



## CLIENT ALERT

### ADA GIFT CARD ACCESSIBILITY LAWSUITS

Over recent months there has been a wave of new lawsuits filed in New York alleging that the failure of gift cards to contain braille is a violation of the Americans with Disabilities Act (the “ADA”), as well as state and city disability laws.

Compliance with the ADA has long been the source of concern for many business owners. As most know, the ADA prohibits discrimination on the basis of disability in the employment context and in the full and equal enjoyment of the goods and services of any place of public accommodation. Examples of public accommodations include restaurants, hotels, retail stores, salons, galleries and spas.

In the past, lawsuits focused on the accessibility of a public accommodation’s physical premises (*i.e.*, whether there was a ramp to permit wheel chair bound individuals entrance into a restaurant or whether touchscreen point-of-sale systems had a speaking function so visually impaired individuals may order food). Over the past few years, lawsuits have focused on the accessibility of websites to those with disabilities. Please see an [article](#) we authored on the topic.

Recent litigation focuses on the accessibility of gift cards for the visually impaired. Dozens of lawsuits were recently filed in New York against retailers and restaurants for failing to sell gift cards that contain braille. Legally blind plaintiffs allege they were prevented from enjoying the full and equal access of a company’s services because their gift cards, which are generally the same size and texture as other cards, do not contain braille. Consequently, to a visually impaired individual they are indistinguishable from other cards. Plaintiffs allege that in order to use one, they are required to rely on the help of a sighted individual. These lawsuits seek permanent injunctions requiring the defendant retailers and restaurants to design and sell gift cards that are embossed with braille identifying the name of the merchant, the denomination of the gift card, and other pertinent information.

While business owners have affirmative defenses, these types of lawsuits are so new that it is unclear how these lawsuits will play out. For example, public accommodations are not required to provide modifications to their goods or services when doing so would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided. What is considered an “undue burden” for one establishment may not be considered an undue burden for another establishment when taking into consideration the size, nature, revenue and resources of each establishment. Additionally, while plaintiffs are seeking to have all gift cards embossed with braille, a court may determine simply having them available by request or having an employee available to read and convey the information to the customer is compliant. Unfortunately, given the novelty of these allegations, it is not clear how a court will rule.

Just like the website accessibility cases, these gift card cases can be brought by serial plaintiffs, potentially as a class action, against any business who offers gift cards. Businesses should be mindful of this new liability risk, and consider the feasibility of proactively making their gift cards accessible for the visually impaired.

\* \* \* \*

If you have questions or would like additional information, please contact EGS’s Employment Law Practice Group Leader, Amanda M. Fugazy at [afugazy@egsllp.com](mailto:afugazy@egsllp.com) or the primary EGS attorney with whom you work.



#### THE EMPLOYMENT LAW PRACTICE GROUP

**Amanda M. Fugazy, Esq.**

**Paul P. Rooney, Esq.**

**Valerie J. Bluth, Esq.**

**Mitchell F. Borger, Esq.**

**Stephania C. Sanon, Esq.**

**Mohammad B. Shihabi, Esq.**

**Ilan Weiser, Esq.**

**Nicole Vescova, Esq.**

**Allison Vieyra, Paralegal**

1345 Avenue of the Americas, New York, NY 10105

Telephone: (516) 801-8139/(212) 370-1300

[afugazy@egsllp.com](mailto:afugazy@egsllp.com) | [www.egsllp.com](http://www.egsllp.com)

*This memorandum is published solely for the informational interest of friends and clients of Ellenoff Grossman & Schole LLP and should in no way be relied upon or construed as legal advice.*