



# **RISK MITIGATION:**

## PROACTIVE PLANNING – IT'S EASIER THAN YOU THINK

**Keith Dunnagan, Esq.**  
*Managing Attorney*

August 12, 2025

# Overview

- Website Compliance & the ADA
- Understanding Legal Exposures from:
  - Employee Travel
  - Events
  - Alcohol-Related Events
- Embezzlement

# ADA Outline

History \_ *The Americans with Disabilities Act of 1990* (the "ADA")

affords civil rights protection to individuals with disabilities similar to that provided to individuals on the basis of race, color, sex, national origin, age and religion

- The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services and telecommunications
- The scope of the ADA is broadly construed, and extends to just about any facility that a member of the public can access
- Intended to provide guidelines to enable the provision of full and equal access

# Public Accommodation

- Public Accommodation:
- **Title III** of the ADA requires “**public accommodations**” (*i.e.*, any place doing business with the public) to provide **full and equal access** to goods, services, privileges and facilities

Public Accommodations are private entities whose operations affect commerce.

# Auxiliary Aids & Services

- A public accommodation must provide, at no cost, auxiliary aids and services reasonable necessarily to achieve effective communication
  - *examples:* Braille statements; qualified interpreters; notetakers; videotext displays; accessible electronic and information technology; screen reader software; magnification software; optical readers *etc.*
- Public accommodation decides which auxiliary aids and services to provide (*c.f.* Title II – “primary consideration”)

Think about relationship to websites as more and more commerce is conducted online

# Web Access

- Websites are considered places of public accommodation by many courts under Title III, with recent legal rulings reinforcing this stance
  - State laws, such as the Washington Discrimination Laws California Unruh Civil Rights Act, can impose statutory damages in addition to the injunctive relief and attorneys' fees remedies available under the ADA
  - The DOJ has cited conformance with the Web Content Accessibility Guidelines (WCAG) as the benchmark for compliance, with **WCAG 2.2 AA** being the current standard to achieve

# World Wide Web Consortium (W3C)

- The main international standards organization for the World Wide Web Consortium
- Use of screen reader software to highlight text and alternative text for images
- Use of voice recognition software
- W3C generated the **Web Content Accessibility Guidelines 2.2 A and AA Success Criteria (WCAG)**
- The leading set of web accessibility guidelines used by government agencies and authoritative entities
- Focuses on four principles: Perceivable, Operable, Understandable, and Robust (POUR), ensuring websites are accessible to users with disabilities, including those using assistive technologies like screen readers.

# World Wide Web Consortium (W3C)

- Implementing these simple changes can significantly improve accessibility:
  - Use proper **heading structure** (e.g., h1, h2, h3) to organize content for screen readers.
  - Provide **alt text** for all images to describe them for users who cannot see them.
  - Ensure sufficient **color contrast** between text and background for readability. Maintain at least 4.5:1 contrast ratio, use tools like WAVE to verify
  - Make sure the website is **navigable** using only a **keyboard**, supporting users who cannot use a mouse.
  - Add **captions** to videos for deaf or hard-of-hearing users.

These tips are low-hanging fruit, easy to implement, and can address common accessibility issues quickly.

# World Wide Web Consortium (W3C)

To maintain ADA compliance, consider the following:

- Conduct **regular accessibility testing** using both automated tools and manual checks to identify issues.
- Hire an accessibility **consultant** or expert to review and advise on your website's compliance.
- Any time the site is changed, ensure all **new content** follow WCAG guidelines to prevent future accessibility barriers.
- Provide **training** to staff on creating accessible content, fostering a culture of compliance.

These steps can help mitigate legal risks and enhance user experience.

