

# Financial Services Update: Does Your Website Need To Be ADA Compliant?

November 8, 2016

Recent years have seen an increase in Americans with Disabilities Act (ADA) claims being asserted against banks and other businesses. The initial wave of claims involved accessibility issues at automated teller machines. In recent months, a new wave of claims involving website compliance with the ADA has arisen. Many of these claims have been made on behalf of sight-impaired persons asserting the failure of websites to comply with the ADA.

In the recent article "Companies Face Lawsuits Over Website Accessibility for Blind Users," the *Wall Street Journal* noted that over 240 businesses nationwide have had these types of claims asserted against them. The article further notes that most claims are settled quickly for "between \$10,000 and \$75,000." Unfortunately, the legal status of these types of claims is muddled because there is a split among the federal courts regarding whether websites are subject to the ADA, and the Justice Department, which is charged with enforcing the ADA, has not issued promised website compliance guidelines.

Although Florida, Pennsylvania, New York, and California have seen 95 percent of the lawsuits involving these claims, it is likely that they will be spreading to other states. Further, reports have indicated the focus of these claims will shift to the websites of community banks. The first notice your financial institution might have of an issue might be a demand letter from a lawyer. If you receive a demand letter, it is important to promptly get your legal counsel involved to help you assess the risks and develop a response.

Changing your website is a big task - especially since your site, including your online banking service, is likely provided by one or more third-party service providers and you do not have control over how responsive a provider will be to your requests. So what can - or should - you do now? Although you may not be able to avoid a claim, the following are some steps you can take now to help manage your risk:

1. Check your service provider agreement. Many online banking services agreements contain representations that the system will comply with applicable law. Further, they may indemnify the bank for a failure to comply with the law. If you use the same provider for your entire website, determine whether



the compliance with law representation extends to just the online banking transactional part of the service or to all parts of the website.

2. In contrast to online banking service providers, most independent website developers will not indemnify you in these situations. They simply do not have the capability to ensure compliance. As a result, they will often disclaim liability for compliance issues and place that burden on you. That means your bank will either need to take on that responsibility, outsource it to a third-party or find another website vendor with greater capabilities. The regulatory standards regarding third-party relationship management require that you consider these types of issues as part of your vendor due diligence efforts.
  
3. Any indemnity provision in a vendor agreement should be broad enough to include not only out-of-pocket losses and damages, but also all costs related to any claims from the point that the claim is first asserted, including attorneys' fees and costs of investigation.
  
4. If your vendor agreements do not include adequate indemnity provisions and your contract is up for renewal in the near future, you should include an expanded indemnity in your negotiation strategy.

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