

## Lawsuit Risk

# More Businesses Sued Over Disabled Website Access

**B**USINESSES WITH a web presence, particularly those that are consumer-facing, are increasingly being sued over website accessibility issues that prevent visually impaired individuals from using a website.

While the number of such cases has been growing, 2,281 website accessibility lawsuits were filed nationwide in 2023, down from 2,387 the prior year and 2,352 in 2021, according to a report by *Accessibility.com*, a firm that helps businesses make their websites usable for certain disabled individuals.

The drop in cases actually filed is due to more organizations settling with law firms without going to court, in light of the fact that there was an 18% year-on-year increase in demand notices in 2023, the report concludes.

## What is website accessibility?

Website accessibility refers to the extent to which a site can be used by individuals with disabilities. This can include people who are blind or have low vision, those who are deaf or hard of hearing, and people with mobility impairments, cognitive disabilities or other disabilities.

The Americans with Disabilities Act allows individuals with disabilities to bring lawsuits against businesses directly. A plaintiff can seek injunctive relief, such as asking for a court order requiring the website to be changed as well as attorneys' fees or costs. However, the ADA does not permit the recovery of monetary damages in these cases.

That said, many states, including California and New York, have enacted laws allowing individuals to recover monetary damages for disability discrimination. Courts in both states have ruled that websites are places of public accommodation akin to establishments with physical locations, and, thus, are subject to the ADA.

As a result, more than 85% of website accessibility lawsuits are filed in those two states, according to the *Accessibility.com* report.

There are indications that filing these types of lawsuits has become a moneymaker for a few law firms and individuals.

## Follow the Money to CA, NY

- New York had nearly 73% of all the cases filed nationwide, followed by California and Illinois.
- Over 69% of all website accessibility lawsuits were filed by five law firms out of New York and California.
- Almost 16% of website accessibility lawsuits in 2023 were filed by five plaintiffs. One of them filed more than 105 lawsuits that year after filing 108 in 2022. The report found that four other individuals filed between 52 and 78 cases apiece in 2023.

## What should businesses do?

Most of these lawsuits cite the "Web Content Accessibility Guidelines," published by the World Wide Web Consortium. While these guidelines are advisory only, they have become the standard to follow when making websites accessible to individuals with disabilities.

There are widgets that can be installed on websites to ensure they comply with the WCAG, but even so, 933 lawsuits filed in 2023 were against businesses that had installed such widgets on their websites.

Experts recommend:

- Regularly checking your website and digital content to ensure it is accessible to individuals with disabilities.
- Ensuring that your website complies with the latest WCAG guidelines and includes a general statement regarding accessibility and a clear indication of how to contact your company if an issue with accessibility arises.
  - If necessary, hiring an outside vendor that can bring your website into compliance with the WCAG guidelines.
  - If you receive an ADA demand letter or complaint, you should consult with attorneys who are experienced in these types of cases. ❖

