National Association of Theatre Owners

LITIGATION MATTERS

NATO members should be aware of several pending cases and investigations regarding the Americans with Disabilities Act (ADA), labor laws, and security protocols that could impact exhibitors. Please note, this newsletter highlights only certain cases and should not be construed as legal advice.

ADA: Broadway Theater Sued for Outside Food Policy

In August, a Broadway theater was served with a class action lawsuit alleging that the theater violated the ADA by not allowing customers with metabolic disorders to bring their own food to the venue. The complaint states that the theater bans outside food without making any accommodations, and that this prevents potential customers with metabolic disorders from accessing goods and services offered by the theater. Specifically, plaintiff alleges the theater's website includes a "no outside food" policy, which deterred her from purchasing a ticket because her metabolic disorder requires her to bring outside food to manage her illness. The filing notes that other public venues in New York, like Yankee Stadium, do have a policy of allowing any patron to bring in outside food. The plaintiff, Evelyn Castillo, has filed over 10 ADA lawsuits in New York.

ADA: Court Enforces Notice Requirement for Drive-By Lawsuits in California

In August, a California state court judge ruled that a plaintiff failed to follow California requirements for notice on ADA violations and dismissed the lawsuit. The plaintiff had sued a restaurant for alleged ADA violations, and the court found that the plaintiff neglected to adequately comply with state requirements for notice to the defendant of their rights. Assembly Bill No. 1521, which was enacted in 2015, requires attorneys filing complaints or demand letters alleging a violation of construction-related accessibility to also serve defendants with an advisory containing specific language noting that the business is not required to pay any money to a plaintiff unless and until a court finds the business liable for violations. Plaintiff argued that an earlier federal suit against the same restaurant provided adequate notice so no additional notice should have been required. The judge declined to accept Plaintiff's interpretation and ruled that the legislative language "require[s] strict compliance," setting a precedent for other plaintiff's attorneys who allege ADA violations.

ADA: Ticketing Website Sued Over Online Purchases of Accessible Seating

In July, a judge for the U.S. District Court for the Western District of Washington judge granted partial summary judgment in an ADA lawsuit alleging that Ticketmaster had discriminated against wheelchair users by not making accessible seating available for purchase online.

The plaintiff, Barry Long, uses a wheelchair, and tried to buy a ticket to a game at CenturyLink Field in Seattle, WA using a ticket exchange website operated by Ticketmaster. Mr. Long's complaint alleged that he could not identify which seats were accessible; the seating chart on the website did not identify the wheelchair spaces or the companion seats.

After the complaint was filed, Ticketmaster modified the exchange website to include a specific webpage showing which seats were accessible. However, the chart did not distinguish between wheelchair spaces and companion seats. Then Ticketmaster made a further changes to the website: Users attempting to buy accessible seating on the exchange website were redirected to the regular Ticketmaster site. However, the regular Ticketmaster website still lacked certain features, like searching for accessible seating within ticket categories like lowest price or best seat location.

Ticketmaster argued that the exchange website a) wasn't a place of public accommodation and b) the complaint was moot since now accessible seats are sol like other seats through its regular website.

The court found that the changes made by Ticketmaster were insufficient to have the case dismissed, because the challenged conduct could recur. The court found that the fact that Ticketmaster made multiple changes to the website after the complaint was filed was proof that at any point, the website could be modified again to disallow the purchase of accessible seats.

Additionally, the court held that the website itself was a place of public accommodation, because there was a "'nexus' between 'the good or service complained of and an actual physical place.'" The court's opinion noted that this is the standard set by other district courts within the Ninth Circuit. In other words, because the website is connected to a physical place of public accommodation, it is also subject to the ADA.

Furthermore, the court ruled that the original exchange website violated the ADA by not making accessible seats available for purchase online. However, the court found that there was insufficient information to determine if the subsequent changes made by Ticketmaster were sufficient to comply with the ADA, and required both parties to file an updated report identifying what issues remain. Subsequent to the filing of this report, the judge ordered the case to go to a jury trial in 2019.

