

IS YOUR WEBSITE ADA COMPLIANT?  
PLAINTIFFS' LAWYERS WANT TO KNOW.

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Many Texas bankers will recall two waves of class action litigation spotlighting ATMs. Wave one involved signage, a matter that Congress subsequently addressed in amendments to EFTA. Wave two involved accessibility of drive-up ATMs for the visually impaired. It has been some time, but the same firms that filed these two waves of litigation have now embarked on a third wave: class action ADA lawsuits based on alleged “digital barriers” in an institution’s website that limit access by the visually impaired.

In a nutshell, visually impaired individuals use several forms of assistive devices to access websites. These include screen readers, which translate text on a webpage into audible content or braille, specialized browsers or other techniques. At this point, DOJ, which has promulgated ADA standards in many other areas, has deferred issuance of its own website ADA standards until 2018. DOJ has relied upon the Web Content Accessibility Guidelines [“WCAG”] developed by the World Wide Web Consortium. The American Foundation for the Blind has information on this subject available through its website. Plaintiffs’ attorneys have relied upon WCAG. Thus far, most ADA class actions have been addressed to other types of businesses, but there is little doubt that this wave of litigation will find its way to banks.

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In a speech last September, FDIC Chairman Martin Gruenberg stated that bank regulators intend to focus on increasing banking access for people with disabilities. (<https://www.fdic.gov/retiree/fdicnews/2015-09.pdf>.) It is not too much to suppose that regulators ultimately will follow up on this speech with standards. DOJ is in the midst of taking comments on various issues relating to websites (the comment period ends October 7, 2016), and its current notice to governmental entities states that their sites should comply with WCAG 2.0AA. (Comment: ADA title II addresses governmental compliance, while Title III addresses businesses. You also may safely assume that DOJ will hold private business websites to the same standards as governmental websites. You may also assume that, as was the case with updated software and equipment for ATM accessibility, demand for website upgrades will outstrip supply.)

Plaintiffs' attorneys are not waiting, however, and now would be an excellent time to check website compliance in conjunction with appropriate experts. Even if you complete this process, be prepared for a new wave of demand letters as this wave of litigation passes through Texas.