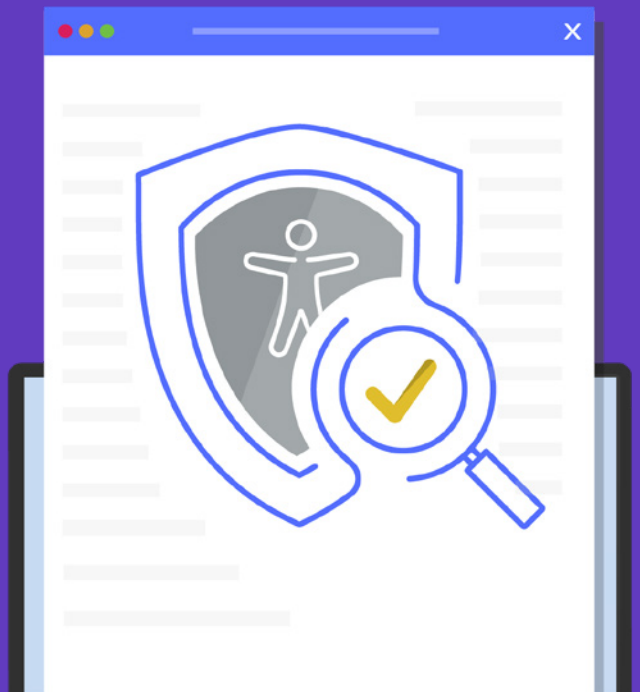
ADA Compliance for Digital Accessibility



The Basics, Latest Trends, and What's Needed to Ensure Compliance in the Digital Realm

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LEVEL access

What is the ADA and does it apply to websites and other technology?

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in all aspects of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

The law was written before the digital versions of banking, shopping, and entertainment existed.

But now, based on a wide variety of cases and rulings, the ADA applies to virtual places like websites and applications, too.

A closer look at the ADA and digital accessibility

The ADA is divided into five Titles, or sections, that cover areas of public life. Four of those Titles are relevant to digital accessibility, but Title III warrants the most focus for digital.

Title I relates to employment and benefits.

Title II relates to facilities and services provided by state and local governments.

Title III relates to public accommodations operated by private organizations.

Title IV covers the equipment and services of telecommunications providers

Title V is miscellaneous and includes a variety of items. Most notably, it allows the recovery of attorneys' fees by prevailing parties.

Includes some digital accessibility requirements that ensure people with disabilities have same access to work opportunities and technology needed to do their jobs.

If you have a physical location, Title III is what requires you to have accessible parking spaces or a wheelchair ramp. In the technology space, ADA compliance means your website, mobile app, software, or other digital content is accessible to individuals with disabilities.

ADA Title III

So what does it say? Paraphrasing, ADA Title III says that you can't prevent people with disabilities from enjoying full and equal use of the "stuff" that you do or provide at the place of public accommodation.

- The goal of the ADA is to ensure the integration of people with disabilities into society.
- To the fullest extent possible, support for the equal access of people with disabilities should be provided as part of the core experience of the goods and services.
- Under the ADA, access is not meant to be provided in a separate program.
- In fact, providing access as a separate program is defined as discrimination under the ADA.
- An integrated, accessible experience is provided by making the primary technology (commonly a site or application) accessible, and that is also a key and fundamental requirement of the ADA.

Some important ADA definitions to keep in mind

Public Accommodation:

A place where a business provides a good or service.

Auxiliary Aids and Services:

Tools or means to provide effective communication to people with disabilities or different communication needs. This includes:

- Interpreters,
- written text,
- hearing aids and listening devices,
- Braille,
- and captioning among many other examples.

Effective Communication:

There is no direct definition of effective communication given in the ADA. However, during the 1991 rule-making process the Department of Justice did define it this way:

"...that communication with persons with disabilities is as effective as communication with others."

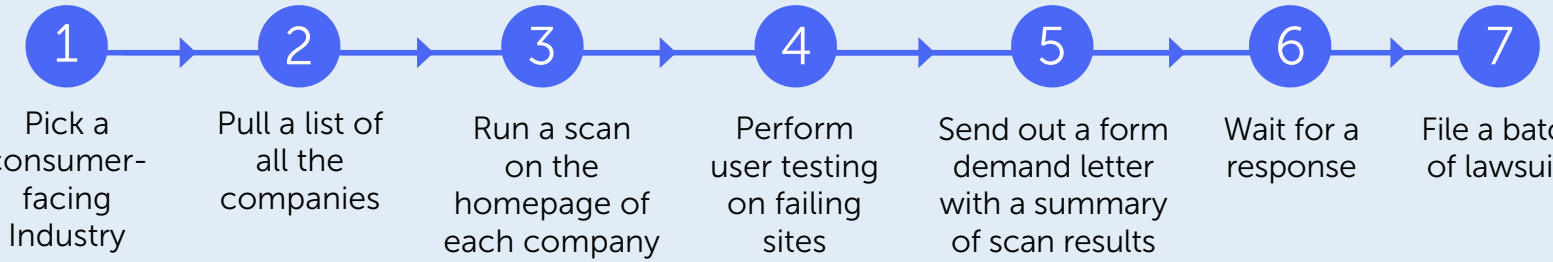
Importantly, the regulatory record is clear that effective communication means people with disabilities are not, *"...treated differently than other individuals..."*

