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ADA Pipeline

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The Full Promise of the ADA: Restoring the Original Intent

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Director of Training and Technical Assistance

When President George H.W. Bush signed the Americans with Disabilities Act (ADA) into law on July 26, 1990, the event represented an historical benchmark and a milestone in America's commitment to full and equal opportunity for all of its citizens. The ADA was the world's first comprehensive civil rights law for people with disabilities.[1] The purpose of the ADA was "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2] The provisions of the ADA addressing architectural, transportation, and communication accessibility have changed the face of American society in numerous positive ways by enhancing the independence, full participation, inclusion, and equality of opportunity for individuals with disabilities.[3] For example, many doctor's offices, hospitals and courthouses are more accessible to people who use wheelchairs. Local theaters offer some of their live performances with audio descriptions or sign language interpreters for persons with visual or hearing impairments.

Rep. James Sensenbrenner (R-WI) stands at the podium: "Today we want to place the ADA rightly back among our Nation's great civil rights laws." From left to right, Rep. Steny Hoyer (D-MD) upper far left, Rep. Jim Langevin (D-RI) bottom foreground, Yoshiko Dart in baseball cap, Rep. Jim Sensenbrenner (R-WI) at the podium, Sen. Tom Harkin (D-IA) far right.

Unfortunately, from a legal standpoint, not all of the news is positive. Over the past 17 years, some of the fundamental provisions of the ADA have been narrowed by Supreme Court rulings. Consequently, the ADA currently does not provide the scope of opportunities and protections that were originally expressed by the legislators and disability advocates involved in the creation and passage of the law.[4] "When the ADA was enacted, Congress intended that the executive agencies and the courts would continue the broad, flexible interpretation of the definition [of disability] and scope of coverage under Section 504 [of the Rehabilitation Act of 1973] previously adopted by executive agencies and courts."[5] In addition the Supreme Court affirmed in its decision in the *School Board of Nassau County v. Arline*[6] that the "Section 504 definition [of disability] 'acknowledged that society's myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment'. Therefore, the Court emphasized that "Section 504 of the Rehabilitation Act was designed to protect individuals who are discriminated against because of the negative attitudes of others toward them, whether or not they have an actual physical or mental impairment."[7]

In a series of ADA cases alleging employment discrimination on the basis of disability (e.g., *Sutton v. United Airlines*[8], *Alberston's v. Kirkingburg*[9], *Murphy v. United Parcel Service*[10], and *Toyota Motor Manufacturing v. Williams*[11]), the Supreme Court has "moved away from a broad remedial interpretation it had previously given to the Rehabilitation Act [of 1973 and its amendments] and the disability definition in the *Arline* case"[12].

continued on page 4

Inside

2 *Highlights from Around the Region*

4 *More Information on the ADA Restoration Act*

7 *Technical Assistance Corner*

8 *A Status Report from the Department of Justice*

10 *What's New on Our Web Site*

Highlights from Around the Region

Facilitating Voluntary Compliance with the ADA in the Southeast

The DBTAC state and local affiliates throughout our eight-state region have been successful in promoting voluntary compliance with the Americans with Disabilities Act (ADA) in their state and local communities. Some of their successful outcomes are reported below.

Florida Creates New Governor's Commission on Disabilities

On the 17th Anniversary of the Americans with Disabilities Act, Florida Governor Charlie Crist signed Executive Order 07-148, creating the Governor's Commission on Disabilities. The Governor appointed Lance Block to serve as Chairman. The commission will advance public policy and work with state agencies and organizations on behalf of Floridians with disabilities. Crist remarked, "The commission will represent Florida's disabilities community as a whole, ensuring that all Floridians have equal access to education and employment, information regarding resources and services, and opportunities to fully participate in all aspects of life." The commission will partner with the Statewide Advocacy Council, which will serve as a clearinghouse of disability resources while providing guidance and education to state agencies regarding the implementation of the ADA. These functions previously were performed by the ADA Working Group, which expired July 25, 2007, under the terms of a prior executive order.

Improving Access to Courts in Florida

The Chief Justice of the Florida Supreme Court, R. Fred Lewis, appointed a committee to improve access to the courts and to survey court facilities throughout the state for accessibility. Over the past two months, the committee provided training to court and county personnel in Tallahassee, Orlando, Clearwater and West Palm Beach. After training over 150 individuals on the various elements of a survey instrument developed for this purpose, the committee expects to receive reports on each court facility by October 1st of this year.

Visit "Promising Directions" on the Southeast DBTAC's website at www.sedbtac.org/promisingpractices.php ?idpg=34 to view a copy of ***Georgia's Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities.***

North Carolina Facilitates ADA Compliance Through its Grassroots Network

The North Carolina ADA Network involves a statewide network of grassroots groups led by people with disabilities, who conduct ADA projects that promote voluntary compliance with the ADA in their local communities. Outcomes reported by local grassroots affiliates over the past six months include:

- The Fayetteville-Cumberland Advisory Council for People with Disabilities is working on accessible public transportation, among other issues in their community. They received funding from Easter Seals Project ACTION to send five local representatives (including people with disabilities, and county, city and transportation officials) to the National Mobility Planning Services Institute in May 2007.

