



Alachua County Attorney's Office

Sylvia E. Torres, County Attorney

MEMORANDUM

TO: Commissioner Hutchinson, Board of County Commissioners Chair

VIA: Sylvia E. Torres, County Attorney

FROM: Geena M. Cesar, Assistant County Attorney

DATE: February 18, 2020

SUBJECT: *Americans with Disabilities Act and Rehabilitation Act Compliance*

In order for the County to ensure compliance with the Americans with Disabilities Act (herein, “ADA”) and the Rehabilitation Act, the County Attorney recommends that a Website Accessibility Action Plan be adopted by the Board in adherence to guidance provided by the Department of Justice (available here, <https://www.ada.gov/websites2.htm>). In accordance with Department of Justice guidance for state and local governments, a Website Accessibility Action Plan should include:

- Establishing a policy that web pages be accessible, and a process for implementation.
- Ensuring that all new and modified web pages and content are accessible.
 - If it is known that documents will have to be put on the website, plan for it ahead of time by utilizing templates which will produce accessible documents.
- Developing a plan for making existing web content more accessible.
- Ensuring that in-house staff and contractors are properly trained.
- Providing a way for visitors to request accessible information or services by posting a telephone number or e-mail address on the home page.
- Periodically enlisting disability groups to test website pages for ease of use.

The Plan should be strictly adhered to. Consistent with the Plan, a County-wide policy should be adopted and enforced to guarantee continued ADA and Rehabilitation Act compliance within all County departments and all current and future contractors.

The ADA is a federal civil rights law, which applies to the states and their subdivisions. Title II of the ADA requires federal, state and local governments, such as the County, to provide individuals with disabilities equal access to programs, services or activities.¹ Websites are a

¹ Americans with Disabilities Act, 42 U.S.C. § 12132 (2019).

“program” under the ADA. Federal courts have interpreted the term “equal access” to mean providing the same information and functionality, delivered in the same time frame, with substantially equivalent ease of use.

The County is further required to comply with Section 504 of the Rehabilitation Act of 1973, which explicitly requires that all website content be accessible to people with disabilities. This applies to web applications, web pages, and all attached files available on the internet. Since County programs receive federal funding, the County as a whole must comply with the Rehabilitation Act by making internet content accessible to people with disabilities.

The County, like many local governments, are increasingly using their websites as a primary conduit of important information and services, including streaming Board meetings and applying for jobs. Under the requirements of these laws, substantial accommodations may be required in order for those with disabilities to have equal access to County programs, services, or activities as those without disabilities.

An accommodation may be unreasonable if it imposes a significant financial or administrative cost (*i.e.*, undue burden), or if the accommodation fundamentally alters the nature of a program, service or activity.² Financial “undue hardships” are considered in relation to the benefits of the accommodation to the person with disabilities, as well as to the employer’s resources.³ While courts understand that a reasonable accommodation does not necessarily have to drain an entity of all of its financial resources, it is generally understood and expected that reasonable accommodations will cause the employer to incur some costs.⁴

Further, an entity may not need to provide a requested accommodation if the accommodation fundamentally changes the nature of the service, program or activity.⁵ However, if there is no compelling argument that compliance fundamentally alters a program, service or activity, or imposes an undue burden, then true compliance requires meeting industry-accepted standards for accessibility by persons with disabilities for website content. Any claimed exemption must be clearly articulated and documented so that, if the matter ever has to be defended, the basis of the claimed exemption is clear. In the case where full compliance may not be possible, every effort needs to be made to show that an effort was made to comply, even if this only results in partial compliance.

Therefore, in order for the County ensure compliance with the ADA and Rehabilitation Act, the County Attorney recommends that a Website Accessibility Action Plan be adopted by the Board and be strictly adhered to.

Cc: Board of County Commissioners
Michele Lieberman, County Manager
Gina Peebles, Assistant County Manager
Jacqueline Chung, Equal Opportunity Manager
Kevin Smith, Information and Telecom Services Director

² A.H. v. Ill. High Sch. Ass’n, 881 F.3d 587, 594 (7th Cir. 2017).

³ Garza v. Abbott Lab., 940 F. Supp. 1227, 1239 (N.D. Ill. 1996).

⁴ Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 334-35 (2d Cir. 1995).

⁵ Powell v. National Bd. of Medical Examiners, 364 F.3d 79, 88 (2d Cir. 2004).