The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Supreme Court Rules on Civil Rights Tester Case

On December 5, 2023, the US Supreme Court issued its first opinion of the 2023-2024 term, *Acheson Hotels v. Laufer*. *Acheson Hotels* primarily dealt with Title III of the Americans with Disabilities Act ("ADA"). Title III of the ADA requires that businesses open to the public provide equal access to facilities and services for those with disabilities, including alleviating architectural barriers and ensuring accessible websites amongst other requirements.

The plaintiff in *Acheson Hotels*, Deborah Laufer, was a "drive-by" litigant who has brought hundreds of lawsuits against businesses for accessibility issues under the ADA. The plaintiffs' bar claims that parties like Ms. Laufer are "testers"—a tool for civil-rights advocates to ensure places of public accommodation comply with Title III of the ADA, despite no intention of actually doing business with the facility. In this case, Laufer sued an inn in Maine for violating what is known as the "reservation rule" under the ADA, which requires hotels to describe accessibility information online so people with disabilities can determine if they can utilize the facilities.

Laufer had voluntarily dismissed her case in a lower court due to an issue with her attorney's license, but Acheson Hotels argued that Laufer did not have a legal right to sue and that allowing her to do so would create adverse precedent for tester cases.

Justice Coney Barrett wrote the 9-0 opinion, which held that Laufer's case was moot because she voluntarily dismissed her lawsuit and, therefore, did not present an active controversy. Justice Thomas concurred but added that the court could consider the issue of Laufer's standing to sue, which she did not have. Justice Ketanji Brown Jackson also wrote a concurring opinion in which she agreed the case was moot but wrote separately to question a judicial practice known as "Munsingwear vacatur," which automatically vacates a lower court judgment.

What does this mean for you?

Though the Court's decision rested upon the issue of mootness, tester cases are still frequently utilized to enforce the ADA, including in Minnesota. Until the Supreme Court addresses the standing issue, these civil-rights tester cases are great reminders to businesses and places of public accommodation to ensure they are compliant with applicable state and federal laws, such as the ADA. Typically, businesses can defend these cases by remediating the alleged violation and moving for summary judgment on mootness grounds.

An emerging area of interest under Title III of the ADA is for the accessibility of websites. The issue of website accessibility is a growing area of concern for people with disabilities and businesses. Although the world is dependent on online resources, transactions, and information, not all websites are accessible by screen readers or assistive technology that people with disabilities use. This may impact not only clients and customers, but also employees. Assistive technology can also be incorporated as a reasonable accommodation of employment.

At Bassford Remele, we have extensive experience litigating cases under Title III of the ADA, including numerous summary judgment victories and court-trial verdicts. We also regularly advise clients to ensure ADA compliance and mitigate risks. Please reach out to the Employment Law Group for guidance, questions, or further assistance. We are here to help!

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