Legal Update Article

Federal Disability Discrimination Law Does Not Require Websites Be Accessible, Appeals Court Holds

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April 9, 2021

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A website is not a "place of public accommodation" and an inaccessible website is not necessarily equal to the denial of goods or services, a federal appeals court has held in a groundbreaking decision on disability discrimination under Title III of the Americans with Disabilities Act (ADA). *Gil v. Winn-Dixie Stores, Inc.*, No. 17-13467 (11th Cir. Apr. 7, 2021).

While the Eleventh Circuit joins several other circuits in holding a website is not a "place of public accommodation" under Title III, it went further in expressly holding that, under the facts of the case, an inaccessible website is not necessarily tantamount to the denial of goods or services because the website lacked an auxiliary aid that would enable the website to be read aloud by screen-reader technology.

The Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia.

Standing to Sue

The plaintiff, who has a visual disability, had standing to assert his claims, the Eleventh Circuit held, because he had been a regular customer for 15 years, using coupons and filling prescriptions in the store, until he stopped patronizing the store because he discovered the website offered online prescription refills and electronic coupons he was unable to access.

Places of Public Accommodation

On the broader issue of whether websites are "places of public accommodation," the Eleventh Circuit held that a website is not a place of public accommodation because it is not one of the 12 enumerated types of public accommodations listed in the statute.

The court explained that the statutory definition of "public accommodation" clearly included only physical locations. It said, "All of these listed types of locations are tangible, physical places. No intangible places or spaces, such as websites, are listed." Further, it explained that it cannot judicially amend Title III's definition to include websites, because, under the separation of powers doctrine, this must be left to Congress.

Access to Goods or Services

The Eleventh Circuit held that, even if a website was a service of the physical store (and place of public accommodation), Winn-Dixie did not discriminate against individuals with visual disabilities by not having a screen-reader-compatible website as an auxiliary aid because individuals with disabilities had full access to the goods

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and services offered by the place of public accommodation, which is the physical Winn-Dixie store.

The court found significant that the plaintiff had filled prescriptions and used paper coupons in the store for many years without difficulty. The court noted that he could continue to do so in the store in the same way despite the website's *alternative*, and often faster, ways to refill prescriptions and use online coupons. The Eleventh Circuit held the ADA requires that disabled patrons be given equal access to those goods and services, but not necessarily in the identical way as non-disabled patrons. It noted that the statutory requirement to provide auxiliary aids and services permits equivalent but not identical access. It said this was true even if non-disabled patrons could have more convenient access through the website. (The website at issue did not allow any direct purchases. All prescriptions had to be picked up in the store and all coupons had to be used in the store.)

While the Eleventh Circuit appeared to say that, as long as a disabled patron is able to purchase goods and services at the physical place of public accommodation, there is no claim under Title III if the disabled patron cannot *also* purchase such goods through a website, the court did not squarely address this issue given that Winn-Dixie's website did not sell goods and services.

Nexus Standard Rejected

Finally, the Eleventh Circuit directly rejected the "nexus" standard that had been used by many courts around the country.

Under the nexus standard, courts have held that, even though websites are not directly included in the definition of places of public accommodation, they can be treated as part of the physical place of public accommodation if there is a strong nexus between the website and the physical store. This theory led to thousands of cases being filed, alleging that most websites have a strong nexus to a physical store.

The Eleventh Circuit found the theory was flawed and held there was no basis under Title III to expand the ADA to include places or websites not otherwise covered merely because such websites have a connection (even a strong one) to a physical place of public accommodation.

Dissent

In her 34-page dissent, Circuit Judge Jill Pryor agreed with the lower court that Winn-Dixie offered separate, additional services to customers through its website by allowing customers to refill prescriptions and load coupons onto a customer's store card. She would have found Winn-Dixie violated the ADA because it did not provide auxiliary aids and services to make those additional services accessible to individuals with disabilities (through a screen-reader-compatible website).

Implications

The Eleventh Circuit's decision is significant for businesses that operate fully online businesses because it holds that a website itself is not a place of public accommodation to which the ADA applies. In addition, brick-and-mortar businesses that provide alternative means for disabled patrons to obtain goods and services, such as in-person or by phone or email, instead of just through a website would find good points in the court's decision.

The Eleventh Circuit also underscored the utility of having an accessibility statement providing an alternative means of obtaining information or goods contained on a website or providing assistance in using the website. The court endorsed the idea that the ADA requires equal access, not necessarily access in the manner preferred by any particular patron. Similarly, even where an auxiliary aid might be required, the particular auxiliary aid sought by a particular patron (for example, a screen-reader-compatible website) may not be a "necessary" auxiliary aid under the ADA if alternative means of obtaining goods and services exist.

Despite the Eleventh Circuit's decision, it remains to be seen whether other circuits will follow or it will be favored with respect to state disability laws. Businesses must carefully scrutinize the interplay between federal and state disability laws in order to determine the correct course.

Please contact a Jackson Lewis attorney with any questions about this case.