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Alert

LABOR AND EMPLOYMENT PRACTICE

OCTOBER 2019

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The Supreme Court Declines to Look at Website Accessibility—At Least For Now

SUMMARY

On the first day of the 2019 term, the U.S. Supreme Court issued orders denying dozens of petitions for a writ of certiorari—a request that the Supreme Court take a case. As is customary, there are no reasons given. One of those many cases was *Robles v. Domino's Pizza*. The result is that businesses, colleges and universities, public entities and other entities covered under ADA Title II and Title III will have to wait for the Supreme Court to weigh in on the question of whether the ADA ever requires that websites, mobile apps and similar platforms must be accessible.

There have been lower court decisions over 20 years holding that brick and mortar public accommodations covered by the ADA must have all of their goods and services accessible, including the websites that support those locations. The U.S. Department of Justice consistently supported that position under prior administrations, and extended it to public entities covered under ADA Title II. The key unresolved issue was whether the ADA applied to on-line only entities and non-profits, and there is an evolving circuit court split.

Domino's Pizza was sued in a routine website accessibility lawsuit and convinced a federal district court to dismiss the case. The U.S. Court of Appeals reversed the decision. While it agreed that ADA Title III claims had to have a nexus to a physical location, it held that all services, such as on-line ordering through the website or mobile apps, needed to be accessible. It remanded the case for further proceedings. Domino's filed its cert. petition and hoped to hit a home run, arguing that because the ADA was passed before the modern internet, it had no applicability. They swung and missed.

There has been an explosion of website accessibility lawsuits and demand letters in the past five years, often involving the same lawyers who file "drive-by" lawsuits over parking and restrooms. The Obama Administration had planned to pursue rulemaking on this issue, but the Trump Administration ended that process. A number of major business groups weighed in to support Domino's petition, hoping that the Supreme Court would take the case and shut down these claims.

Initial press reports touting this as a major victory for disability rights advocates are premature. Nor is this doom and gloom for businesses and other covered entities. Lower courts have struggled with how the ADA applies to websites and mobile apps (e.g. which concepts and defenses are most applicable), as well as what entities are covered. While we do not know why the Supreme Court denied the cert. petition, it seems obvious that one factor was that Domino's is a major company, whose locations are covered by ADA Title III, and whose telephone orders need to be accessible, that was claiming that its methods of on-line ordering did not need to be accessible. This is a situation where most lower courts and prior administrations were in agreement.

The Supreme Court will need to eventually weigh in on this issue. But not this year.

This alert was written by Robert L. Duston, a partner in the Firm's Labor and Employment Practice. Robert can be reached at (202) 342-3415 or at Rob.Duston@saul.com. This alert has been prepared for information purposes only.

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