

Legal News for Your Business

FROM CHARLOTTE, NORTH CAROLINA'S

Business Lit, Employment, Healthcare & Tax Law

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Eleventh Circuit says companies don't need to accommodate users under ADA

In recent years, risk of website accessibility litigation has been on the rise. From 2017 to 2018, the number of federally filed website accessibility cases nearly tripled, from 815 to 2,285. In 2019, more than 3,200 cases were filed. The majority of these cases involve accessibility standards for the visually impaired – that is, courts are being asked to determine whether websites are required to have integrated functionality that allows a person with a visual impairment to use the website.

The Department of Justice has historically declined to clarify regulations and standards on what company websites must do to comply with Title III of the Americans with Disabilities Act (ADA); therefore, leaving the courts to decide.

Recent Ruling

The Eleventh Circuit decided last week that websites are not places of public accommodation, and thus, businesses do not have to offer disability-friendly services on their website.

In *Gil v. Winn-Dixie*, the U.S. Court of Appeals for the Eleventh Circuit ruled that Winn-Dixie had not discriminated against a visually impaired customer who alleged that Winn-Dixie's website was not accessible to him. The court stated the plaintiff had not shown it was necessary for Winn-Dixie's website to be accessible for him in order to access the goods and services Winn-Dixie offers in its physical store.

What the Eleventh Circuit Ruling Means for Your Company.

This decision creates an even bigger split than previously existed in the way the federal courts of appeals analyze website accessibility claims brought against companies under the ADA.

Companies operating in Florida, Georgia and Alabama (in the Eleventh Circuit) are not required by federal law to make their websites ADA compliant under this new 11th Circuit precedent.

Companies operating in North Carolina, Maryland, Virginia, West Virginia, and South Carolina (in the Fourth Circuit) have less clarity.

How to Manage Risk

- Discuss your website's current accessibility with third-party vendors and developers. Determine what accessibility features you have and what additional options may exist.
- Encourage user feedback and carefully consider it.
- Be alert for continuing trends. The law in this area will almost certainly continue to develop and may reach the U.S. Supreme Court.

If you need assistance managing risk or staying compliant with the ADA, contact **Nicole Gardner** or **Erin Ball**.

Employers can learn a lot from the Amazon union drive in Alabama

Earlier this month the results of a widely publicized unionization vote at a 6,000-person Amazon fulfillment center in Bessemer, Alabama were announced, with workers decisively voting against forming a union. Despite the loss, many experts believe that unionization in America is poised for a resurgence. The Biden administration has been openly sympathetic to unions and to potentially passing rules making unionization easier and more likely.

Employers should look to the attempted unionization of the Bessemer, Alabama Amazon warehouse as a cautionary tale. The most pressing issue for these warehouse workers was not money. (The average pay at the Amazon facility in Bessemer was double the federal minimum wage and considered excellent starting pay for the region.) Rather, employees main concerns revolved around the physical demands of the work and the relentlessness of the schedule, as an app tracked their "time on task." Employees at the fulfillment center complained of being penalized for taking bathroom breaks, being forced to work long hours, and generally being treated as replaceable parts in a machine. The employees who sought to form a union and supported unionization tried to bring these concerns to the attention of management, but felt their concerns weren't heard or understood and ultimately felt disrespected by the company.

In particular, Employees complained of lack of interaction with supervisors, and said they would only know who their supervisor was by checking an app – it might be someone they had never met. They felt they had no one to go to with questions or concerns. They also complained about standards used for disciplinary actions and terminations including those regarding "time on task" that were never clearly explained to employees.

Employers everywhere should keep in mind that while competitive pay is undoubtedly important, clear and fair policies and good communication with their workers will also produce significant bottom line benefits, including a reduced threat of unionization. Union avoidance training can help provide managers with the skills they need to build effective partnerships with their workers. If you have interest in providing union prevention training to your managers and supervisors, contact **Nicole Gardner**.



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