



Municipal Excess Liability Joint Insurance Fund

Office of the Fund Attorney
714 Main Street
P.O. Box 228
Boonton, New Jersey 07005
Tel (973) 334-1900
fsemrau@dorseysenrau.com

BULLETIN

TO: All Members

FROM: Fred Semrau, Fund Attorney

DATED: June 27, 2019

RE: Website Compliance with the Americans with Disabilities Act (ADA)

In light of a rash of federal lawsuits against public and private entities regarding website accessibility, members should be aware that they risk legal exposure if their websites do not meet the requirements of the Americans with Disabilities Act (ADA).

Although the ADA was adopted prior to the Internet becoming widely used, the law requires that covered entities using the Internet to communicate make those communications accessible to individuals who are hearing or visually impaired. Federal courts and the U.S. Department of Justice have affirmed that the ADA applies to websites, both public and private. For example, in Robles v. Domino's Pizza, LLC, the influential Ninth Circuit Court of Appeals recently affirmed that the ADA places an affirmative legal duty on places of public accommodation to ensure that disabled individuals are able to have "full and equal enjoyment" of public websites. 913 F.3d 898, 904 (9th Cir. 2019). This ultimately means that members must incorporate various compliance mechanisms into their websites, such as closed-captioned video or transcripts, photograph subtitles, and document compatibility with screen readers.

No federal regulations enumerating requirements for website compatibility currently exist. However, courts have looked to the Web Content Accessibility Guidelines (WCAG), a series of recommendations published by the primary Internet international standards organization, as providing adequate website accessibility. Implementation of the technical requirements is complex and requires an IT professional to review the website and determine if it can be effectively modified or whether a new site or host is required. In conducting this review, public entities must consider not only the information on their own websites, but also information provided via linked third-party websites for services such as online bill pay. The remediation of the website or migration to a new site may be costly and take many months.

Although there appears to be some flexibility with the level of accessibility required to for compliance, members should review this as soon as possible. We recommend speaking to your IT professional to begin the compliance process. As part of this process, members should place

a prominent notice on their website to indicate that the public entity is available for ADA assistance. We office the following language for your consideration.

Please be advised that this website is currently under review to ensure accessibility under the Americans with Disabilities Act (ADA). If you have any trouble with accessing information contained within, please contact [insert name with telephone number and email address].

We bring this matter to your attention in an effort to assist our members in avoiding unnecessary legal exposure. However, please contact your municipal attorney and website administrator for specific advice regarding review and remediation of websites to achieve ADA compliance.