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# Websites and the ADA: Do your Inns Have to Be Accessible?

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Kara M. Maciel, Esq.  
Chair, Labor & Employment Practice Group

# Kara M. Maciel

kmaciel@connmaciel.com / 202.909.2730

**Kara Maciel** is the Chair, Labor • Employment Practice at **Conn Maciel Carey**, where she represents employers in all aspects of the employment relationship:

- Defends employers in litigation at both the federal and state levels, including matters related to ADA, FLSA, FMLA, and Title VII
- Counsels employers on compliance with federal and state law, including issues related to hiring, discipline, internal investigations, and termination
- Special attention to legal issues in the hospitality industry, including resorts, hotels, restaurants, and spas

# Website Accessibility



# Why Does this Matter? Culture Counts!

- ✓ Set a culture that emphasizes the accessibility of your inn and services, including making online reservations and the integration of best practices.
- ✓ Strong business case that making your website accessible will increase profitability and improve your brand and consumer pool by being a preferred hotel for individuals with disabilities.

# What is the Americans with Disabilities Act (ADA)?

- Federal **civil rights law** that requires all public accommodations be accessible to individuals with disabilities.
- Since January 16, 1992, all places of public accommodations are required to comply with the ADA.
- Applies to owners/operators, landlord/tenants, franchisors/franchisees.

# Title III Obligations

- Must modify policies, practices, and procedures – unless doing so fundamentally alters goods and services



- Requires auxiliary aids and services for effective communications
- Removal of barriers to access

# ADA and Website Accessibility

1. Does your website need to be accessible for users with visual, hearing and physical impairments? (WCAG issue)

- “It’s complicated”

2. Does your website need to provide information regarding various accessibility features at your resort?

- Yes

# Does the ADA require my resort's website to be "accessible?"

o Maybe! Tension exists in courts and DOJ whether Title III applies to websites

- Courts have ruled on both sides of the issue
- No universally recognized standard for achieving website accessibility
- Trend is for courts to find that websites are places of public accommodation
- This, even in the absence of guidelines for private companies' websites, the trend is to comply with WCAG 2.0.



# What are some common Website Accessibility Issues?

- Users with visual impairments:
  - Pictures, symbols, maps, diagrams, etc. with no written descriptions
  - “Click here” links
  - Text as an image file (as opposed to html)
- Users with hearing impairments:
  - Video and audio files with no captioning
- Users with physical impairments:
  - Navigating website without a mouse or a keyboard

# Common Threads in WCAG 2.0

- Provide text alternatives for non-text content (e.g., pictures, maps)
- Provide text captions for audio content
- Avoid using color as the only means of conveying information (e.g., green means go)
- Make all functionality available from a keyboard interface (as opposed to requiring mouse “clicks” to activate links)
- Provide a way to pause or slow down “time out” features

# Proposed DOJ Rule on Accessibility

- On July 26, 2010, the DOJ release proposed advanced notice of a proposed rule to amend Title III to adopt standards covering websites
- Proposed staggered compliance deadlines
- NPRM was expected to be published in 2015, but has been postponed indefinitely by DOJ



# Recent Court Splits

- In 2017, federal courts are deciding website accessibility cases and coming out with different results:
  - *Winn Dixie* – Florida trial court issued a verdict to retailer because its website was not accessible
  - *Domino's Pizza* – California federal court dismissed the case brought by a blind individual
- **Take-aways:** Websites that are not accessible should have a 24/7 toll free number serviced by live agents who can provide access to guests.

# Policy and Remediation Plans

- Given the regulatory ambiguity, resorts should proactively test your website's accessibility.
  - ❖ WAVE (WebAIM.org) – provides visual feedback containing errors preventing or interfering with content accessibility and areas that can be improved
  - ❖ Functional Accessibility Evaluator and Ainspector Sidebar

# Policy and Remediation

- If not accessible, implement a remediation plan:
  - 1) A timeline for remediating accessibility issues
  - 2) Executive and senior management participation
  - 3) Identify an accessibility project leader
  - 4) Make third party providers aware of accessibility requirements and expectations

# Policy and Remediation

- Create a web accessibility policy consistent with WCAG 2.0
- Ensure training and compliance with policies
- If you do not implement certain accessibility features because they are unduly burdensome or would fundamentally alter your website, make sure to have plenty of documentation to back up that claim.
  - Heavy burden to prove this defense

# Policy and Remediation

- Retain an Accessibility Consultant
  - They can help you build safeguards into your contracts to protect against client liability for inaccessible deliverables



# Hotel Accessibility Information on Website

- Hotel websites are subject to the ADA because it provides information about their goods and services to the public
  - ADA regulations - 28 CFR 36.302(e)(1)
- A public accommodation that owns, leases, or operates a place of lodging shall:
  - i. Modify its policies, practices, or procedures to ensure that individuals with disabilities **can make reservations for accessible guest rooms during the same hours and in the same manner** as individuals who do not need accessible rooms;

# Accessibility Information on Website

- ii. Ensure that **accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented** and the accessible room requested is the only remaining room of that type;



## Accessibility Information on Website

- iii. Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the **guest room requested are blocked and removed from all reservations systems;**
  
- iii. Guarantee that **the specific accessible guest room reserved through its reservations service is held for the reserving customer,** regardless of whether a specific room is held in response to reservations made by others;

# Accessibility Information on Website

- v. **Identify and describe accessible features in the hotels** and guest rooms offered through its reservations service **in enough detail** to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs.



# Accessibility Information on Website

- This final prong of the regulation is crucial and has been the subject of hundreds of lawsuits.
- Plaintiffs are now claiming they “wanted” to visit the hotel, but were deterred due to lack of information about the hotel’s accessibility features on its website.
- Florida, Arizona and California have been the main targets so far.
- Much easier logistically to bring this type of claim as opposed to more “traditional” brick and mortar claims.

# Accessibility Information on Website

So, what is enough information?

1. At a minimum, provide information regarding whether common areas of your hotel are accessible
2. Where should that information be provided?
  - Popular common areas: parking, main entrance, public restrooms, pool/pool lift, restaurants and bars, fitness centers, business centers, lever handles on doors, etc.
3. Are there accessible routes to get to these areas?
4. If so, describe those as well.
  - ❖ Do not provide inaccurate information!

# Accessibility Information on Website



So, what is enough information?

1. You also need to provide sufficient information regarding the accessibility of your rooms.
2. What does that mean?
  - Bed type, number of beds, type of bathroom (roll-in shower, tub with accessible seats), non-slip grab bars, etc.
3. How should this information be provided?

# Accessibility Information on Website

- Due to the lack of case law, there is no bright line rule as to the amount of information that is deemed to be “sufficient.”



- The more information you can provide, the more likely you are to be ADA compliant and avoid these types of lawsuits in the future.



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# Service Animals

## Service Animals

- ❖ Definition -- Dogs (or miniature horse) trained to perform work for the benefit of a person with disability
- ❖ Cannot impose surcharge or cleaning fee for use of service animals
- ❖ Only two permissible inquiries can be made:
  - Is the animal required because of a disability?
  - What work or task has the animal been trained to perform?
  - \* No other inquiries about an individual's disability or the dog are permitted



# Service Animals

- ❖ Cannot require proof of certification or medical documentation as condition of entry
- ❖ May require the dog to be harnessed, leashed or tethered
- ❖ May only exclude service animals if:
  - The dog is out of control and the owner cannot gain control
  - The dog is not housebroken
- ❖ “Comfort,” or “emotional support” animals do not meet the ADA’s definition of service animal



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# Questions?



**Kara M. Maciel**

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