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Federal Appellate Court Holds That Not All Business Websites Must Be Accessible To Disabled Persons

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On April 7, the U.S. Court of Appeals for the Eleventh Circuit ("11th Circuit") held in Gil v. Winn-Dixie that a business's website is not a place of public accommodation under Title III of the Americans with Disabilities Act ("ADA"). A public accommodation is defined as a business that is generally open to the public, and that falls into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, daycare facilities, recreation facilities, and doctors' offices. The ADA's Title III prohibits discrimination in the services and activities offered by places of public accommodation based on an individual's disability. Although websites are not specifically defined by ADA as places of public accommodation, nonetheless, some courts have held that they are such, and therefore the ADA's regulations apply to them.

A spate of lawsuits has been filed against employers based on the theory that websites are places of public accommodation. In particular, these lawsuits allege that customers with visual impairments cannot access these websites, and therefore the services and activities offered to them by the business that hosts the website are not the same as that offered to non-visually impaired customers*, therefore* the websites are discriminatory.

Gil v. Winn-Dixie

The case of Gil v. Winn-Dixie (a supermarket chain), was decided on April 7, 2021 by the 11th Circuit Court of Appeals. The plaintiff in Winn-Dixie, Juan Carlos Gil, who is legally blind, alleged that he could not use the Winn-Dixie website to re-fill pharmaceutical prescriptions and link online coupons to his Winn-Dixie store card. Winn-Dixie's website did not integrate with screen reader software for the visually impaired, preventing him and other visually impaired customers from using it. Gil claimed that he was denied "the full and equal enjoyment of the services, facilities, privileges, advantages and accommodations" of the retailer because he could not use Winn-Dixie's website.

The 11th Circuit concluded that the Winn-Dixie website is not a place of public accommodation. The Court further ruled that Gil could access the goods and services of the supermarket chain because he had access to the physical locations of the store. Indeed, Gil had to visit Winn-Dixie's physical stores to purchase goods, fill his prescriptions, and use coupons. The 11th Circuit noted that Gil had shopped at Winn-Dixie's physical stores for approximately 15 years, and nothing prevented him from continuing to do so. Therefore, the Court explained, failing to have access to the Winn-Dixie website does not constitute discrimination.

Although the 11th Circuit decision offers some hope for employers in defending against lawsuits alleging their websites are not ADA compliant, there are other circuits that have already ruled that websites are a public accommodation. Down the line, the U.S. Supreme Court will have to resolve this split in the circuit courts.

TAKEAWAY: Until New Jersey courts clarify exceptions to the general rule that websites must be accessible to the visually impaired, New Jersey employers should continue to make all websites ADA compliant.

If you are an employer and need help navigating Title III of the Americans with Disabilities Act or any other employment laws, contact Stephanie Gironda or any member of the Wilentz Employment Law Team.

Attorney

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