

WEBSITE ACCESSIBILITY CHECKLIST

7 THINGS YOU CAN DO TO PROTECT YOUR BUSINESS

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BACKGROUND OF THE ADA AND CALIFORNIA UNRUH ACT:

Most companies know by now that the Americans with Disabilities Act (“ADA”) was enacted and set out to remove discrimination for persons with disabilities who wish to patronize businesses. The California Civil Rights Unruh Act set out to accomplish the same but allows for \$4,000.00 for each time the person visits a business where there are construction-related accessibility barriers. The ADA and Unruh Act (collectively referred to herein as “the ADA”) are often misused which has resulted in an onslaught of lawsuits pertaining to construction-related access barriers throughout California. While the ADA and the Unruh Act were originally designed to remove access barriers to brick-and-mortar locations of a businesses, as technology and the ways in which to conduct business have changed, the ways in which these lawsuits can be filed, have also changed.

Serial plaintiffs have begun targeting websites for alleged discrimination based on the failure to have Website Content Accessibility Guidelines (“WCAG”) compliant websites, which makes websites compatible with “screen-reading” and other assistive technology for persons with visual, auditory and/or cognitive disabilities. Currently, WCAG 2.1AA is the current guideline for accessibility and it ensures that the company’s website and mobile application are accessible.

Below is a checklist of things you can do to protect your business against predatory lawsuits. This checklist is designed for use in conducting a preliminary assessment of the accessibility of your company’s website. The goal is to review your website and your company’s website policies and procedures and see if there are red flags alerting you to ADA accessibility concerns.

- 1. Ensure that web developers responsible for webpages and webpage content development understand what WCAG 2.1 AA is, and how to implement it.** If they do not, then the company should find a developer that does and can.
- 2. If your website contains inaccessible content, work with your website developer to create a specific written plan including time frames in place now to make all of your existing web content accessible.**
 - a) In order to determine if there is inaccessible content on a company’s website, an audit can be a great tool to determine which features are non-conforming with the WCAG.
 - b) As a starting point, there are free auditing tools available that can be used to spot check the company’s website, such as WAVE. However, these free tools should not solely be relied upon for an official audit, as there is no

adequate substitute for having a person use digital technology during the auditing process.

3. Develop and/or Update the Website Accessibility Policy (“WAP”):

- a) If you have not already created one, the company and/or website developer should create a WAP and post on the website the WAP, that addresses the following:
 1. Contact information for a point of contact if a person encounters a barrier while utilizing the website.
 2. Information describing specific actions taken to make your existing website accessible to people with disabilities.
 3. It should inform the public that user feedback and input on accessibility improvements is encouraged. Let customers know about the standards or guidelines that are being used to provide accessibility.
 4. Include a timeline of when WCAG 2.1AA compliance is anticipated to be achieved. Regularly revisit the timeline to ensure that it stays current.
 - i. It is perfectly fine to extend the timeline for accessibility so long as it is being worked on. Remember, courts do not necessarily demand perfection, they expect to see progress!
 5. Identify on the website home page in an easily locatable information a telephone number and email address for use in reporting website accessibility problems so that requests can be made for the provision of accessible services and information.
 6. Establish procedures to assure a quick response to people with disabilities who use this contact information to access web-based information or services.
- b) If the WAP does not address each of these points, modify your WAP so that it is more robust to include each of the above.

4. Test the website and compare it to the WCAG 2.1AA guidelines to identify common accessibility issues:

- a) Make accessibility modifications to the more popular webpages on your website a priority.
- b) Ensure that the pages that require a customer to interact with, such as a “chat” feature or a “contact us” feature, are accessible.
- c) Some of the most common issues are:
 1. Each page should contain a “skip navigation” link.
 - i. This feature directs screen readers to bypass the row of navigation links and start at the webpage content, thus enabling people who use screen readers to avoid having to listen to all the links each time they move to a new page.
 2. All links should have a text description that can be read by a screen reader (not just a graphic or “click here”).

3. All photographs, maps, graphics and other images on the website should contain an “alt” tag or an embedded text description of what is being visually displayed in the photograph so that the screen reader can “read” out loud what the image is conveying.
 4. If your website has online forms, HTML tags should describe all of the controls (including all text fields, check boxes, drop-down lists, and buttons) and information (i.e. “name”, “telephone number”, etc.) so that people can complete and submit the forms.
 5. Videos should have audio (for the customers with visual impairments) and visual descriptions (for customers with auditory impairments) of what is being displayed.
 6. Webpages should be designed with high contrast color and font, so that people with low vision can perceive and understand what is on the site.
 - i. Additionally, ensure that your webpages are designed in a manner that allows them to be displayed using a visitor’s own settings for color and fonts.
- 5. Regularly test the website to ensure that the new content has maintained the requisite level of WCAG accessibility on a regularly scheduled reoccurring basis.**
- 6. Review your vendor contracts to ensure that what is being contracted for, is actually being done.**
- a) If the vendor contract includes reoccurring tests, accessibility upgrades, and/or accessibility maintenance, periodically check in to ensure that those particular terms of the contract are being fulfilled, and also request supporting documentation.
- 7. In the iterum, while the website is being modified to achieve WCAG 2.1AA compliance, ensure there are alternative ways of accessing web-based information and services available such as training staff on what is contained on the website so that they can answer questions about the company’s products and services, including specials, sales, discounts, etc.**
- 8. Review third-party contracts to determine whether there is an indemnification clause should a complaint be filed against the company for an inaccessible website.**
- a) If there is no clause, you may need to consider renegotiating the contract.

Rachelle Taylor Golden, President of Golden Law A.P.C., is an attorney who uses a manual wheelchair due to a snowboarding accident as a teenager. She maintains a defense litigation practice for businesses that are facing lawsuits brought by persons with disabilities and consults with businesses on proactive Americans with Disabilities Act and Unruh Act compliance in the brick-and-mortar and website environments. She can be reached at (559) 878-3521 and/or Rachelle@GoldenADADefense.com

