ADA Non-Compliance: Can You Afford It?

Is your organization compliant with the Americans with Disabilities Act (ADA) of 1990? Most organizations are not as they feel there is not an imminent need or do not have the funding. In the past, this has been an unfunded federal requirement with very little financial support. The truth of the matter is that over the past decade there have been several major lawsuits filed due to discrimination on the basis of not complying with the Americans with Disabilities Act of 1990. As a result, private citizen watchdog groups and federal and state organizations have emerged and are looking for non-compliance. This paper will explore the hotel industry, private hospitals and medical facilities, private businesses, and educational institutions.

Compliance with the Americans with Disabilities Act of 1990 (ADA) can be costly and has little federal funding to support the effort. The challenge for most organizations is that non-compliance can be an even costlier position considering the large lawsuits won over the past decade. Several class action lawsuits filed by private citizens and watchdog groups such as the National Association for the Deaf (NAD) have set precedence for similar lawsuits throughout the United States. With millions of dollars in fees, damages, and litigation expenses at risk, can your organization afford to be non-compliant?

Ask the Hotel Industry

The hotel industry has recently become a significant target of the U.S. Department of Justice (DOJ) for noncompliance with ADA. In the spring of 2009, the DOJ initiated an ADA compliance investigation of more than 45 hotels in New York's theatre district. ADA requires hotels to implement policies, practices, and procedures to allow disabled guests the same opportunity to utilize the hotel's services. A hotel must provide auxiliary aids and services to disabled guests, including but not limited to TDD devices, visual alarms, grab bars, roll-in showers, Braille and large print materials, and closed captioning for television and conference events. The increased scrutiny for hotels' ADA compliance is rapidly producing lawsuits against hotel properties for noncompliance with the disability standards set forth by the ADA. As a result, both the DOJ and private organizations have brought lawsuits against hotels that are noncompliant. In a suit brought by the DOJ, the courts may award monetary damages and civil penalties ranging from $55,000.00 to $110,000.00 for continued violation.

With the strong threat of investigations and lawsuits, hotels across the country are evaluating their compliance and investing in guest procedures and employee training to ensure that they thoroughly understand and comply with the ADA and are prepared to properly provide for and interact with their disabled guests. Given the potential legal liability at stake, hotels are taking immediate action to best protect themselves in the event of a government investigation or private lawsuit.

Ask Private Hospitals and Medical Facilities

Inova Fairfax Hospital, a hospital serving the Virginia suburbs of Washington, D.C. settled a comprehensive settlement agreement with the Department of Justice In April 2007 as a result of ADA noncompliance. The settlement agreement resolves allegations that the hospital did not appropriately

respond to requests to provide auxiliary aids for the deaf mother of a pregnant patient who had been involved in a car accident. This forced the patient to act as the interpreter for her mother at the same time that the patient was receiving distressing news about her own condition. The hospital paid the patient and her mother $55,000.00 in damages as well as agreed to provide auxiliary aids, when needed, to family members and companions as well as to patients; assess the communication needs of individuals with speech or hearing impairments upon their arrival and provide qualified interpreters on site, as well as closed captioning of video or teleconferencing technologies. The settlement agreement was reached with the Justice Department as a result of Title III litigation. Title III of the ADA applies to private entities such as hospitals and other medical care facilities and, among other things, requires that private entities such as hospitals ensure effective communication with persons with speech, hearing, and vision impairments.

In another suit filed by a private individual in the US District Court in Baltimore, Baltimore Washington Medical Center (BWMC), agreed to pay monetary damages as well as provide quality interpreting services, including closed captioning of video, for Deaf and Hard of Hearing patients. The Agreement stems from a lawsuit filed by Alma Andrews, who is deaf, alleging that BWMC failed to provide her with qualified interpreter services at certain points during several visits to the hospital in 2006. The National Association of the Deaf represented Ms. Andrews.

Ask Private Businesses

In 2006, Federal Express Corporation (FedEx) was fined $108,000 by a federal jury for violating the ADA. The U.S. Equal Employment Opportunity Commission (EEOC) charged the global shipping giant FedEx with failure to provide a reasonable accommodation in the form of American Sign Language Interpreters to a deaf employee who worked as a package handler at the company's Baltimore Ramp. The jury found FedEx liable for punitive damages in the amount of $100,000.00 for failure to accommodate the employee as well as compensatory damages of $8,000 for the loss of the accommodation itself. The EEOC's lawsuit was filed in the U.S. District Court for the Northern District of Maryland after the agency's first attempts to reach a voluntary pre-litigation settlement failed.