- Pathways for the Future Center for Independent Living in western North Carolina reports that as a result of

continued on page 3

ADA Pipeline

ADA Pipeline is published twice each year by the DBTAC: Southeast ADA Center (Southeast DBTAC). The Southeast DBTAC is authorized by the National Institute on Disability and Rehabilitation Research, Grant #133A060094 to provide information, materials, and technical assistance to individuals with rights, as well as entities, that are covered by the ADA. The information, materials, and technical assistance are intended solely as informal guidance; this assistance does not serve as determination of your legal rights or responsibilities under the ADA, nor is it binding on any agency with enforcement responsibilities under the ADA.

ADA Pipeline is available, free of charge, to subscribers in the eight southeastern states. *ADA Pipeline* is available upon request in large print, braille, audio cassette, and computer disk.

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continued from page 3

their 2006 project to promote voluntary ADA compliance in downtown Bryson City, businesses made accessibility improvements. For example, the Ingles store made their signage more accessible and other businesses made accessibility improvements to parking, paths of travel, curb cuts and accessible routes. As a result of this project, a Pathways representative is now providing input on the new Bryson City Pedestrian Plan that addresses accessible sidewalks and crosswalks.

• Citizens Together Advocacy Group (CTAG) in North Carolina is encouraging local physicians to have at least one accessible examination room equipped with an accessible exam table in their practice or have policies in place that will allow individuals with disabilities to have access to an accessible exam room when needed. To date, two physicians said that they will purchase accessible exam tables for their practices, if financial assistance is available. CTAG is sending these doctors information about ADA tax credits. CTAG is also supporting a new piece of statewide legislation that will provide a tax credit and other financial assistance to purchase accessible medical exam tables. CTAG is collaborating with advocates from the Tennessee Disability Coalition (the Tennessee DBTAC state affiliate) to share strategies for success on this issue.

Tennessee State Building Codes

In 2007 there was a bill before the Tennessee state legislature that would change the accessibility requirements for certain buildings to be less prescriptive than North Carolina Code requirements that are in current law. The bill was assigned to a study committee and, therefore, did not come up this session. Using its dissemination network, the Tennessee Disability Coalition will keep everyone updated for the bill to reappear during the next legislative session.

Tennessee Judge Wins ADA Spirit Award

Judge Charles D. Susano, Jr., is the recipient of the 2007 Spirit of the ADA Award. "This award is given to someone who has overcome physical and attitudinal barriers, and as an empowered individual in the community, is an inspiration to other people," said Lillian Burch, Executive Director of the Knoxville disABILITY Resource Center. Susano works at his office on the second floor of the historic U.S. Post Office and Courthouse building in downtown Knoxville. During a sleep-walking episode in June of 1992, Susano. plunged through a second-story window of his home and was paralyzed. Using a wheelchair for mobility, Susano returned to his law practice. He was appointed by the Governor to fill an unexpired term on the Tennessee Court of Appeals in March 1994 and was elected to the court in August 1994, then subsequently re-elected in 1998 and 2006. Susano is modest about his achievements. "Nothing but good things have happened to me since the accident," he said. "God didn't push me out that window, but he's sent me many, many things since then, number one of which is the appointment to the judgeship. So I've been very blessed." Susano was named Appellate Judge of the Year in 2003. He now serves on the advisory board of the Knoxville disABILITY Resource Center, which works with people who have disabilities to create practical plans for them to achieve independence and also works to eliminate community barriers to independence. Visit www.drctn.org or call 865-637-3666. (Source: © 2007, Knoxville News Sentinel Co., http://knoxnews.com/news/2007/jul/25/judge-wins-ada-spirit-award/)

ADA Road to Freedom Tour— Tennessee Disability Coalition Is Lead Organizer

Launching from Washington, DC, the *Road To Freedom* is an awareness campaign and yearlong, cross-country bus journey to expose mainstream audiences across the United States to the ADA and the history of the disability rights movement — all while bringing needed attention to the ongoing struggle for equal access to healthcare, transportation, education, employment and more. When the bus reaches Tennessee on October 29, events will begin at the Civil Rights Museum in Memphis, then head to Jackson, Nashville, and Knoxville. For more information about times and locations or to learn how you can help, contact Courtney Jenkins-Atnip at courtney_j@tndisability.org, by phone (615) 383-9442 or by TTY (615) 292-7790. For more information about the Road to Freedom, visit www.adawatch.org/RoadtoFreedom.htm.

Access Nashville

Access Nashville is a college student training project that gathers useful accessibility information about restaurants for customers who use wheelchairs and/or have other disabilities. The project also provides community awareness of disability issues through volunteerism and social action. Access Nashville volunteers provide disability awareness and accessibility training in a classroom setting. Following the training, students are given a restaurant to survey as a classroom assignment. Based on survey results collected, each restaurant receives a WOW, GOOD, or LIMITED ACCESS rating that is posted on the Nashville Convention & Visitors Bureau website and the Access Nashville website (http://kc.vanderbilt.edu/accessnashville/access.html).

