



ADA WEBSITE ACCESSIBILITY

How to Avoid Lawsuits

Website compliance with the Americans with Disabilities Act (ADA) is a tricky thing. In fact, many small businesses are unaware that their websites must comply with the ADA. With ADA lawsuits increasing each year, it's important to take steps to **minimize your liability**.

What is the ADA?

The ADA is a civil rights law that provides protections for individuals with disabilities. Congress enacted the ADA in 1990 to eliminate disability-based discrimination. It does so in three parts:

PART 1

Employment

- Applies to employers with 15 or more employees.
- Prohibits discrimination against those with a disability (an "impairment" as defined in [42 U.S.C. 12102](#)) in hiring, firing, compensation, or other conditions and privileges of employment.
- Requires that employers provide a disabled employee with a "reasonable accommodation," which means either making employee facilities useable/accessible or modifying some aspect of the job or work environment, unless doing so would impose an "undue hardship"—defined in [42 U.S.C. 12111](#) as "an action requiring significant difficulty or expense."
- [42 U.S.C. 12111](#) lays out examples of reasonable accommodations.

PART 2

Public Services

- Applies to state and local governments, as well as public transportation.
- Ensures that individuals with disabilities are not excluded from participation in or denied the benefits of services, programs, or activities of these public entities.

PART 3

Public Accommodations and Services by Private Entities

- Applies to all public accommodations and private entities.
- "Public accommodation," defined in [42 U.S.C. 12181](#), consists of places of commercial activity which members of the public frequent, including hotels, restaurants, movie theaters, schools, parks, and more.
- Mandates that those with disabilities have "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."



Does the ADA Cover Websites?

Because the ADA was enacted prior to the internet boom, it has not been clear whether a website counts as a “place of public accommodation” under the ADA.

Some federal courts have held that a place of public accommodation refers only to physical places, such as brick-and-mortar establishments. Other courts have disagreed, holding that websites fall under the ADA based on their close connection to providing the goods or services of the business. While the U.S. Supreme Court has not weighed in, the recent trend from Department of Justice (DOJ) guidance and the courts is to include business websites in the ADA’s reach.

To minimize legal exposure and the risk of financial repercussions, the NFIB Legal Center recommends that small businesses make their websites accessible to those with disabilities. As the Supreme Court has recognized in a related ADA case, there are individuals who “systematically search[] the web to find [entities] that fail to provide accessibility information and sue[] to force compliance” with the ADA. *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 3 (2023). Some of these individuals have filed “hundreds” of lawsuits against small businesses, often using “boilerplate complaints.” *Id.* at 3-4. Small businesses are especially prone to these “systematic[]” efforts because they often lack the financial resources to fight back and are forced to opt for quick settlements.

In recent years, the NFIB Legal Center has heard from countless small businesses that have been targeted by these systematic efforts.

What is an ADA-Compliant Website?

In 2024, DOJ issued a final rule requiring all *public entities* under Part 2 of the ADA to comply with the Web Content Accessibility Guidelines Version 2.1 Level AA (WCAG 2.1AA). While the final rule applies only to public entities and public transportation under Part 2 of the ADA, the government’s identification of WCAG 2.1AA as the proper standard for ADA website compliance offers insight into what courts might use as a benchmark for private entities under Part 3 of the ADA. **Private entities should begin working now to update their websites to conform with the WCAG 2.1AA guidelines.**

WCAG 2.1AA Guidelines

The WCAG 2.1AA Guidelines identify 4 criteria for website compliance.

PRINCIPLE 1 **Perceivable**

A perceivable website is one that clearly shows all information. A perceivable website utilizes text alternatives for non-text content, captions for live audio content, audio descriptions of prerecorded video content, certain contrast ratios, the ability to resize text, and more.

PRINCIPLE 2 **Operable**

An operable website is one that allows users to freely control and navigate the interface. An operable website makes full functionality available from a keyboard, provides enough time for users to read and use the content before shifting to new content (or allows users to manually extend the content's time), minimizes quick flashes known to cause seizures, has page titles as well as headings and labels, and more.

PRINCIPLE 3 **Understandable**

An understandable website is one where the information and operation of the interface is understandable to the user. This means that the main language of the website (English, Spanish, German, etc.) and the parts of the website can be programmatically determined by reading assistance materials; that changing the focus or setting of a website component does not change the context; that navigational tools such as search bars or drop-down menus are consistently presented; that symbols (such as check marks or icons) carry the same meaning across the website; that users can identify, correct, and reverse data submitted through the website; and more.

PRINCIPLE 4 **Robust**

A robust website means that the content of the website is able to be interpreted by a wide variety of users and user agents, including assistive technologies. This means that website components can be parsed and determined by assistive technologies such as screen readers. Additionally, it means that values and data normally inputted by a user can be inputted by program or assistive technology.

The above are summaries of the technical requirements for each individual criterion. In determining and establishing website compliance with the WCAG 2.1AA guidelines, small business owners should review the full list of requirements in [How to Meet WCAG \(Quick Reference\) 2.1](#).

Where do I Start?

With the array of everyday concerns already facing small business owners, it may be daunting to determine where, or how, to start updating your website. Thankfully, there are resources available to help.

The Web Accessibility Initiative (WAI) is the body responsible for creating the WCAG 2.1AA guidelines that DOJ has adopted as the required standard under Part 2 of the ADA. WAI provides many helpful resources that small businesses can use in starting their website updates.

- ▶ First, a small business should review WAI's [Evaluating Web Accessibility Overview](#). This page describes the process and tools used to make sites more accessible.
- ▶ Next, WAI's [Easy Checks – A First Review of Web Accessibility](#) is an initial tool that business owners can use to quickly determine, from a general perspective, how their websites conform to basic accessibility requirements.
- ▶ Finally, WAI has a [Web Accessibility Evaluation Tools List](#), which is a non-exhaustive compilation of vendors and checkers that can thoroughly check for failures to adhere to specific WCAG guidelines.

**Note that NFIB does not endorse specific products or vendors and cannot speak to the quality of a third-party service or product.*

NFIB Can Help

NFIB continues to monitor the ADA website accessibility issue. In its recent [Small Business Growth Agenda for the 119th Congress](#), NFIB identified ADA reform as one of its key priorities.

If you have questions or need guidance about the ADA and website compliance, contact the NFIB Legal Center at info@nfib.org.

Additional Resources

- ▶ [Web Content Accessibility Guidelines \(WCAG\)](#)
- ▶ U.S. Department of Justice ADA Information Line: (800) 514-0301
 - Monday, Wednesday, and Friday: 9:30am-12:00pm and 3:00pm-5:30pm ET
 - Tuesday: 12:30pm-5:30pm ET
 - Thursday: 2:30pm-5:30pm ET
- ▶ [ADA National Network - a free resource helping employers and business owners with ADA compliance](#)
- ▶ [DOJ Final Rule Identifying WCAG 2.1AA for Public Entities](#)
- ▶ NFIB White Paper: [The ADA and Small Business: Website Compliance Amid a Plethora of Uncertainty](#)

