

Website Accessibility & the ADA
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Recently, there have been a slew of lawsuits filed across the country alleging that owners and operators of hotels and other places of lodging are using websites that violate the Americans with Disabilities Act (“ADA”). These lawsuits are different than the wave of lawsuits and demand letters sent to so many hotels and other places of public accommodation the last few years alleging that those companies failed to make their websites accessible for users with visual, hearing and physical impairments by not adhering to the Web Content Accessibility Guidelines (WCAG).

ADA regulations require hotels to make reasonable modifications in their policies and practices when necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. Because the purpose of a hotel’s website is, in large part, to allow members of the public to review information pertaining to the goods and services available at the hotel and then reserve appropriate guest accommodations, such websites have been found to be subject to the requirements of ADA regulations. According to these regulations, a hotel must identify and describe accessible features in the facilities and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given facility or guest room meets his or her accessibility needs. Thus, rather than alleging that the website itself is inaccessible to users with disabilities, these “new” website accessibility lawsuits claim that a hotel’s website violates the ADA by failing to sufficiently identify and describe the physical “brick and mortar” accessibility features of the hotel.

The promulgation of these regulations has made it easier than ever for plaintiffs to file lawsuits against hotels. Previously, even a “drive by” plaintiff had to physically go to a hotel, experience some sort of an ADA violation, and then allege an intent to return to the Hotel to establish standing necessary to bring a lawsuit. Now, however, Plaintiffs can sue multiple hotels on the same day from the comfort of their own home. They can file these types of lawsuits simply by claiming that they WANTED to visit a specific hotel (or multiple hotels), but were deterred from doing so and/or making a reservation because the hotel’s website failed to provide enough information for them to determine whether the accessibility features of the hotel meets their needs. Thus, a plaintiff can assert a claim against your hotel without ever visiting, without

ever making a reservation, and without contacting you first to notify you of the alleged deficiencies on your website.

The amount of these types of lawsuits is increasing exponentially, with several plaintiffs (represented by the same few plaintiff law firms) filing dozens of these suits each and every day. Accordingly, if your hotel does not already provide a plethora of accessibility-related information regarding your property, it is imperative that you make changes to your website as soon as practicable. You should provide plenty of information about both the common areas of the hotel as well as the accessible guestrooms.

At a minimum, you should include information regarding the accessibility features of the primary features of your hotel — that is, your parking, main entrance, public restrooms, pool lift, restaurants and bars, fitness centers, and business centers. You should also provide information regarding whether there are accessible routes to get to these highly utilized common areas. It is of course equally important that these areas are actually compliant with the ADA, as providing false, inaccurate, or misleading information could result in liability as well.

Additionally, you need to provide as much accessibility-related information as possible regarding the specific room that will be booked. This includes the bed type (double, queen, king, etc.), number of beds, type of bathroom and shower (roll-in shower, transfer shower, bathtub with accessible bench, etc.), and whether any visual alarms exist.

Based on the dearth of case law in this relatively new and complex area of the law, it is still a bit of a guessing game as to how much information is “sufficient” under the law. And, although ADA compliance is imperative, you also want to strike a balance between the amount of ADA-related information you are providing and various logistical and aesthetic issues that your website may face so that you do not overwhelm the reader. Just keep in mind that at the end of the day, providing as much accessibility related information as possible on your website will significantly increase your compliance with the ADA, and, as a result, will also decrease the chances that you will be hit with this type of “website drive by” lawsuit that so many hotels are now being forced to defend against.