Is a website a place of public accommodation?

In a letter to Congress in 2018, the Department of Justice clarified that it believes Title III of the Americans with Disabilities Act (ADA) applies to the websites of public accommodations.

How do ADA lawsuits work for digital accessibility?

The Process



The Trends

- Specific plaintiff attorneys have focused on specific industries
- Firms target lists of companies and file lawsuits in "waves"
- Lawsuits typically cite a mix of automated and manual testing results
- Follow-up discussions are then limited to automated testing results
- **Note:** Some lawsuits discuss usability of the site for people with disabilities – these are very different

* Generally, automated testing results (good or bad) **strongly correlate** with the risk of a digital accessibility lawsuit

How we determine our framework for ADA compliance

Here are the **basic requirements we see for a valid claim of ADA compliance**:

1. Consistent with the law since valid claim of compliance with the ADA needs to ensure conformance with the actual requirements.

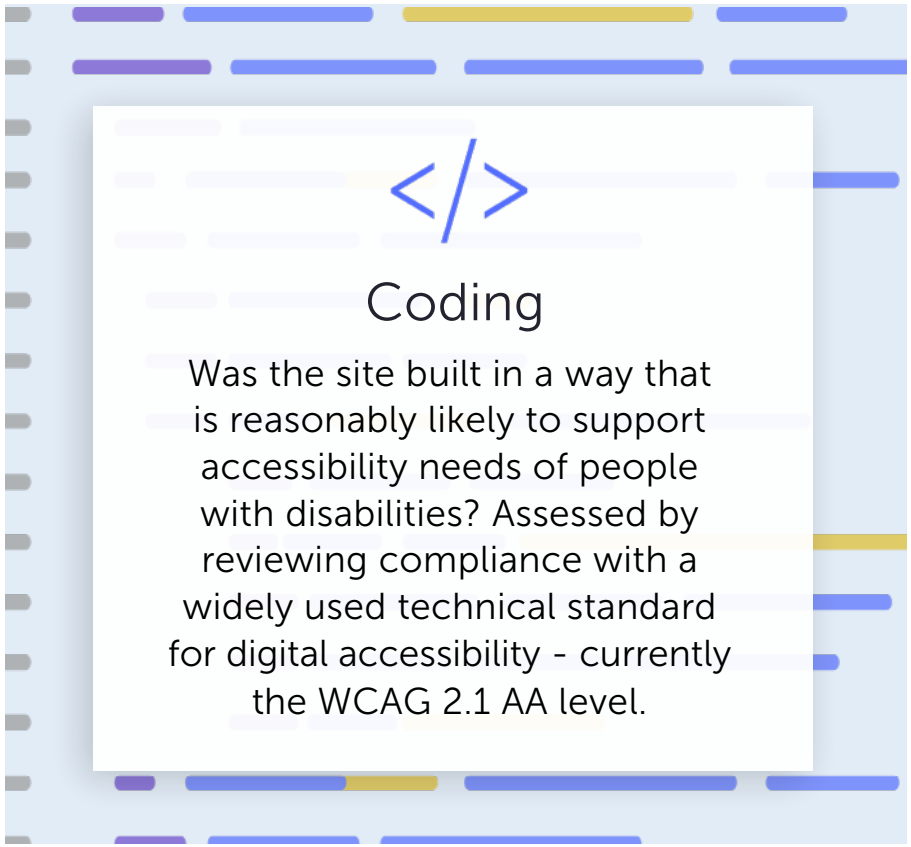
2. Consistent with the regulatory record when it can be judiciously and reasonably applied to technology.

3. Supported by relevant technical guidance from the Department of Justice and U.S. Access Board.

4. Helpful in the current legal environment, or in other words, does the claim make sense practically in the real-world context of litigation (what we see happening in courts)?

