



*****Alert: Drive-by ADA Website Compliance Letters*****

February 8, 2016

Last week, we received inquiries from five states regarding letters sent to restaurants by Carlson Lynch Sweet & Kipela (Carlson Lynch), a Pennsylvania law firm. The letters are headlined **“FOR SETTLEMENT PURPOSES ONLY”** (emphasis in original) and say that “experts ... have identified access barriers” on restaurant websites.

In its letters, the law firm lists “compliance failures” and urges recipients to contact the firm as a first step. Specifically, the letter states that before **“engaging outside experts of your own, we invite you to first contact us directly to explore a far more cost-effective and pragmatic approach to resolving these issues.”** (Emphasis in original.) The firm also encloses a “Draft Settlement Agreement” under which a restaurant would agree to, among other things, “pay certain attorney’s fees and expenses in the amount and in accordance with the terms memorialized in a separate, confidential letter agreement.”

What should you do if you receive such a letter?

If you receive a similar letter from Carlson Lynch or another law firm, we encourage you to look at Chapter 6, “Legal Aspects of Compliance,” of the National Restaurant Association’s ADA “Toolkit for Restaurant Operators.” NRA members can [download a free PDF version here](#).

Contrary to Carlson Lynch’s recommendation to “first contact [Carlson Lynch] directly” before going to your own experts, we recommend that you contact or retain appropriate legal counsel and/or other consultants who are experienced in accessibility issues. In addition to that, since the letters threaten litigation, we also suggest you consider the following steps:

- 1) **Research the plaintiff.** A simple Internet search of Carlson Lynch, for example, would show that, starting last summer, the law firm has sent hundreds of similar demand letters to retailers all over the country offering to settle these alleged ACA website-accessibility claims. As Carlson Lynch proudly highlights in its letter, it has already filed lawsuits against other retailers, including Foot Locker, Sears, Toys-R-Us, Brooks Brothers, Pep Boys, Hard Rock Cafe and others, mostly in Carlson Lynch’s home state of Pennsylvania.
- 2) **Check whether other businesses in the area are being contacted by the same individual or entity.** As with other ADA “drive-by lawsuits,” plaintiffs in these cases commonly sue other businesses in the area as well. Given the number of inquiries we have been getting, it is highly probable that your colleagues are being contacted as well. Depending on the particular facts of each case, coordinating defense efforts or strategies may yield cost efficiencies and other advantages.
- 3) **Assess the violations alleged.** You should carefully assess with legal counsel or other consultants the merits of the violations being alleged and potential strategies for resolving them. In this particular instance, it is questionable whether the violations Carlson Lynch highlights are actual violations at all.

- 4) **Notify your insurance company.** Insurance coverage for the potential lawsuit you are being threatened with may or may not be available depending on the particular provisions of your policy and the nature of the allegations. Promptly notifying your insurance company of the claim will ensure that your rights under the policy are preserved.
- 5) **Know your rights.** In the event an individual or entity threatens you with, or actually files, a lawsuit, you have the right to be represented by counsel and to ask that the individual or entity communicate with you only via that counsel. The individual or entity making the threat may also attempt to persuade you to hire them to advice on website accessibility issues. We recommend against it.

What are the legally binding requirements for websites?

Unlike what the Carlson Lynch letter seems to imply, the U.S. Department of Justice has not issued any final, or proposed, ADA Title III rules on website accessibility. In 2010, the DOJ announced that it was planning to issue proposed regulations on website accessibility because “a clear requirement that provides the disability community consistent access to Web sites and covered entities clear guidance on what is required under the ADA does not exist.” However, the DOJ has yet to issue proposed regulations for businesses. In fact, late last year the DOJ said it did not expect to publish such regulations until 2018.

Without a rulemaking from the DOJ, there is no regulatory guidance about legal requirements for the private sector on website accessibility, and no legally binding technical standard defining an accessible website. Yet despite its delay in issuing such regulations, the DOJ continues to pursue legal actions on website accessibility—particularly in conjunction with the DOJ actions on ADA violations related to a business’s physical location. In addition, last year, in a couple of pending private lawsuits dealing with website accessibility, the DOJ filed briefs urging the courts not to stay or dismiss the cases due to the agency’s lack of rulemaking.

What is coming next from the National Restaurant Association?

Despite no legally binding regulations, the DOJ continues to pressure businesses to comply with the “voluntary” [Web Content Accessibility Guidelines \(WCAG\) version 2.0](#). The Association encourages its members to proactively explore these voluntary guidelines to address the accessibility of their websites.

The Association is working with Teresa Jakubowski, a partner in the Washington, D.C., office of Barnes & Thornburg LLP, to schedule a webinar on this subject. Ms. Jakubowski worked on the Association’s ADA “Toolkit for Restaurant Operators” and is a member of the firm’s disability law practice. The firm is one of the 100 largest law firms in the United States, with more than 550 legal professionals throughout 12 offices in Atlanta, Chicago, Delaware, Indiana, Los Angeles, Michigan, Minneapolis, Ohio, and Washington, D.C.

Please contact Angelo Amador, Regulatory Counsel at the National Restaurant Association, at aamador@restaurant.org or 202-331-5931, with any further questions.