

DOL Opinion Letters, Website Accessibility Claims, and Tape Recordings at Work

US Department of Labor Reinstates Wage and Hour Opinion Letters.

One of the positive developments of the new administration is a less adversarial Department of Labor. On June 27, 2017, the DOL Wage and Hour Division announced that it will reinstate the issuance of opinion letters. Prior to 2010, opinion letters were a DOL practice for 70 years.

An opinion letter is an official, written opinion by the DOL of how the FLSA or FMLA, for example, applies in specific circumstances.

Anyone who wishes to request an [opinion letter](#) can do so through the DOL's website. CCM recommends that employers request opinion letters through their attorneys so they can preserve their anonymity and properly frame their issue.

Website Accessibility Claims - Something New to Worry About.

Title III of the ADA provides for equal access of persons with disabilities in places of public accommodation. Employers that are public accommodations are: schools, recreation facilities, service establishments, restaurants, stores, healthcare facilities, theaters and more.

Title III claims are on the rise. The U.S. Department of Justice received 6,391 accessibility complaints in fiscal year 2015 - which is a 40% increase over claims from the prior year. Certain disability advocates are now making the claim that employers' websites violate the ADA because the website is not sufficiently accessible to individuals with disabilities.

These claims often revolve around vision impairments, but hearing impairments are an issue too if the website includes video. Disability advocates are suing businesses under Title III of the ADA in an effort to force them to adopt the standard in the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA).

The first trial on this issue was held on June 15, 2017 in a federal court in Southern Florida and Judge Robert Scola found in that case that the [Winn-](#)

[Dixie](#) grocery store's website is in violation of Title III of the ADA. The takeaway from this decision is that businesses that are public accommodations, and even those that aren't, must think of their websites as an extension of the physical footprint of their business. Moreover, all employers should insist that their website developer make their website as accessible as is reasonably possible.

Tape Recordings at Work – Beware of Prohibiting Them.

No area of labor and employment law was upended more in the last ten (10) years than Section 7 of the National Labor Relations Act. Section 7, which applies to all employers, prevents employers from prohibiting their employees from “engaging in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

Recently, the United States Court of Appeals for the Second Circuit upheld a [ruling](#) against Whole Foods Market that a policy in its employee handbook violated Section 7 of the NLRA because it prohibited employees from recording conversations in the workplace.

Whole Foods argued that its policy was designed to encourage open communication and the free exchange of ideas, but the court affirmed that photography, audio or video recordings, and social media postings are important tools that an employee may use when exercising her Section 7 rights. CCM aggressively edits our clients' handbook policies that might be construed by a court as a Section 7 violation.

If you have any questions about the matters addressed in this *CCM Alert*, please contact the following CCM author or your regular CCM contact.

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