ADA: Website Lawsuits Proliferate

Online and brick-and-mortar retailers continue to be served with lawsuits alleging that their websites violate the Americans with Disabilities Act. One recent such example is a class action lawsuit filed against Apple Inc. in August. A plaintiff with visual impairments filed suit alleging that Apple's website doesn't fully comply with screen reader software and is therefore not entirely usable by blind and low-vision customers. The complaint alleges that Apple's website lacks alternative text on graphics, coding that allows screen reader software to vocalize a description of the images on the screen. As a result, the complaint says, visually impaired users of the site cannot look up store locations and hours or make purchases. The full complaint can be read here.

Labor Laws: Restaurant Considered Joint Employer in Wage Theft Case

In June, the Cheesecake Factory, along with a janitorial contractor, was found liable in a $4.2 million wage theft case. According to a statement released by the California Department of Industrial Relations, The Cheesecake Factory had a contract with

Americlean Janitorial Services Corp. to provide janitorial services. Americlean provided janitors subcontracted from another company called Magic Touch Commercial Cleaning. The workers would begin their shifts around midnight and work until morning without proper breaks for meals or rests. Further, they were not allowed to leave until kitchen managers conducted walkthroughs to review their work, which often resulted in additional tasks that led to workers logging up to 10 hours of unpaid overtime each week.

Magic Touch was ultimately responsible for paying the $3.94 million in unpaid wages and $632,750 in penalties for failing to provide properly itemized pay stubs. However, if Magic Touch does not pay, then the Cheesecake Factory and Americlean Janitorial Services are responsible for the $4.2 million in fees.

This case stems from two California laws that went into effect in 2015 and 2016. The pair of laws holds employers accountable for workplace violations originating from their contractor and mandates that businesses that contract for services in the property services industry, which includes janitorial work, are jointly liable for any unpaid wages, including interest.

In the weeks following the Cheesecake Factory decision, at least one exhibitor has been sued for various wage claims on behalf of a class of California janitors hired by a subcontractor. Exhibitors with locations in California should consult with qualified counsel to determine how to ensure that any outsourced labor is being appropriately compensated.

Although this case is based on California laws, there is a push to expand this type of liability to other states. Furthermore, the National Labor Relations Board has ruled in recent cases that an employer can be held liable for another entity's labor law violations, even if the first employer exercises only indirect control over the second entity's terms and conditions of employment.

Labor Laws: Restaurant Held Liable for Overtime and Child Labor Law Violations

In July, the Department of Labor's (DOL) Wage and Hour Division announced that they were fining a group of Jack in the Box restaurants over $18,000 in civil penalties for overtime and child labor law violations. DOL investigators discovered that teenage employees were operating equipment illegal for minors to use, like deep fryers and trash compactors, and were working hours beyond what is allowed by the Fair Labor Standards Act. In addition, the investigation revealed that the restaurant's management did not add up the total number of hours employees worked at different locations during the week to calculate when overtime was owed. (Exhibitors should note that while there is a federal overtime exemption for movie theater employees, many states do not have this exemption, and employers are required to follow the standard most favorable to the employee.) DOL ordered the company to pay over $500,000 in overtime backpay and damages to their employees.

Security Protocols: Venue Sued for Negligence in Mass Shooting Incident

A victim of the August 26, 2018 shooting at the Madden e-sports tournament in Jacksonville, Florida has filed suit against Electronic Arts, Inc., the maker of the game, as well as the venue that hosted the tournament, alleging several counts of negligence. The suit alleges that the security measures of the event were insufficient, and that the event lacked adequate perimeter control, noting that the event was without security guards, metal detectors, or handheld wanding of attendees. The complaint also alleges that the tournament's organizers did not inform local law enforcement that the event was occurring, and that the building had only one means of ingress and egress. The complaint notes that previous criminal events had occurred at the venue and that the organizers failed to notify attendees of same. The case is Jacob Mitich v. Electronic Arts Inc. et al., case no. 16-2018-CA-005930, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida.

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