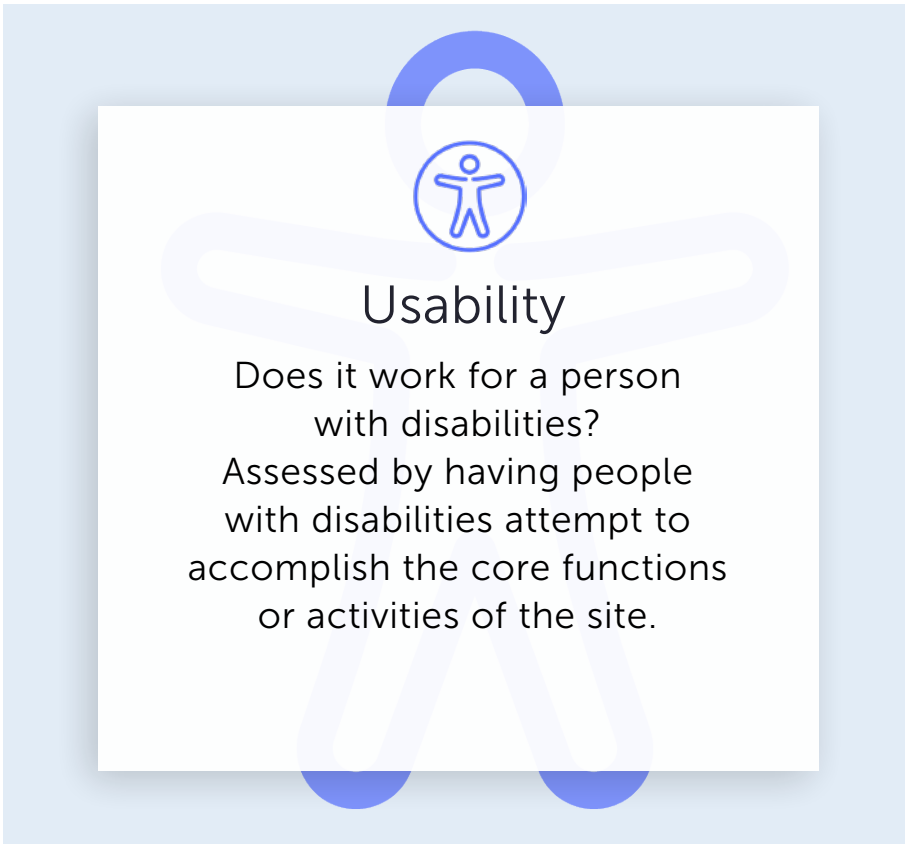
5. Reasonable, meaning a combination of appropriate and fair, or, sensible. This relates to (i) what is technically achievable in the system, and (ii) the user experience of individuals with disabilities interacting with the system.

Evaluating a system for compliance



Coding

Was the site built in a way that is reasonably likely to support accessibility needs of people with disabilities? Assessed by reviewing compliance with a widely used technical standard for digital accessibility - currently the WCAG 2.1 AA level.



Usability

Does it work for a person with disabilities? Assessed by having people with disabilities attempt to accomplish the core functions or activities of the site.

So what constitutes ADA compliance?

The compliance framework that maps to demand letters and settlement terms goes beyond just the system level

System Compliance

- **Coding**
  - 95% or greater conformance to WCAG 2.1
- **Usability**
  - All core use cases can be completed by a person with disabilities using commonly used assistive technology

Process Compliance

- **Formal Testing** – Annual third-party audits
- **Monitoring**
  - Pre-production CI monitoring
  - Production monitoring (spiders or analytics)
- **Training** - Ongoing training program covering all digital roles
- **Tooling** – Interactive development and testing tooling
- **Implementation Support** – Access to expertise in the development and authoring lifecycle
- **Policy** – Written policies, publicly available
- **Feedback** – Method for users to provide feedback
- **User Support** – Discrete support channel for people with disabilities

What most lawsuits are demanding

A closer look at what's needed in practice to demonstrate proper controls for ongoing accessibility

Formal Testing

Establish a central program or web accessibility coordinator/committee

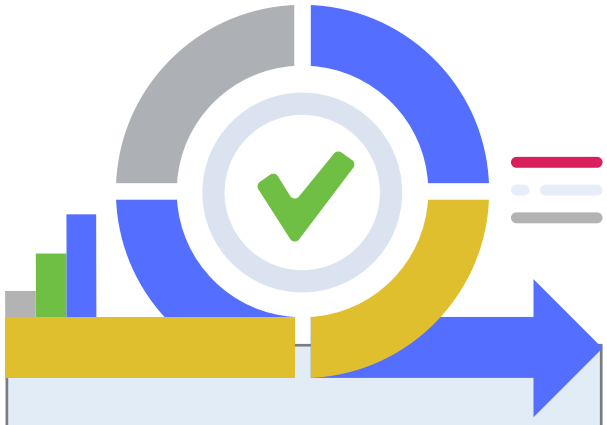
Expert Consultants

Access to support services from expert consultants for testing and guidance when needed.