Service Animals in Tennessee

There are ongoing issues when individuals with service animals are denied access. The most recent complaint deals with access at a local mall in west Tennessee. The individual was in the mall and was asked to produce certification of the animal and medical documentation. The individual provided educational materials and explained what the service animal did for him. However, the request for documentation continued, with security being called. The individual recently filed a complaint with the Disability Law and Advocacy Center and is in the process of filing a complaint with the mall

continued on page 6

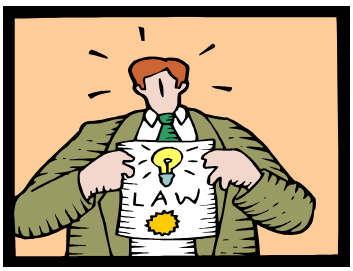
Full Promise of the ADA: Restoring the Original Intent

ADA Restoration Act Timeline

July 26, 1990	ADA Signed Into Law by President George H.W. Bush
1999	Supreme Court Rules in Sutton v. United Airlines, Albertson's v. Kirkingburg, Murphy v. United Parcel Service/Narrows Definition of Disability
2002	Supreme Court Issues Decision in Toyota Motor Manufacturing v. Williams, Places Burden of Proof of Disability on Plaintiff, Provides Interpretation of Substantially Limited
2004	National Council on Disability Releases Report, Righting the ADA, highlighting the initial ADA Restoration Act
September 13, 2006	Testimony Presented to House Judiciary Subcommittee on the Constitution — The ADA: Sixteen Years Later
September 29, 2006	HR 6258 (ADA Restoration Act of 2006) Introduced by Representatives Jim Sensenbrenner (R) and Steny Hoyer (D)
March 26, 2007	Lecture by the Honorable F. James Sensenbrenner, Jr. about the ADA Restoration Act
July 26, 2007	HR 3195 (ADA Restoration Act of 2007) introduced by Representative Jim Sensenbrenner (R), House Majority Leader Steny Hoyer (D), Senators Tom Harkin (D) & Arlen Specter (R)

In its place, the Court adopted, and has since applied, a significantly narrower approach." [13]

This narrower approach is considered similar to the reasoning historically used by the courts in Social Security and disability benefit cases. These cases placed the burden on the individual to prove that s/he is medically disabled enough to receive certain benefits. The impact of the court's new application of *medical* criteria to employment issues is that millions of Americans who want to work - and who were otherwise intended by Congress and the ADA to be able to work free from discrimination - have had the door of opportunity shut in their faces because of these legal decisions.[14] As a result, an individual may be not be hired or may be fired because s/he has a physical or mental condition that may or may not pose an actual barrier to his/her ability to perform a particular job. Many employees with disabilities have no recourse under the law as it is being interpreted, because courts focus on whether the employee is covered or not, rather than on whether illegal discrimination has occurred. The authors of the ADA did not envision this scenario when the law was developed and passed.[15]



Many people who are committed to the basic principles of civil rights, including supporters of the ADA, believe that these court decisions and the reasoning behind them are deeply flawed. They believe that the courts have ignored common sense, defied clear Congressional intent, and disregarded explicit federal regulations when interpreting the ADA. Moreover, the courts have ignored legal history and precedence, including Section 504 of the Rehabilitation Act of 1973 and state anti-discrimination laws that allowed people to sue for unfair discrimination based upon a broad definition of disability.[16]

The ADA Restoration Act

The National Council on Disability (NCD), in its December 1, 2004 report, *Righting the ADA*, urged the [George W. Bush] Administration and Congress to support legislation that will "right" the course of the ADA and protect the civil rights of people with disabilities. It further states that "legislation is urgently needed to restore the ADA to 'assure equality of opportunity, full participation, independent living, and economic self-sufficiency' for Americans with disabilities." The report included a draft bill, the *ADA Restoration Act of 2004*, designed to restore the original intent of the ADA. [17]

Responding to the NCD report and similar concerns of national disability rights advocates, Representatives James Sensenbrenner, Jr. (R-Wis.) and Steny H. Hoyer (D-Md.), introduced HR 6258, the Americans with Disabilities Act Restoration Act of 2006, on September 29, 2006. The intent of HR 6258 is to restore the definition of disability to the original meaning intended by Congress in 1990. The legislative goal is to clarify that the ADA covers any individual with an impairment, as defined by the bill, without consideration of the severity of the impairment, the use of mitigating measures, or whether the impairment is episodic or long-term. In addition to restoring the definition of disability, the ADA Restoration Act proposes technical amendments to the ADA, including replacing the phrase "against an individual with disability" with "on the basis of disability." This change will harmonize the ADA with the Civil Rights Act of 1964 and other civil rights laws that prohibit discrimination on the basis of race,

continued on page 5

Full Promise of the ADA: Restoring the Original Intent

color, religion, national origin, and sex. [18] HR 6258 also amends the definition of "qualified individual," as defined in Title I of the ADA, to ensure that employers focus on the essential job functions or the employment qualifications of an individual with a disability and not on the disability itself.[19] HR 6258 was not passed during the 2006 Congressional session.

