

Live from Workplace Horizons 2025: Title III Accommodation — Trends in Litigation Suits

By Joseph J. DiPalma

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Meet the Authors



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Details

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Welcome to a special edition of We get work®, recorded live from Workplace Horizons 2025 in New York City, Jackson Lewis' annual Labor and Employment Law Conference. Over 500 representatives from 260 companies gathered together to share valuable insights and best practices on workplace law issues impacting their business today. Here's your personal invitation to get the insights from the conference, delivered directly to you.



Transcript

INTRO

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Alitia Faccione

Senior Director of Business Development

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Joe, you're a principal in the White Plains Office of Jackson Lewis. Tell us a little bit about what you do there, what kind of law you practice and, really, what kinds of issues in your practice employers are facing right now in 2025.

Joseph DiPalma

Principal, White Plains

I am heavily involved in the firm's Disability Leave and Health Management Group. I do a lot of day-to-day advice and counsel with clients regarding all sorts of disability accommodation and leave issues, whether it be New York State Paid Family Leave, FMLA. I would say that probably occupies about 50% of my time nowadays. The other 50%, I'm really focused on litigation generally. A lot of those accommodation advice and counsel matters that I'm working on sometimes turn into claims, demand letters or litigations, so I'm handling those as well.

Another big part of my practice is ADA public accommodation Title III litigation. This isn't an employment or labor issue that the firm normally handles; it's more of a natural outgrowth from our disability-based practice, where we're representing our clients, the businesses who serve the public in some way, and they're open as a place of public accommodation and these patrons of their businesses are suing. That's a big issue right now.

Facone

It's not surprising, Joe, that you spoke about Title III in your speed round here at Workplace Horizons and more particularly litigation trends in that area of law. Can you tell us a little bit about your presentation and what you shared with our Workplace Horizons attendees?

DiPalma

The audience that typically attends Workplace Horizons, the GCs, the associate GCs, the directors of HR, et cetera, they're not so much focused on public accommodation issues. They're really more focused on their workforce, and maybe their business has no real public accommodation issues, but some do. A hotel client or a restaurant client, for example, those are the types of clients that need to be paying attention to this. They may just do things without really thinking about a different title of the ADA that we need to be mindful of here, and what our obligations are there.

The trends in these litigations we're seeing are your standard brick-and-mortar cases. We're at the Hilton Hotel, hypothetically, if there wasn't an accessible front entrance, which there is one here, but hypothetically, if there wasn't, a person in a wheelchair may say, this hotel is inaccessible to me and can litigate over that. Another similar, we'll keep it here, is the website. I'm a visually impaired person and I want to book a room at this hotel. I can't do it because the website isn't coded in a format that's accessible to me when I use my screen reader software. Businesses need to stay mindful, as we change our website and make renovations to our hotel, we need to be paying attention to these accessibility laws. Another trend we're seeing is that there's always an uptick in these website cases. Last year, there were 8,900 filings across the country. A lot of them are in California, and a lot of them are in New York, specifically, mostly in New York state court now. They're being filed every single day, multiple times a day. Maybe they're unavoidable, maybe they're not, but there are certain precautions businesses can take to give them better defenses or make their businesses less likely to be sued.

The plaintiff's attorneys here are becoming increasingly more creative. A few years ago, you may remember that we were dealing with these Braille gift card cases.

Starbucks had a gift card available in Braille. This way, if you can't see and you've reached into your wallet, you can feel like this is my Starbucks gift card. We started seeing a bunch of cases where, if you have a gift card, you need to make it available in Braille. Those ultimately didn't really go anywhere. There's a new type of case we're seeing, typically against coffee chains. If they charge additional money for a non-dairy milk, a person with a lactose intolerance claims that this is discriminatory if I have to pay more money to get milk in my coffee. It's just another example of a creative way that these plaintiffs and plaintiff's attorneys are trying to sue companies. This is ADA public accommodation at its finest.

Faccone

So, this is why Starbucks doesn't charge me for soy milk anymore, is that what you're saying?

DiPalma

They still do. Some coffee shops have said we're just going to increase our prices across the board to avoid this because everyone pays the same exact price for whatever it is. Some may say we're going to charge 85 cents more for any non-dairy milk. That's what happened in one case we've handled for a firm client. The arguments that we made on our motion to dismiss initially, we don't think that lactose intolerance is a disability. In our decision down in California, the court didn't really get to that, but the court said, in sum, it's not discriminatory because we're charging the same price to anyone who wants it, whether you have lactose intolerance or not. There's this theory under the law that a surcharge is unlawful. This isn't a surcharge, the court held, because we're not just assessing it to persons with disabilities. It's across the board. The court also said that a coffee shop doesn't have to offer these milks as part of its menu offerings anyway. The additional cost is really just tied to the business's cost in obtaining that milk. It's just another case that our clients had to deal with, and if they get a favorable decision, then they can run with it and sue everybody. That's what they did with website cases and the brick-and-mortar cases, so they're looking for that next thing.

Faccone

You did one of our speed rounds, as I mentioned earlier, which is shorter. In that period of time, what were some of the key takeaways you were able to share with our attendees to know what to do if they're faced with this or to anticipate how to avoid being faced with one of these lawsuits?

DiPalma

Initially, just having the fundamental understanding that these laws exist and there are specific requirements that you need to adhere to. There are certain things that you can do to make your business less likely to be sued. Just being mindful of it, knowing what it is, knowing when this is something we need to look into, maybe get legal counsel or an expert involved. That's one of the big things. It could include auditing the website, potentially getting a third-party vendor to do reviews of the website to make sure it's accessible. Do an audit of your physical structures or, if you have a menu, do an audit of your menu offerings. Are you complying with all

auxiliary aid and service provisions required by Title III of the ADA? There are just a lot of moving parts that businesses can be aware of.

There was a recent favorable decision out of New York on a website case, and there was another one that went the other way, but in this particular case, the business already had a plan, and they were constantly working on making their website accessible. The defendant moved to dismiss the complaint, basically saying, there's no likelihood of future harm because we already have this system in place and are working on modifying our website. The court agreed with that argument and dismissed the complaint, so at least there's some precedent now in New York. If the defendant, the business, can establish that this is something we're working on, constantly striving to do, but it's a moving target and very difficult to be 100% substantially compliant, the court may dismiss the complaint. There are arguments, but if the client's not doing anything, then you don't even have that argument, which sounds like awareness, which is why you're here today, and a plan, which is what the clients can take away, is a really important piece for this particular litigation avoidance.

Faccone

Joe, thank you so much for joining us here behind the podcast.

OUTRO

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