



Is Your Brewery Accessible?

BY
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Everyone loves your beer. But can everyone access your beer? Maybe your brewpub is one where people line up hours before a new release, or where you are constantly hustling to keep your top beers on tap. If that's the case, great! It sounds like you have a good thing going.

But maybe the reason people can't access your beer is not related to supply at all. Accessibility can also relate to your brewpub's physical space, your online presence, and your ability to deal with service animals.

Under Title III of the Americans with Disabilities Act (ADA), individuals who own, lease, or operate a place of public accommodation must ensure that people with disabilities have "full and equal opportunity" to access and enjoy the services of that public space. What does this mean for your brewpub?

While having a handicapped-accessible entrance and bathroom is a great start, those factors, in and of themselves, do not likely satisfy your obligations. In addition to your physical space, is your online presence accessible? Are your employees trained in how to handle an encounter with service animals? Do they know how to deal with disability accommodation requests? These are just a few things to consider when it comes to compliance.

Under Title III of the ADA, a brewpub is considered a public accommodation, broadly defined as an establishment that is open to the public and affects commerce in any meaningful way—such as a bar, restaurant, or taproom. Accordingly, in most situations, a brewery will likely be found to "affect commerce" (and thus be a public accommodation) under the statute if it provides tours to the public and/or has a tasting room.

While a public accommodation's obligation under the ADA is expansive, let's touch briefly on three primary areas: physical space, online presence, and service animals.

PHYSICAL SPACE

Often breweries will assume they are compliant if their building and design are up to local zoning code, but the ADA Scoping Requirements go well beyond that. For example, in spaces where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating and standing spaces with dining surfaces must be a minimum of 28 inches above the finished floor and a maximum of 34 inches above the finished floor. Are your signs friendly to those customers with visual impairments? Are your employees trained in how to make sure all individuals have full and equal access to your products and facility?

ONLINE SPACE

Further, the ADA has been found in certain states to apply to an online presence in

Do your due diligence to make sure your brewery is accommodating to all potential customers.

addition to a physical presence. While some courts have decided that a website is not a physical location and therefore does not constitute a place of public accommodation, others have come to the opposite conclusion, finding that as long as there is a "nexus" between the website and the physical location, that is sufficient to require the website to comply with the ADA. If the website in some way prevented an individual from availing himself or herself of the brewery's goods and services (such as if the website contained the address of the tasting room and that address couldn't be seen by a visually impaired individual), that may be deemed a sufficient nexus.

What is an ADA-compliant website? It is one that uses or supports the use of

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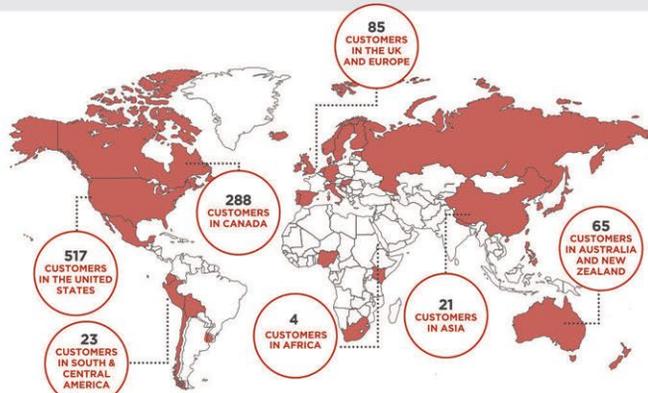
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assistive technology. Breweries should review version 2.0 of the Web Content Accessibility Guidelines, which were developed by the Accessibility Guidelines Working Group of the World Wide Web Consortium, the main international standards organization for the internet. This document provides a multitude of recommendations for making your brewery's web content more accessible to individuals with disabilities, including those with vision impairment.

SERVICE ANIMALS

Title III recognizes that individuals with disabilities may use a service animal to assist in full and equal enjoyment. Dogs and miniature horses qualify as service animals under the statute. Both must be "trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." State law may more broadly define the types of animals that qualify as service animals, so it's important to check to see if you should be accommodating more than dogs and miniature horses—like therapeutic turkeys or support snakes.

Employees cannot ask questions about the nature or extent of the disability, nor require the patron to provide documentation to prove that an animal is a service animal. Employees are permitted to ask two questions: "Is your animal required because of a disability?" and "What work or task has the animal been trained to perform?" Even these questions may not be asked if the animal's function is apparent, such as when a dog is observed with an individual who is blind or is pulling a person's wheelchair. An individual with a service animal does not have carte blanche, however. Under Title III, the brewery can ask an individual with a disability to remove the service animal if the animal is out of control; if the owner isn't taking effective action to regain control of the animal; or if the animal is not housebroken.

Do your due diligence to make sure your brewery really is "open to the public" and accommodating to all potential customers.

Tawny Alvarez is a partner at Verrill Dana, LLP and chairs the firm's Breweries, Distilleries, and Wineries Practice Group. She advises New England breweries on best practices related to licensing, employment practices, and general compliance with public accommodation and anti-discrimination laws. **NB**