Current Status

On July 26, 2007, the 17th anniversary of the ADA, with a show of bi-partisan support, Representatives Sensenbrenner and Hoyer, along with Senators Tom Harkin and Arlen Specter, introduced the newest version of the ADA Restoration Act of 2007 (HR 3195 and S 1881 respectively). Congressman Hoyer stated "We intended a broad application of this law. Simply put, the point of the ADA is not disability, it is the prevention of wrongful and unlawful discrimination. Thus today, Congressman Sensenbrenner - the former Chairman of the House Judiciary Committee - and I will introduce the 'Americans With Disabilities Restoration Act of 2007' to restore the broad reach of ADA that we believed was plain in 1990."[20] As of August 9, 2007, 181 Congressional Representatives were listed as co-sponsors of HR 3195.[21]

According to the Consortium of Citizens with Disabilities, the ADA Restoration Act will allow "Americans who have been denied the right to demonstrate that they have been subjected to discrimination … [to] be judged on the basis of their abilities, not their actual or perceived disabilities."[22] The Act continues to be a work in progress and there is much to be done. At press time, HR 3195 had been referred to House Committee on Education and Labor as well as to the Judiciary, Transportation and Infrastructure, and Energy and Commerce Committees.[23] In the words of Senator Tom Harkin "As with the original passage of the ADA, it's going to take time to hold hearings and build strong majorities. But I look forward to working to restor[ing] Congress' original intent, and, once again, to ensure that Americans with disabilities are protected from discrimination."[24]

(Endnotes)

[1] U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice. (1991). *Americans with Disabilities Act Handbook* (EEOC-BK-19). Washington, DC: U.S. Government Printing Office.

[2] Americans with Disabilities Act of 1990, Pub. L. No. 101-336, §2, 104 Stat. 328 (1991).

[3] National Council on Disability. (2004). Righting the ADA. Washington, D.C. Retrieved June 27, 2007 from www.ncd.gov/newsroom/publications/2004/righting_ada.htm.

[4] Ibid.

[5] Consortium of Citizens with Disabilities. (2006). Background and Justification for and Summary of the ADA Restoration Act. Retrieved June 27, 2007 from http://aucd.org/docs/policy/civil_rights/ada_restoration_act_background_0906.doc.

[6] School Board of Nassau County v. Arline, 480 U.S. 273 (1987).

continued from page 4

[7] op. cit. Consortium of Citizens with Disabilities.

[8] Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999).

[9] Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999).

[10] Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999).

[11] Toyota Motor Mfg.,KY., Inc. v. Williams, 534 U.S. 184 (2002).

[12] op. cit. School Board of Nassau County v. Arline.

[13] Sensenbrenner, F. James (March 26, 2007). Transcript: *Third Annual Tony Coelho Lecture in Disability Employment Law and Policy.* Retrieved June 27, 2007 from www.nyls.edu/pdfs/SensenbrennerSpeech.pdf.

[14] Ibid.

[15] Hearing before the Subcommittee on the Constitution of the Committee on the Judiciary House of Representatives, 109th Congress, Second Session (September 13, 2006), Transcript: *Americans With Disabilities Act: Sixteen Years Later,* Retrieved June 27, 2007 from http://commdocs.house.gov/committees/judiciary/hju29870.000/hju29870_0f.htm

[16] Ibid.

[17] op.cit. National Council on Disability.

[18] op.cit. Sensenbrenner.

[19] op.cit. Sensenbrenner.

[20] Hoyer, S.H. (July 26, 2007). Hoyer Introduces Americans With Disabilities Restoration Act of 2007. Press release. Retrieved August 9, 2007, from http://hoyer.house.gov/Newsroom/index.asp?ID=955&DocumentType=Press+Release.

[21] HR3195, 110th Congress, 1st Sess. (2007). Retrieved August 9, 2007, from http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.03195

[22] op. cit. Consortium of Citizens with Disabilities.

[23] op. cit. HR 3195.

[24] Harkin, T. (July 26, 2007 Harkin Introduces Bill Restoring His Signature Legislation, the Americans With Disabilities Act. Press release. Retrieved August 9, 2007, from www.harkin.senate.gov/news.cfm?id=279891.

ADA Restoration Act Resources

For the most up to date information on the ADA Restoration Act, visit our special web page at www.sedbtac.org/adarestorationact.php.

The topics covered include:

- ADA Restoration Act Legislation
- Congressional Documents & Press Releases
- Consortium for Citizens with Disabilities Resources
- National Council on Disability Publications
- ADA Restoration Act Blog

If you need a copy of this resource list in another format, please contact our office at sedbtacproject@law.syr.edu or call 1-800-949-4232 (voice/TTY).

Highlights From Around the Region

continued from page 3

management and notifying the Department of Justice. The Coalition Network Administrator sent a letter to mall management in the interest of fostering ADA awareness and understanding and enclosed the following materials:

- Service Animals: Technical Information Perspectives and Solutions (www.sedbtac.org/ada/training/ServiceAnimals.doc)
- Promising Directions: Service Animals and Hotels (www.sedbtac.org/ada/ada_in_action/ada_in_actionTemplate.php?ref=28&ptitle=246)
- ADA Business Brief: Service Animals (http://www.ada.gov/svcanimb.htm)

ADA Fairness Hearing

On March 30, 2007, the Tennessee Disability Coalition DBTAC Liaison attended a Title II ADA fairness hearing in federal court in Nashville. The hearing involved a complaint filed against the city of **Clarksville** *(Wheel Me On, et. al v. City of Clarksville)*. Julia Hollenbeck, Executive Director of Wheel Me On, was one of the plaintiffs. The Executive Director from the Northwest Tennessee Center for Independent Living (CIL) was there as support for the plaintiffs. After the hearing, Ms. Hollenbeck, the attorneys for the plaintiffs, the CIL director and the Coalition staff met to discuss the impact of the case on the people of Clarksville. Below is an excerpt from an e-mail from Ms. Hollenbeck:

> *This case, Wheel Me On, et. al VS City of Clarksville, is a victory for thousands of people who either reside or visit the City of Clarksville, and it is the hope of our organization that the City of Clarksville will make every effort to meet or exceed the requirements of the ADA within the timeframe agreed upon or earlier.*

Nashville Symphony Hall

As a follow-up to the training on ADA and Disability Awareness that was conducted in February 2007 for docents with the Nashville Symphony Orchestra League, ADA trainers were invited to participate in a practice tour of the Symphony with the docent educator. The docent wanted to practice and receive feedback from the trainers so that he could better lead individuals with disabilities through the Symphony facilities.

