

EMPLOYMENT LAW ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Recent Push for Web Sites to be Covered by ADA

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The Department of Justice (“DOJ”) has long taken the position that the public accommodation requirements of the Americans with Disabilities Act (“ADA”) extend to the Web sites of covered entities. Courts have disagreed over this issue, with some of them ruling that the ADA does not apply to Web sites. In response to this split, the DOJ issued an Advance Notice of Proposed Rulemaking (ANPRM) on July 26, 2010, announcing that it may revise the ADA regulations to explicitly state that the Web sites of places of public accommodation are covered by the ADA. The DOJ’s regulations are entitled to deference by the court system, and would serve as persuasive authority that could be used by individuals in proving ADA violations.

Title III of the ADA states that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.” A “place of public accommodation” is one whose operations affect interstate commerce and that falls within one of the categories set forth by Title III, including places of lodging, establishments serving food or drink, places of entertainment, sales establishments, and so on. According to the ANPRM, the Web site of a company with no physical storefront would be included among the places of public accommodation. Title III requires places of public accommodation to make modifications to their policies and/or procedures, and provide auxiliary aids and services necessary to accommodate individuals with disabilities, so long as the accommodations do not result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by the entity.

Providing a Web site that is accessible to individuals with disabilities can be a daunting task, especially considering the vast realm of possible disabilities and accommodations. The DOJ’s ANPRM does provide some assistance by listing what it considers to be barriers to Web accessibility. For example, individuals who are deaf cannot access information in online videos that do not have captions. Individuals with limited manual dexterity cannot access Web sites that do not support keyboard alternatives for mouse commands. Blind individuals cannot understand visual information on a Web site without corresponding text that can be read by a screen reader, and individuals with impaired vision may not be able to read Web sites that do not allow the font size or color contrast to be modified. The DOJ also notes that the Web Accessibility Initiative of the World Wide Web Consortium has drafted voluntary international guidelines for Web accessibility, which can be accessed at <http://www.w3.org/TR/WCAG20/>. Businesses may be able to find some helpful ideas in these guidelines.

The DOJ's ANPRM is followed by a 180-day public comment period during which the DOJ will be accepting comments regarding the issues described above. The full text of the ANPRM can be found at http://www.ada.gov/anprm2010/web%20anprm_2010.htm, along with instructions on submitting a public comment. Once the public comment period ends on January 24, 2011, the DOJ will issue proposed regulations for public comment, followed by the final regulations.

The drafting of the DOJ's regulations is still in early stages. However, it is never too early for places of public accommodation to begin taking steps toward making their Web sites accessible to individuals with disabilities. Remember that even before the DOJ issues its final regulations, a place of public accommodation may face a risk of liability for failing to accommodate on its Web site.

If you have any questions about this alert, please call one of our Labor and Employment attorneys listed below.

Bass, Berry & Sims Labor and Employment Attorneys

Lymari Martinez Cromwell
(615) 742-7903
lcromwell@bassberry.com

Davidson French
(615) 742-6240
dfrench@bassberry.com

Tim K. Garrett
(615) 742-6270
tgarrett@bassberry.com

Robert W. Horton
(615) 742-7708
rhorton@bassberry.com

Lin B. Howard
(615) 742-7927
lhoward@bassberry.com

Alonda W. McCutcheon
(615) 742-7717
amccutcheon@bassberry.com

Michael S. Moschel
(615) 742-6297
mmoschel@bassberry.com

Annie Warnock Neal
(615) 742-6517
aneal@bassberry.com

William N. Ozier
(615) 742-6232
bozier@bassberry.com

Justin A. Page
(615) 742-7786
jpage@bassberry.com

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