



June 26, 2018

MEMBERS OF CONGRESS URGE DOJ TO ADDRESS WEBSITE ACCESSIBILITY

Last week, U.S. Attorney General Jeff Sessions received a letter signed by 103 members of the U.S. House of Representatives imploring the Department of Justice (“DOJ”) to provide guidance and clarity on website accessibility under the Americans with Disability Act (“ADA”). Specifically, the bipartisan group asked the DOJ to publicly state that private ADA litigation regarding website accessibility is unfair and violates basic due process principles in the absence of statutory authority or a DOJ rule establishing a minimum website accessibility standard.

The recent flurry of ADA website accessibility litigation spurred the members to send the letter. The letter explains that businesses of every shape and size throughout the country are being threatened with legal action by private plaintiffs alleging ADA violations because a business’s website is not accessible to individuals with disabilities. According to the members, the proliferation of litigation has been caused by the absence of statutory, regulatory or other controlling guidance on the ADA and website accessibility. The members acknowledged that Congress must act to provide greater clarity through the legislative process; however, in the meantime, the members urged the DOJ to act to reduce ADA litigation risk to businesses.

For over seven years, the DOJ contemplated promulgating a rule under the ADA to (i) clarify the ADA’s applicability to websites and (ii) set forth website accessibility standards. See our ALERT of Aug. 5, 2015 for a summary. After promising a final rule in July 2016, the DOJ ended its rulemaking efforts by withdrawing its advance notices of proposed rulemaking (“ANPR”) in December 2017. When withdrawing the ANPRs, the DOJ indicated that it wants to evaluate whether regulation on the accessibility of website information and services is necessary and appropriate.

In April 2017, a California district court issued a favorable decision dismissing an ADA website accessibility lawsuit on due process grounds. See our ALERT of Apr. 28, 2017. The court’s decision could be persuasive to other courts addressing ADA claims regarding website accessibility. However, until Congress or the DOJ act, any business operating a website or mobile application that has not updated its website or mobile application to comply with version 2.0 of W3C’s Web Content Accessibility Guidelines (“WCAG”) faces

the uncertain prospect of ADA litigation. □

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