Louisville Builds New Arena

The city of Louisville, Kentucky has begun building a multi-purpose arena in the downtown area, where basketball will be the primary sport. The Center for Accessible Living is involved in the planning process by meeting with the Arena Commission and the architects to give input on ADA accessibility issues.

Accessibility Visit to Nashville Airport Marriott Hotel

Members of the Tennessee Disability Megaconference Accessibility Committee (Donna DeStefano, JoEllen Fowler, Peggy Cooper) and Kenton Dickerson with CILMT met at the Nashville Airport Marriott Hotel with the Senior Event Manager to check on renovations made for accessibility and to address specific concerns. The Tennessee Disability Megaconference was held May 31 – June 2, 2007 at the Marriott. There were concerns noted with entry into a bathroom stall in the main public area. Another concern was the men's restroom in the Cumberland Room. When the accessible stall door is opened, it hits a wall, leaving an opening of 30.5 inches. Two years ago, for the same conference, the hotel had reversed the door to allow a 32-inch opening. The door will be reversed again; the Committee stressed the need to leave the door reversed (thereby leaving it accessible for all future events) and not to change it back after the conference. Accessibility renovations included changes to accessible parking spots, restrooms and sleep rooms. All looked to be in good order.

Nashville Reporter Focuses on Service Animals

A television news reporter contacted the Tennessee Disability Coalition in Nashville about a story she is planning to do on service animals. She requested information on people who use them and with any training schools for service animals. The ADA Network affiliate provided names and contact information for two individuals as well as e-mailed her some of the materials from DOJ, and an audioconference transcript on service animals that the DBTAC did in 2002. The segment has yet to air.

New Publications and Online Resources

Check out the Southeast DBTAC publication section at www.sedbtac.org/publications.php for links to many documents containing important and accurate ADA information.

EEOC: ADA and Health Care Workers

www.eeoc.gov/facts/health_care_workers.html

This new Equal Employment Opportunity Commission fact sheet provides practical information about the ADA and healthcare jobs — from hospitals and nursing care facilities to doctors' and dentists' offices and diagnostic laboratories.

ADA Best Practices Tool Kit for State and Local Governments

www.ada.gov/pcatoolkit/toolkitmain.htm

Released in several installments, this kit teaches state and local government officials how to: (1) identify and fix problems that prevent people with disabilities from gaining equal access to their programs, services, and activities; and (2) conduct accessibility surveys of their buildings and facilities to identify and remove architectural barriers to access.

The Justice for All: Designing Accessible Courthouses Report

www.access-board.gov/caac/report.htm

These recommendations of the Courthouse Access Advisory Committee will assist the U.S. Access Board in developing and disseminating guidance on accessible courthouse design under the ADA and the Architectural Barriers Act. This is not a regulation.

2006-2007 ADA Audio Conferencing Series

www.ada-audio.org

Archived sessions are available at www.ada-audio.org/Archives

Technical Assistance Corner

Question: Under what circumstances can an employer bar a health care worker with a disability from employment for safety reasons?

Response: In the Equal Employment Opportunity Commission (EEOC) *Questions and Answers about Health Care Workers and the Americans with Disabilities Act* (www.eeoc.gov/facts/health_care_workers.html), it states:

Health care employers oversee workplaces that raise unique safety questions and concerns. Various care settings may involve invasive procedures, exposure to body fluids or bio-hazardous materials, caring for immune-compromised patients, and making specific assessments and determinations according to medical protocols, sometimes in a fast-paced setting. Errors may result in health or safety consequences for the patient, while at the same time demanding duties or exposure to illness may pose health or safety consequences for the health care worker. For these reasons, health or safety risks posed by the disability of an applicant or employee may be of particular concern to health care employers.

Under the ADA, an employer may exclude an applicant or employee with a disability from a particular position if that individual would pose a direct threat to health or safety. "Direct threat" is defined as a significant risk of substantial harm to the individual or others in the workplace that cannot be reduced or eliminated through reasonable accommodation. The determination that a particular applicant or employee with a disability poses a direct threat must be based on an individualized assessment of the individual's present ability to perform the essential functions of the job safely. Factors to be considered include: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. This standard must be satisfied in all instances where an individual with a disability is not hired or is removed from a position based on concerns about health or safety risks posed by the disability.

A fact-specific inquiry into the nature of the workplace setting and the requirements of a position, as well as the best available objective evidence about a particular individual's disability and its effect on health and safety, will be important in assessing whether a "direct threat" exists. The determination that an individual with a disability poses a direct threat to safety must be based on an ***individualized*** assessment of the employee's present ability to safely perform the essential functions of the job. The decision must be based on a reasonable medical judgment that relies on the most current medical knowledge rather than on speculation about what people with a particular impairment generally can do. In some situations, an employer may want to have an employee (or an applicant post-offer) whom it reasonably believes may pose a direct threat examined by a health care professional of the employer's choice (at the employer's expense) who has expertise in the employee's specific condition.