Training

Tailored training for developers, content authors and anyone else that can impact the system's accessibility. Should consider organization's specific needs and environment.

Ongoing partnership with qualified and specialized organization.



Monitoring

Regular scanning or monitoring of site for accessibility issues

Software

Management platform with full reporting capability and testing support for entire development lifecycle

Tools and applications to enable your teams

Feedback and Support Channel

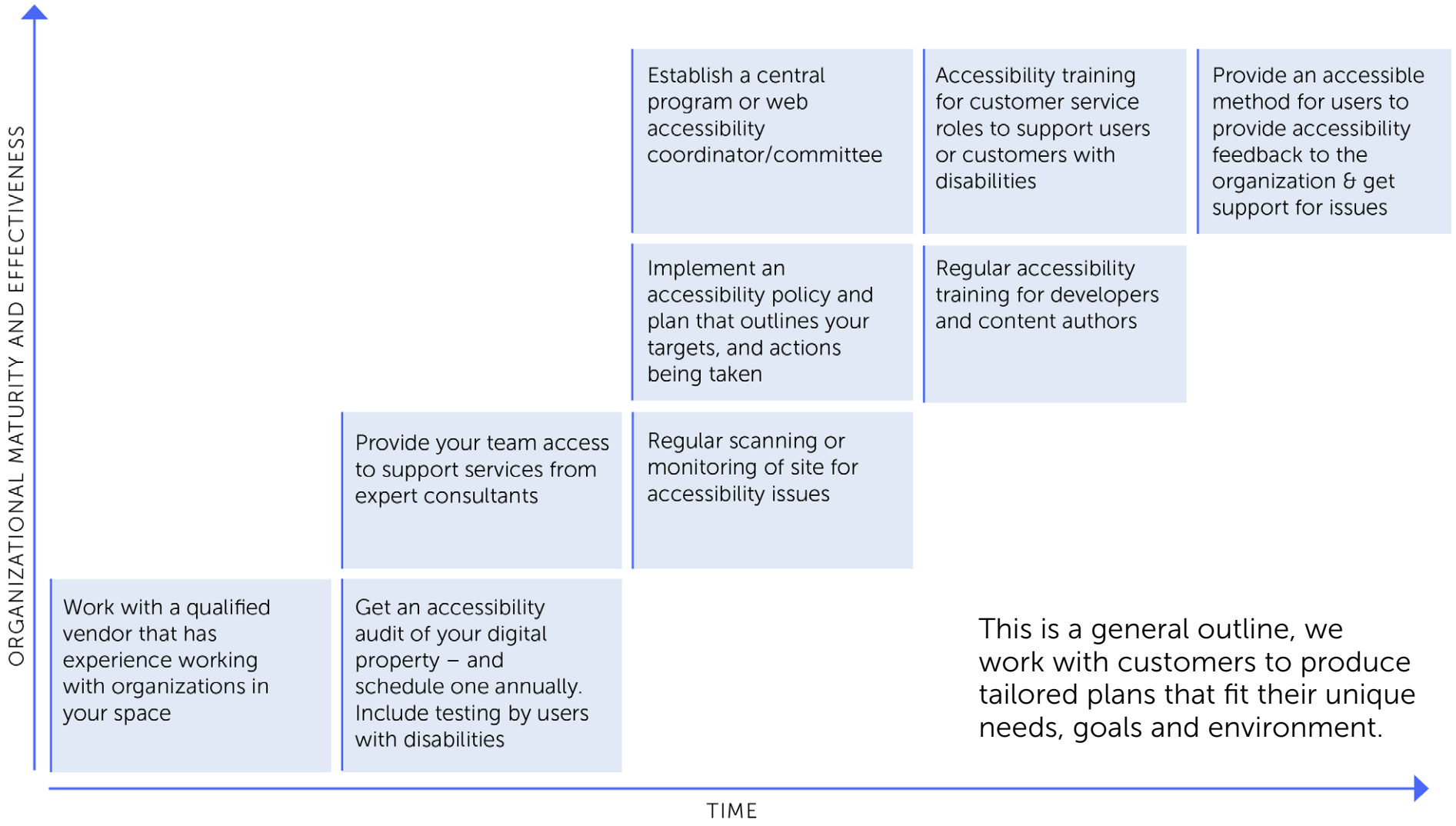
Provide an accessible method for users to provide accessibility feedback to the organization and get support for issues or questions

Policy

Accessibility policy and plan that outlines your targets, and actions being taken; establishment of responsibility for central role or team.

