

Is Your Webinar ADA Compliant?

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[Andrew P. Kelly](#)

As a result of the COVID-19 pandemic, many businesses are relying on webinars as a tool to both stay in touch with clients and continue marketing efforts while practicing social distancing. However, is it possible that your company's webinar may run afoul of the Americans with Disabilities Act ("ADA")?

Pursuant to Title III of the ADA, "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

While the ADA does not specifically list websites, webinars or other electronic intangibles as places of "public accommodation," federal circuit courts are currently split on whether they should be included within the ADA's definition of this term. As of the date of this posting, the Third, Fifth, Sixth and Ninth Federal Circuits have held that the term "public accommodation," as used in the ADA, is limited to physical structures or accommodations, while the First, Second and Seventh Federal Circuits have held that the definition is not so limited.

Although the Eleventh Circuit—which has jurisdiction over Florida, Georgia and Alabama—has so far not taken a side in the Circuit-split, the Eleventh Circuit held in *Rendon v. Valleycrest Productions, Ltd.*, 294 F. 3d 1279 (11th Cir. 2002) that an "intangible barrier" to a place of public accommodation (and the services or products offered therein), may give rise to an actionable discrimination claim under Title III of the ADA. This decision paved the way for website-based Title III discrimination claims in the Eleventh Circuit. Based on this ruling, it is quite possible that a plaintiff could allege sufficient facts to establish that a webinar functioned as an intangible barrier to a place of public accommodation.

At least one federal district court (i.e., a federal court with jurisdiction over a part of a state, in this case Utah) has addressed the issue of a company's failure to provide auxiliary services to disabled individuals in the context of a webinar. In *Jensen v. United First Fin.*, No. 2:09-CV-00543 DAK, 2009 WL 5066683 (D. Utah 2009), a group of hearing-impaired plaintiffs alleged that

the defendant, who provided training webinars for its independently contracted sales representatives at hotels, convention centers and other rented facilities, failed to provide auxiliary services to the hearing impaired in connection with the webinars.

While the Jensen court did not go so far as to rule that the lack of auxiliary services provided to deaf webinar participants constituted a violation of Title III, the court did deny the defendant's motion to dismiss, stating that "there may...be a nexus between the provisions of the webinars and video training services and the allegedly discriminatory policies and procedures complained of by the plaintiffs." Therefore, the Jensen court found that "plaintiffs [could] possibly prove at least one set of circumstances in which...relief may be granted."

Again, depending on where you consider the webinar "to be" (a challenging question itself), proactive measures that may prevent webinar-based ADA litigation include: (i) inquiring as part of the webinar registration process whether the participant will need any ADA related accommodations, (ii) supplying webinar transcripts, (iii) providing subtitles for the webinar, (iv) providing a sign language translator for the webinar, and (v) reaching out in advance to disabled participants to obtain any questions the individual may wish to pose during a question-and-answer portion of the webinar. Despite these measures, this is still a developing area of the law, and the risk of a potential webinar-based ADA lawsuit is unique to each particular set of circumstances. Webinar hosts are encouraged to contact an attorney with ADA litigation experience to better understand and mitigate the risk of a potential Title III lawsuit.

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