EXAMPLE: No Direct Threat

Ariel, a phlebotomist at a blood bank, is responsible for drawing blood. Lakshmi, a certified nurse's aide in a nursing home, is responsible for dressing and grooming residents, making their beds, and serving their food trays. Both Ariel and Lakshmi are HIV-positive. Since the best available medical evidence at the time of the employer's decision indicates that HIV-positive healthcare workers in these types of positions do not pose a direct threat to the safety of patients if they adhere to universal precautions, neither poses a direct threat in their positions based on their HIV-positive status. Therefore, their HIV-positive status would not justify reassigning these employees to different positions or terminating them.

EXAMPLE: Direct Threat

A hospital physician served as Chief of the Department of Internal Medicine. In addition to patient care, his responsibilities included assignment and evaluation of a staff of 150 physicians and others and overseeing departmental quality control.
Following a three-month absence for treatment of alcoholism after a hospital employee found him visibly intoxicated while treating a patient, the physician sought to resume his position as chief of internal medicine. The hospital refused based on information that the physician had relapsed after a six-year period of sobriety, and that his prior alcohol abuse, as well as a prior barbiturate addiction, had gone on for many years undetected by his professional colleagues. Under these circumstances, the physician would pose a direct threat even with reasonable monitoring. Moreover, even if the direct threat standard was not satisfied, the employer could discipline the physician — up to and including termination — in accordance with any uniformly applied conduct rule that was consistent with business necessity, for example a rule prohibiting drinking alcohol before or during a shift.

Southeast DBTAC Partners in the News

Burton Blatt Institute
SYRACUSE UNIVERSITY

Burton Blatt Institute Enters Historic Partnership With Israel to Promote Disability Rights

The Burton Blatt Institute: Centers of Innovation on Disability at Syracuse University (BBI) and the State of Israel's Ministry of Social Affairs and Services have signed an historic agreement to work together to expand the scope and reach of disability rights in Israel and the United States. Read more online at http://sunews.syr.edu/story_details.cfm?id=4166.

A Status Report from the Department of Justice

This update is excerpted from Disability Rights Online News, a bi-monthly update about Civil Rights Division activities in the area of disability rights. It highlights ADA activities of the Department of Justice in the Southeast Region from April 2007 — June 2007. The full reports are available through the Department's ADA website at www.ada.gov/disabilitynews.htm.

Tennessee Restaurant Agrees To Allows Service Animals On December 20, 2006, the Department entered into a settlement agreement with Shoney's, LLC, in Columbia, Tennessee, resolving a complaint alleging that a customer was told to leave the restaurant because she was accompanied by a service animal. The settlement agreement requires Shoney's to revise its service animal policy and post a sign stating that service animals are welcome in the restaurant. The complainants had previously settled their separate suit filed in federal court and received damages of $1,000 plus attorneys fees of $5,518.16.

Hotels in South Carolina Will Make Accessibility Improvements On January 25, 2007, the owners and operators of the Hampton Inn located in the historic district of Charleston, South Carolina, entered into a settlement agreement with the Department resolving a complaint filed by a man who alleged that during his stay at the hotel his mother was unable to use her guestroom shower due to the lack of maneuvering clearance and the lack of an accessible shower or tub. The owners agreed to modify four existing accessible rooms and four additional rooms so that each is fully accessible to people with disabilities. They will also modify the toilet rooms in the hotel lobby to comply fully with the ADA Standards, ensure that there are accessible routes into and throughout the hotel, provide accessible parking, and provide accessibility equipment such as TTYs, closed captioned televisions, and visual notification devices for guests with hearing disabilities. In addition, the hotel will train staff members in all ADA issues relevant to the operation of the hotel facility.

Local Agencies In Kentucky Sign ADA Agreements On January 30, 2007, the Department signed settlement agreements with the Pike County (Kentucky) Library District and the Pike County Health Department under Project Civic Access. Project Civic Access is the Department's wide-ranging initiative to work cooperatively with local governments to ensure that people with disabilities have an equal opportunity to participate in civic life, a fundamental part of American society. The agreements cover the Library District and Health Department programs and activities, including: notification to patrons about the requirements of the ADA, training employees on the provisions of the ADA and the requirement of effective communication, updating employment policies in accordance with the EEOC's regulations, assessing and maintaining the accessibility of the agencies' website and web-based services. In addition, the agreements require remedial action for violations of the ADA Standards found in five of the Library District's facilities and two of the Health Department's facilities.

Sheriff's Office Agrees To Provide Effective Communication For Detainees On April 12, 2007, the Department entered a settlement agreement with the St. Lucie County, Florida, Sheriff's Office to resolve two complaints of discrimination under Title II of the ADA. One complaint alleged that the Sheriff's Office failed to provide a qualified interpreter for an inmate who is deaf during his 280-day imprisonment at the County Jail. Another complaint alleged that in an attempt to communicate with a detainee who is deaf, the Sheriff's Office used a deputy Sheriff as an interpreter, but he lacked the necessary skills for interpreting services. The Sheriff's Office agreed to establish procedures for effective communication, provide qualified interpreters, TTYs, and other auxiliary aids when needed, make telephone relay services available, and appoint an ADA coordinator.

