

Publications

Businesses Now Being Sued in Latest Class Action Wave for ADA Claimed Violations for Gift Card and Expanded Web/App Accessibility

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AUTHORED ARTICLE | Winter 2020

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(Published in the Winter 2020 issue of *The Bankers' Statement*)

LATEST CLASS ACTION LITIGATION

Beginning in October 2019, more than a dozen individuals through at least four law firms have filed hundreds of new lawsuits against businesses alleging violations of the Americans with Disabilities Act of 1990's Title III (starting at 42 USC §12101), as well as local New York state (N.Y. Exec. Law Article 15) and New York City Human Rights Laws (starting at N.Y.C. Admin. Code §8-101). New lawsuits continue to be filed weekly like these. These lawsuits have been filed in Federal District Courts for the Southern and Eastern Divisions of New York. Many of the defendant businesses are not New York incorporated and do not have their principal place of business or headquarters there. The lawsuits allege that businesses discriminate unlawfully against individuals who are blind or have visual impairments by providing gift cards for purchase without a Braille version.

PLAINTIFFS' COUNSEL ARE EVER CREATIVE IN IDENTIFYING NEW ADA ALLEGED VIOLATIONS

Over about the past three years, there has been a shift in ADA threat letters and filed lawsuits from allegations regarding the lack of architectural accessibility (counter height, ramp slope, door width, etc.) to allegations involving auxiliary aids and service provisions of the ADA (provisions to provide accommodation to individuals with vision, hearing, and speech limiting disabilities). This latest wave of ADA accessibility litigation follows the tremendous growth of lawsuits filed under the ADA for alleged website accessibility violations. In the website lawsuits, individuals claim that businesses unlawfully discriminate because their websites are not coded to efficiently interact with assistive technology like screen readers for the blind or visually impaired. The substantial majority of these threats and lawsuits were by sight impaired or blind individuals over alleged website or mobile

application accessibility issues.

PLAINTIFFS ARE PULLING RETAILERS INTO CONSUMER-FRIENDLY LOCALES

Thousands of lawsuits on this basis were filed in 2018 across the United States from coast to coast, even apart from threat letters demanding remediation of websites and payment of a settlement fee that includes attorney fees. The website/app threats and lawsuits often involved residents of states or locales that provide greater dollar damages or more specific attorney fee provisions than the federal Americans with Disabilities Act itself, which focuses on non-monetary injunctive relief for plaintiffs and the potential for attorney fees. They also tended to come from states with more plaintiff-friendly court decisions. This has often included New York, with its Human Rights Laws at the state and city level, and California with its Unruh Act. Threat letters and lawsuits have been sent or filed against businesses across the spectrum: retail, restaurant, hospitality, financial institutions and more. Businesses located in such states or even offering to provide good or services nationwide are now receiving threat letters or lawsuits wherever complaining individuals live.

COUNSEL MUST BE AWARE OF THE BEST WAY TO HANDLE OR DEFEND THESE CASES

Website/app accessibility disputes are subject to differing application of law (and defenses) in different parts of the United States. Braille gift card disputes are brand new and could be subject to a variety of different legal and practical defenses.

Vorys actively represents businesses both in response threat letters and individual and class action litigation on these issues nationwide.