# To Update Website Templates for ADA Compliance

- Choose a template already designed to be accessible, following WCAG guidelines, such as those based on Bootstrap with accessibility features
- If using an existing template, modify it to ensure it meets standards, including proper heading structure, sufficient color contrast, and keyboard navigability

Changing a template is the easiest way to make changes across the entire site on any pages using that template

# To Update Website Templates for ADA Compliance

Be aware of these common mistakes that can undermine compliance:

- **Beware of software overlay tools** (e.g., Level Access, AccessiBe, AudioEye, Deque, etc.). While they can help make a website accessible, they are generally not sufficient on their own despite marketing promises to the contrary
- **Beware of third-party companies** providing code for the website, such as Shopify or other online payment, chat, search or other tools
- Not providing **alt text** for images, leaving visual content inaccessible to screen readers
- Using **color** alone to convey information, such as indicating required fields, which can exclude colorblind users. Use additional indicators like asterisks or text labels

# To Update Website Templates for ADA Compliance

Be aware of these common mistakes that can undermine compliance:

- Making the website only mouse-navigable, ignoring **keyboard navigation** needs for
- users with motor disabilities
- Poor **color contrast** that makes text hard to read for users with visual impairments
- Inaccessible **forms** that don't work with screen readers, hindering user interaction
- Not **testing** the website with assistive technologies, missing potential barriers for users

# WCAG 1.2.2 Captions (Prerecorded Content)

Captioning for prerecorded audio content in synchronized media, except when the media is a media alternative for text and is clearly labeled as such. (Level A)

- Captions are not needed when the synchronized media is, itself, an alternate presentation of information that is also presented via text on the Web page
- WCAG not standard -- achieving “Effective Communication” through auxiliary aids and services of public accommodation the standard per 28 CFR § 36.303
- Best practice: "No sound is used in this clip" – note 1.2.3 (Level A) requires audio for prerecorded video content
- *C.f.* 1.2.4 for live audio content (Level AA)

# Beyond the Website

- Any non-HTML content, such as PDFs or videos, must also be accessible.
- For instance, PDFs should be tagged and have a logical structure for screen readers, while videos require captions and transcripts. The W3C provides detailed guidance on non-HTML content accessibility (W3C Non-HTML Content Accessibility), ensuring comprehensive compliance.

# Washington Company Liability for Offsite or Off-Duty Employee Conduct

Understanding Legal Exposure from Employee Travel,  
Events and Alcohol-Related Incidents

# Introduction & Legal Framework

- Key Concepts:
  - Scope of Employment
  - Workers' Compensation
  - Employer-Sponsored Events
  - Intoxication-Related Liability
- Primary Statutes:
  - RCW 51.04 – Workers' Compensation Framework
  - RCW 51.08 – Definition of Employment Scope

# Traditional Employer Liability (Respondeat Superior)

- Vicarious Liability Basics:
  - Employer liable for torts committed within scope of employment
  - May apply even when off-duty or off-premises
- Scope Analysis Factors:
  - Benefit to employer
  - Employer's direction or expectations
  - Consistent with job duties

# Case Study- Dickinson v. Edwards

Created New Liability Theory for Banquet-Hosting Employers

- 5-Part Prima Facie Test:
  1. Employer-hosted event benefitted the business
  2. Employee required or expected to attend
  3. Alcohol consumed at event
  4. Accident occurred afterward
  5. Intoxication was proximate cause

# Employer Social Events – Legal Risks

## Key Considerations:

- Was the event a business function or a social gathering?
- Did the employer deduct the expense as a business cost?
- Was attendance optional or expected?

# Workers' Compensation & Traveling Employees

## “Traveling Employee Doctrine”

- Employees traveling for work generally covered 24/7-unless:
  - They clearly depart from worked related activities
  - They engage in purely personal conduct

Washington follows the “continuous coverage rule” (Ball-Foster v. Giovanelli)

# Covered & Uncovered Activities

## Covered Activities:

- Eating, sleeping, walking, light exercise
- Short outings for fresh air or relaxation

## Not Covered:

- Ski trips, hot tubs far from hotel
- Days-early personal vacations

# Role of Intoxication in Limiting Liability

General Rule (Knight case):

- Severe intoxication = personal conduct = no coverage
- Moderate alcohol use for comfort may still be covered

RCW 51.32.020:

- Denies compensation if injury caused by intoxication

# Exception – Employer Encouraged Drinking

Flavorland Case:

- Employer encouraged social drinking as part of the job
- Court upheld benefits for widow after intoxication death

If employer benefits from or facilitates drinking, liability may remain-even if toxication is severe