Two Business Establishments Agree to Admit Service Animals On March 13, 2007, the Department reached a settlement with the owners of the Log Cabin Restaurant in Loudon, Tennessee, resolving a complaint filed by a woman who uses a service animal. The complainant, who has a mobility disability, alleged that she was asked to leave when she attempted to purchase a meal because the owners objected to the presence of her service animal. The restaurant owners agreed to post a notice stating that they do not discriminate on the basis of disability and that service animals are welcome, to develop a policy on providing access to people with service animals, and to train current and future employees on the policy.

Settlement Agreement Between the US and Harrison County, Mississippi On July 26, 2007, the Department of Justice entered into a Settlement Agreement with Harrison County, Mississippi, under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35. The United States initiated this matter in the spirit of federal/local government cooperation to provide technical assistance to the County in complying with its obligations under Title II and not as a result of a complaint alleging violations of Title II by the County. In 2005, Hurricanes Katrina and Rita produced wide-spread flooding in Harrison County, Mississippi. As a result, many County facilities were damaged or destroyed, and extensive construction and rehabilitation of buildings and facilities are

continued on page 9

A Status Report from the Department of Justice

expected throughout the County over the next several years. The Settlement Agreement is designed to facilitate the County's compliance with the requirements of Title II of the ADA with respect to: (1) the construction of new facilities to replace those that were destroyed or damaged; (2) the rehabilitation of facilities that were damaged; (3) the reintroduction of programs, services and activities to buildings and facilities closed because of damage; and (4) the development of an emergency operations plan that addresses the needs of persons with disabilities. The Settlement Agreement will help ensure that the new construction of public buildings by the County will be ADA compliant. It also provides for certain training and technical assistance to help ensure that County building officials, architects, engineers, contractors, and others involved in rebuilding public and private facilities in Harrison County are meeting their obligations to design, construct, and alter buildings and facilities so they are accessible to people with disabilities. In addition, the Civil Rights Division will provide the County with technical assistance to ensure that the County's emergency planning and preparedness include the steps needed to address the needs of persons with disabilities, as required by Title II of the ADA. The text of the Settlement Agreement specifies the steps that Harrison County will take to ensure access for persons with disabilities to its facilities, programs, services, and activities. The Settlement Agreement will remain in effect for four years from July 26, 2007. It is available at www.ada.gov/harrisoncomspca.htm.

Circus Circus Mississippi, Inc. Settlement Agreement On May 2, 2007, the Department of Justice and Circus Circus Mississippi Inc. entered into a settlement agreement to resolve violations under Title III of the ADA with respect to the Gold Strike Casino Resort in Tunica, Mississippi. Circus Circus Mississippi, Inc. is a subsidiary of MGM Mirage. This fact sheet sets out highlights of the settlement agreement and should provide guidance to other casino resorts on how to ensure that they are meeting the requirements of the ADA and providing non-discriminatory services to individuals with disabilities. The Gold Strike Casino Resort includes a casino and a 31-story hotel with 1131 guest rooms and suites; six restaurants or bars; a meeting and convention center; a theater; and specialty shops. Read the Fact Sheet and Settlement Agreement at www.ada.gov/goldstrike/goldstrk.htm.

MEDIATION

Under a contract with the Department of Justice, The Key Bridge Foundation receives referrals of complaints under Titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. Over 80% of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation in the Southeast Region.

In **North Carolina**, a wheelchair user who called a racetrack for tickets complained that he was told the racetrack did not have companion seating. The owners of the racetrack confirmed in mediation that they did, in fact, have companion seating available, but that employees were not aware of it at the time the complainant called. The racetrack owners developed a comprehensive policy on providing companion seating and trained employees in implementing the policy. In addition, the racetrack owners provided four suite tickets to a future NASCAR race at any of

continued from page 8

their facilities and $8,500 in compensation. They also agreed to try and arrange a meeting between the complainant and a racing superstar.

In **Florida**, a person who is hard of hearing complained that a theater company did not have working assistive listening equipment for live performances. The theater agreed to check the listening devices daily and maintain the devices in working order at all times. The theater also provided the complainant with complimentary tickets to three other shows and concerts.

Other Enforcement News

In partnership with the Burton Blatt Institute (BBI), the Southeast DBTAC's Legal Team analyzes legal and policy developments relevant to civil rights protections and the impact of court decisions in the Southeast Region under the Americans with Disabilities Act (ADA). Also highlighted are legal terminology and policy developments relevant to information technology (IT) accessibility. Visit www.sedbtac.org/legalissues.php?idpg=14 to view Legal Updates on Professional Licensing Issues: Title II of the ADA Applied to State and Local Professional Licensing, Telework Options for Employees with Disabilities, Reassignment as ADA Reasonable Accommodation in Manufacturing Industries of Southeast U.S.: Comparing Appellate Court Outcomes, and much more!

