

## **Not If, But When: Applying the ADA's Accessibility Requirements to Mobile Apps**

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Americans with Disabilities Act (ADA) accessibility suits continue to flood federal court dockets in New York, California, and Florida. Neither Title III of the ADA nor the implementing regulations mention websites. Yet, plaintiffs with disabilities have been increasingly successful in bringing lawsuits against companies under the ADA and comparable state accessibility laws for alleged unequal access to their websites under Title III's "public accommodation" clause. As courts have increasingly allowed these cases to proceed, many companies have come to accept that their websites must be accessible and have engaged with vendors to come into compliance. But the risk of exposure to suit under the ADA does not end at websites. What about other digital offerings, such as a company's mobile apps?

In the financial services arena, consumers rely on mobile apps more and more each day to check their retirement and investment accounts, access insurance account information, view the status of claims, find insurance providers, and track health and wellness information. As more and more businesses are learning, the rationale for applying the ADA to websites applies equally to mobile apps. The following arguments related to website accessibility, accepted by many courts, make this possible.

Title III applies to both tangible and intangible barriers to accessing a place of public accommodation. Discrimination occurs when a person is denied the opportunity to participate in programs or services of a place of public accommodation, or is provided separate, but unequal, goods or services. "Public accommodation" is defined as a privately operated facility or location whose operations affect commerce and fall within at least one of 12 specified categories, including the sale of goods and services generally. A business is said to discriminate against an individual if it provides unequal access to its goods and services through its digital offerings, including websites. This is either because the offering itself is a place of public accommodation, or because the website has some connection to a physical place of public accommodation where goods or services are traditionally offered and the discrimination impedes or denies access to it.

Applying this logic, an increasing number of courts are holding that the ADA applies to mobile applications too. Some courts hold that the ADA applies to mobile apps upon a showing that goods and services can be accessed by the public and affect commerce. Others require a nexus between the goods or services sold on the mobile application and a physical place to conclude that the ADA's accessibility standards are triggered. Regardless, just as with websites, courts are concluding with increased frequency that the ADA applies to mobile apps.

Accordingly, businesses should be mindful of the accessibility of all of their digital offerings, including business-to-consumer mobile apps, especially those that connect users to physical places of public accommodation (i.e., provide office or branch locations, or connect to users through locationbased data). The same can be said for apps intended for use by a distinct group of users, such as customers. While such apps are designed for a smaller pool of users, and not every member of the public will be able to bring suit against a company for non-compliance, the risk of non-compliance still exists. Business-to-business apps may also be subject to the ADA. While a business is not an "individual" under Title III, the user of the application on behalf of the business could bring a claim as an individual under Title III.

As apps are becoming more ubiquitous and the pandemic forces companies to conduct more business through mobile apps, it has become increasingly important to keep compliance with statutes such as the ADA in mind.

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