# Final Takeaways for Employers

## Key Points:

- Review event and travel policies for liability exposure
- Document intent and expectations clearly
- Limit alcohol service or monitor consumption
- Educate managers about scope of employment and risk factors

Liability depends on context, conduct and employer benefit

# Embezzlement: How Does it Happen?

Lots of ways:

1. Fictitious employees being paid and funds being diverted to perpetrator.
2. People pay with cash and receipts are deleted from system
3. Items charged are changed in system to change amounts and money diverted
4. Vendors are added with fictitious payments.
5. Supply orders are entered and paid – but never actually are placed

# Embezzlement: What to watch for on P&L

- Advertising
- Auto and Truck Expenses
- Dues and Subscriptions
- Office Expenses
- “Promotion”
- Repairs
- Supplies
- Travel

# Risk Management: Be Proactive

## Things to Do:

1. Do separate billing and bookkeeping services
2. Do require 2 signatures on all checks and invoice verification
3. Learn and have a basic understanding of standard business financial reports and reports that are unique to your business.
4. Do have a system for cash payments requiring 2 party verification.

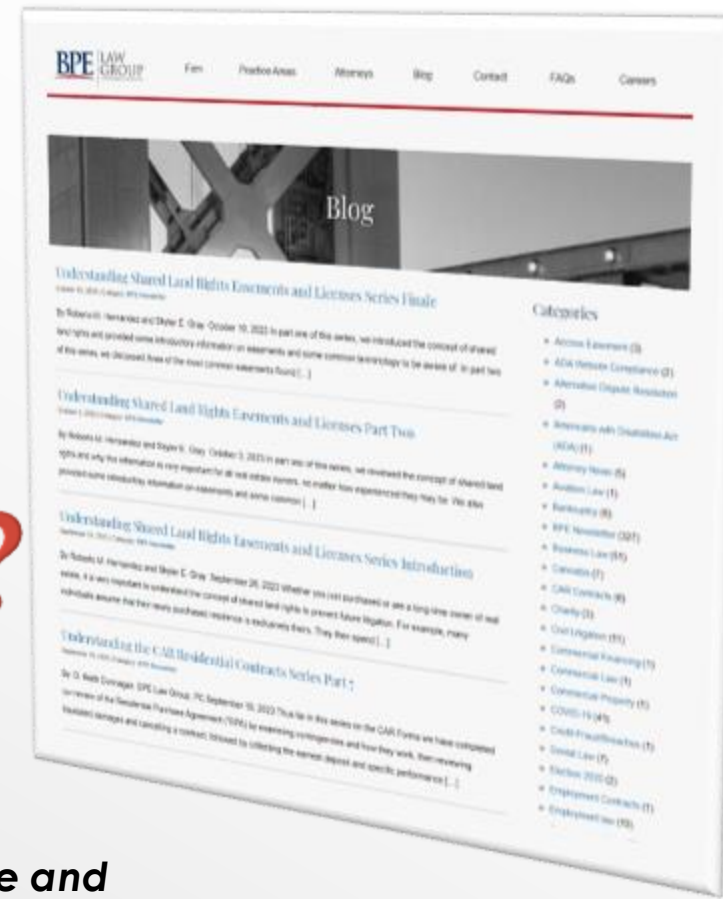
## Things not to Do:

1. Do not allow one single person to control all of the financial/bookkeeping functions
2. Do not ignore when financial reports are not delivered in a timely fashion.
3. Do not forget or fail to review payroll reports, financial statements, and bank accounts.
4. Do not forget to have monthly meetings with your financial team to review financial performance and ask tough questions related to performance. Ask what you don't know about.
5. Do not ignore employees that publicly discuss financial difficulties – especially if they handle the money!



Scan the QR Code Below to Subscribe to the Blog

Business, Property, Estate Planning, Civil Litigation...



***At BPE Law our mission is simple:  
to meet our clients' needs by providing fast, effective and  
cost-conscious representation.***

700 Mountain View Ave, Suite 508, Ellensburg, WA 98926  
Tel: (509)245-0400

[www.bpelaw.com](http://www.bpelaw.com)