Organizational program and procedure development

A typical progression for customers



This is a general outline, we work with customers to produce tailored plans that fit their unique needs, goals and environment.

What is claimed in a lawsuit?

Overall: The defendant's policy, practice and procedures have resulted in an inaccessible site.

The claim of a typical lawsuit:
Given the clear inaccessibility—and no apparent plan to fix this—the plaintiff is engaged in an intentional act of discrimination.

1

The website wasn't built with accessibility in mind even though the defendant reasonably should have been aware that accessibility was a requirement.

2

As updates have happened, the site hasn't been made more accessible.

3

The organization has no corporate policy or program in place to become or remain accessible.

Note that a large amount of this all comes back to policies, practices, and procedures: how the covered entity does business.

Accessibility approach scorecard

Rank your accessibility approach for your digital property on a scale of 1 (does not meet requirement at all) to 5 (meets requirement fully) to the best of your knowledge.

A. Item	B. Requirement	C. Score (1-5)
1. Equivalence	Does the approach allow a person with disabilities to accomplish all the things a person without a disability can?	
2. Integration	Is the approach provided integrated with the core experience provided to the general users of the site?	
3. Appropriate	Does the approach support the communication needs in a way that's appropriate for the medium?	
4. Self-Service	Is the accessibility approach self-service in nature?	
5. Real-Time	Is the approach real-time in nature?	
6. Availability	Is the approach available twenty-four hours a day seven days a week?	
7. Privacy	Does the accessibility approach protect the privacy of a person with disabilities to the same level as a person without disabilities?	
8. Independence	Does the accessibility approach protect the independence of people with disabilities to the same level as a person without disabilities?	
9. Consultation	Was the approach arrived upon in consultation with people with disabilities?	
	Total Score (sum of column C.)	

Estimated compliance risk

HIGH RISK	MEDIUM RISK	LOW RISK
Total score of 9 to 22	Total score of 22 to 33	Total score of 34 to 40

Demand letter checklist

What should you do if you receive one?

- **Engage counsel (internal, specialized)**
- **Counsel engages Accessibility Expert (Level Access)**
  - Sets up a privileged relationship
- **Create Rebuttal Report**
  - Accessibility Expert reviews and validates (or invalidates) the specific claims in letter
    - Includes high-level validation of issues focusing on usability
  - Accessibility Expert gathers process data supporting compliance
- **Response to plaintiff counsel with expert report**
- **Negotiations and settlement**

Putting it all together

Based on our research, we'd generally prioritize your site using a model like this:

Section or Pages	Description	Related?	Publicly Available	Priority
• Home Page • Product or Services or Shopping • Contact Us or Chat Feature • My Account • Training or Other Support and Documentation • Locations • Privacy, Security, Accessibility	• Parts of your site that include: • Main or home page that links to the various other parts and highlights content of interest • An overview of the products and services and any shopping or e-commerce pages • Contact numbers, e-mail addresses, case submission forms and live chat features • Login screens, account settings, email preferences, and CAPTCHA screeners • Online training, support, and documentation for the products and services of the organizations • Specific locations for stores, products or services. • The relevant privacy, security, and accessibility policies and sections of the website	**Directly**	**Yes**	**High**
• Meet the Team, Corporate History, Terms of Use • Customers, and Testimonials • Blog, Social Media, Events • Press Releases, Investor Relations	• Parts of your site that include: • An overview of the executive team and/or corporate history of the organization, as well as terms of use for the website • Live events the organization is sponsoring and any information on your customers or testimonials • The blog or social media end points of the organization. • Official press releases and content and/or section of the site related to investor relations.	**Loosely**	**Yes**	**Low**
• Jobs or Careers Section	• Section of the site for searching and providing jobs	**No**	**Yes**	**NA**
• Partner Portal	• Section of the site used by business resellers for our products	**No**	**No**	**NA**

Related – Determines if it's directly, loosely, or not related to the goods and services of the location.
Publicly Available – Determines if it's a function that's available to the general public.
Priority – Determines the relative priority of working on the site section.

There’s no better time than now to begin your accessibility journey!

- Learn more about the ADA here
- Contact an ADA Compliance specialist to plan your roadmap and get started right away

LEVEL access

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Since 1997, Level Access has been developing software, training and consulting solutions to address the specific challenges presented by accessibility requirements. We’re proud to have a diverse team of engineers, programmers and consultants, many of whom have disabilities themselves. This gives us a real edge in testing and creating products and services with accessibility and usability in mind.