

ADA Access: Websites

- Title III of the ADA: individuals with a disability must be offered the “full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation.”
- Inaccessible website impedes the full and equal enjoyment of goods and services offered by the website in violation of the ADA. (*Nat'l Federal of the Blind v. Target Stores 2006*)
- Individuals with disabilities are "entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Civil Code § 51(b).
- A violation of the ADA is a violation of the Unruh Act. Civil Code § 51(f).



WCAG 2.0 Standard

- DOJ waffling:
 - DOJ issued a proposed rulemaking in 2010 but never followed through.
 - In November 2014 DOJ entered into a settlement agreement with Peapod LLC requiring Peapod to upgrade its website to the WCAG 2.0 level AA standard.
- This January, the federal government's Access Board adopted WCAG 2.0 levels A and AA as the standard for federal government websites. DOJ to follow?



WCAG 2.0 Standard

- *Robles v. Dominos Pizza LLC*: In April, a federal district court in California dismissed a suit against Dominos Pizza LLC citing that the DOJ has not issued a final regulation adopting an accessibility standard.
- Court declined to give weight to DOJ's consent decrees and settlements.
- Still, the upshot: Don't wait for a demand letter or law suit. Comply now.



CFPB Arbitration Rule

- Prohibits covered lenders from using pre-dispute arbitration agreements to block class actions related to covered consumer financial products and services.
- Class arbitration is permitted, but may not require a consumer to participate in class arbitration instead of class litigation
- The House passed a bill under the Congressional Review Act to overturn the CFPB's rule, but the Senate has not taken it up.
- The financial services industry has filed suit against the CFPB challenging the rule.



Mortgage Underwriters Non-Exempt

- *McKeen-Chaplin v. Provident Savings Bank*: bank mortgage underwriters are not exempt under Fair Labor Standards Act administrative exemption (9th Circuit)

- Administrative test:
 - Salary test
 - perform as the primary duty “office or non-manual work related to the management or general business operations of the employer or the employer's customers”
 - have as the primary duty “the exercise of discretion and independent judgment with respect to matters of significance.”



Mortgage Underwriters Non-Exempt

- *Key finding: mortgage underwriters apply underwriting standards that the bank sets*
- *DOL regulation Section 541.201(a): “an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.”*
- *Decision exacerbates a split in the federal circuits (Second and Sixth); possible US Supreme Court review*
- *CBA and ABA filing an amicus brief in support of Provident Savings Bank*

DOL Overtime Rule

- DOL raised the salary threshold for the overtime exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). Was to take effect December 31, 2016.
- August 31, 2017: U.S. District Court ruled that the FLSA overtime rule is invalid, creating a nationwide injunction blocking the DOL from implementing the rule.
- DOL issued a request for information on July 26 as it further considers the rule.