

PUBLICATION

Is Your Business Adequately Providing Accommodations in the Wake of the Pandemic?

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The COVID-19 pandemic has disrupted many aspects of our daily lives, including how we socialize and interact with others in public. By now, we are all very familiar with the Centers for Disease Control and Prevention (CDC) recommendations to mitigate the risk of exposure to and spread of COVID-19 by avoiding handshakes and hugs, social distancing, wearing a mask, limiting contact with surfaces and washing your hands as often as possible (or using sanitizer when soap and water are unavailable). These new social norms have not only impacted how we interact with family and friends, they have also impacted how we shop for goods and inquire about services offered by businesses.

In fact, due to these changes, many businesses have pivoted and are now heavily relying on websites and mobile applications for customers to purchase goods and services. And the businesses that have reopened their doors to customers have also adjusted the in-person shopping experience to account for the new social norms. Regardless of whether your business is focusing on online sales, app purchases or in-person services, you must not ignore the need to accommodate customers (and employees) with disabilities while complying with the CDC's guidance. Not only is it legally required that your businesses are accessible, but it is good for business to provide accessible shopping experiences given the number of Americans living with a disability, which the CDC estimates is 61 million adults. The CDC also reports that 13.7 percent of these individuals have difficulty walking or climbing stairs, 6.8 percent have difficulty running errands alone, 5.9 percent have difficulty hearing and 4.6 percent have difficulty seeing even with glasses (or are blind).

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities and requires accessibility in places of public accommodation. While the ADA does not define "places of public accommodation," it provides examples including hotels, restaurants, theaters, hospitals, and insurance offices. Ultimately, if your business is open to the public and you have customers on your premises, your business may be considered a place of public accommodation that must comply with Title III. Even if you do not have a "physical location" that is open for customers, your mobile applications and websites might be considered places of public accommodation. Litigation has increased in the last several years to determine whether (and if so, how) Title III applies to businesses' mobile applications and websites. Federal circuit courts are currently split on when apps and websites should be considered "places of public accommodation." To date, the Third, Sixth, Ninth and Eleventh Circuit Courts of Appeals have held that goods and services provided by a public accommodation through a website may fall within the ADA if they have a sufficient nexus to a physical location. Whereas the First, Second and Seventh Circuit have found that a website can be a place of public accommodation independent of any connection to a physical space. It is important to research the law in your respective jurisdiction(s) to discern whether your websites or applications might be covered by Title III.

Regardless, given the CDC recommendations and the increased reliability on mobile applications and websites to purchase products, now is the time for businesses to consider ways to make their premises and technology accessible to their customers and employees who may be living with a disability or other impairment. For example, you may want to consider how to increase accessibility for your mobile applications and websites; how to follow the CDC social distancing guidelines while maintaining accessibility to those with disabilities; whether to modify physical barriers (e.g., parking lots, service counters, bathroom stalls); how to ensure accessible common use circulation paths for employees and how to provide accessible means of ingress and

egress to the building. Consult a Title III ADA expert to ensure that your business adequately accommodates disabled individuals.

You can access Baker Donelson's October 29 [webinar](#) addressing additional steps businesses can take to ensure compliance with Title III given the CDC recommended guidelines and the increased reliability on websites and mobile applications by businesses in the wake of COVID-19. Feel free to contact the author for more information.