Title I of the ADA prohibits employment discrimination against people with disabilities in the private sector. The EEOC has filed over 46 ADA lawsuits against employers and recovered more than $48 million in total monetary benefits through enforcement and litigation.

Ask the Washington Redskins

In September 2008, a federal judge in Maryland ruled that the ADA requires the Washington Redskins to provide fans who are Deaf and Hard of Hearing with equal access to the auditory information broadcast over the stadium public address system at the FedEx Field where the Redskins play. This auditory information includes play-by-play announcements, referee calls, music with lyrics, advertisements and other announcements. The National Association for the Deaf (NAD) filed the lawsuit on behalf of three deaf fans. The court rejected the Redskins argument that they were not required to do anything more than provide assistive listening systems. The court ruled that the ADA requires the Redskins to provide accommodations to ensure effective communication. The court's ruling that stadiums must ensure effective communication with fans who are Deaf or Hard of Hearing is the first of its kind in the country.

The NAD expects that the decision will provide guidance to stadiums around the country that seek to comply with their obligations under the ADA.

Ask University Campuses

A 1999, ADA class-action lawsuit brought by Deaf and Hard of Hearing students at University of California's Berkeley and Davis campuses was settled with the university agreeing to a substantial number of changes that provide students with more effective communications accommodations. Under the terms of the settlement, students will be provided a combination of sign language interpretation and closed captioning during lectures. The university also agreed to install assistive listening technology in all classrooms holding more than 50 students and provide closed captioning or transcripts for all videotaped lectures.

In 2005, a former Capella University student filed a lawsuit against the institution, claiming that it violated the ADA by using technology that does not accommodate his learning disabilities. The student sought monetary damages in the U.S. District Court for the Central District of California, Southern Division in Santa Ana.

In 2008, a deaf student brought suit against LaTrobe University seeking thousands of dollars in compensation and for the placement of sign language interpreters for all lectures and tutorials. The student alleged that she could not attend some classes because the university did not provide interpreters for the classes. The student's lawyers filed a Federal suit after mediation with the university failed. As seen by these examples, universities are being penalized for not providing equal accommodations. The crucial question that all universities must answer is whether the proper due diligence in making technology accessible to students with disabilities has been done.

Compliance: A Return on Investment

Such widespread investigation and pursuit of litigation by the DOJ and watchdog groups such as the NAD and EEOC provides an opportunity for viewing compliance with the ADA as a return on investment. Not only does the money spent bringing your organization into compliance provide peace of mind and the long-term savings of avoiding costly litigation, but it also provides some 32 million Americans with the resources, tools, and accessibility they need to pursue the American Dream.

References

Moriarty-Amborzaitis, E. (2009). Tackling ADA. Council for Disability Rights. www.disabilityrights.org.

Department of Justice. Press Release. (April 9, 2007). Justice Department and Invoa Fairfax Hospital Reach Americans with Disabilities Act Agreement. www.USDOJ.gov.

National Association of Deaf. Press Release. (May 2, 2007). NAD Settles Complaint against Baltimore Washington Medical Center. www.nad.org/SettlesBWcomplaint.

National Association of Deaf. Press Release. (October 2, 2008). NAD makes Touchdown Victory in Redskins Case. www.nad.org/advocacy/2008.

US Equal Employment Opportunity Commission. Press Release. (March 2, 2006). EEOC Wins Disability Bias Suit Against FedEx. www.eeoc.gov/press/3-2-06.html.

Ragged Edge Magazine News. (November 12, 2002). Deaf Students win accommodations on UC Campuses. www.raggededgemagazine.com/drn/11_02.shtml.

Power, Emily. (October 01, 2008). Deaf Student Sues Latrobe University. www.equalaccess.com.au/blog.php?year=2008&month10.

Carnevale, Dan. Chronicle of Higher Education Technology. August 12, 2005 edition. Article: "Lawsuit charges University does not Accommodate Learning Disabled Students".

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