The U.S. Department of Justice's housing discrimination complaints and settlements are available at www.usdoj.gov/crt/housing/fairhousing. ♿

Visit the Southeast DBTAC web site www.sedbtac.org

Access Board Update

Public Provides Input on Updated Guidelines for Buses and Vans

In April, 2007 the Board released for public comment a preliminary draft of revisions updating its accessibility guidelines for buses and vans covered by the Americans with Disabilities Act (ADA). Changes include the addition of provisions for new or variant forms of service, such as bus rapid transit. The Board is also revisiting various specifications, such as minimum space requirements for wheelchairs, due to the increasing diversity of mobility aids now on the market.

In response to the released draft, the Board received feedback from vehicle manufacturers, transit operators, trade associations, consumers, disability groups, and others. By the close of the comment period on June 11th, the Board received approximately 80 comments on the draft changes. The comments are posted on the Board's website at www.access-board.gov/transit/comments/.

The Board will also issue draft updates of other sections of the vehicles guidelines which, in addition to buses and vans, cover rail cars, trams, and other modes of transportation. The input received on the recent and upcoming drafts will be used to prepare an official proposal which will also be made available for comment. For further information, contact Dennis Cannon at cannon@access-board.gov, (202) 272-0015 (voice), or (202) 272-0082 (TTY).

New Guide Published on Rights-of-Way Alterations

A new design guide is now available on achieving accessibility in alterations projects involving public streets and sidewalks.

Accessible Public Rights-of-Way: Planning and Designing for Alterations explains how to maximize accessibility in the course of alterations through careful planning, an understanding of current regulations and access criteria, and strategies for negotiating constraints. The guide outlines and illustrates design solutions and model sidewalks and includes case studies and other resources. This information was developed by a group of former members of the Board's Public Rights-of-Way Access Advisory Committee which prepared recommendations for the Board's use in developing new guidelines for public rights-of-way. In the course of its work, the Committee determined that guidance specific to alterations was needed as a supplement to future guidelines. The guide was published by the Institute of Transportation Engineers with support from the Board and will soon be available on the Board's website.

What's New on Our Web Site

Our staff has been hard at work adding new resources to the DBTAC: Southeast ADA Center web site. These materials will enhance the effectiveness of your ADA technical assistance, training and outreach activities. Check them out using the direct links on our Home Page (www.sedbtac.org). If you have suggestions about how to improve this information, please contact us via email at sedbtacproject@law.syr.edu.

• **ADA Training Resource Center**
In celebration of the 17th anniversary of the Americans with Disabilities Act (ADA), the DBTAC: Southeast ADA Center launched the DBTAC - National Network of ADA Centers' **ADA Training Resource Center — Your One-Stop for Courses, Events & Tools on the ADA** located at www.adacourse.org. Visit often for information about Audio Conferences , Case Law, Case Studies, Courses, Handouts, Statistics & Quotes, TIPS, Solutions, Pages for Targeted Audiences, and more

• **ADA Case Law Development Briefs**
In partnership with the Burton Blatt Institute (BBI), we analyze legal and policy developments relevant to civil rights protections and the impact of ADA- related court decisions in the Southeast region. Recent legal updates and issues include:

- DMV Requests for Medical Information
- Title II Applied to State and Local Professional Licensing.

• **TIPS: Technical Information Perspectives and Solutions**
These documents provide accurate information on issues and concerns related to the Americans with Disabilities Act (ADA). They are designed to strengthen the capacity of those who provide technical assistance to help others achieve effective compliance with the ADA on these topics:

- Fertility Treatments and the ADA
- Immigration Issues and the ADA
- Multiple Chemical Sensitivity (MCS)
- Service Animals
- Tribal-Owned & Operated Casinos and the ADA
- Workers Compensation, FMLA, LTD, & STD

• **ADA Headliner Newsletter**
Monthly update packed with useful news and resources on ADA and accessible information technology (IT). The latest issue is now posted on our web site.

• **Materials from 2007 Postsecondary Leadership Academy on Accessible Information Technology**
Fully accessible transcripts and audio files for all topics presented during the 2007 Academy (Video, Web, Word, PDF, Policy**)** are posted online. During May to July 2,109 people visited the website to learn more about accessible information technology (IT) and to develop partnerships with others who share this vision. A total of 15,670 hits to 6,119 pages were recorded during the three month period.

ADA Promising Directions at Blue Ridge Community College

The DBTAC: Southeast ADA Center is committed to developing and sharing practices that exemplify effective implementation of the Americans with Disabilities Act (ADA) and support improvements in access for individuals with disabilities to information technology across educational environments in the U.S. Southeast region.

Our work with Blue Ridge Community College was included in the new National Council on Disability (NCD) report, *Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success*, in the section, "ADA Implementation Notable Practices." The full NCD Report is available at http://www.ncd.gov/newsroom/publications/2007/implementation_07-26-07.htm.

The Promising Direction is cited below for your reference. Additional ADA Promising Directions can be found on the Southeast DBTAC website at www.sedbtac.org/promisingpractices.php?idpg=17. Check often, because new information is frequently uploaded.

Blue Ridge Community College — Assessing Educational Technology Accessibility

Blue Ridge Community College (BRCC), located in the Appalachian region of North Carolina, developed a practice to assess current educational technology accessibility, implement faculty training, and upgrade adaptive technology on its two campuses. The project included the input of a student advisory board, the development of faculty training materials, the creation of a disability services handbook, an assessment by the North Carolina Assistive Tech Project, and proposed procurement policies.

BRCC took these steps to improve services to students with disabilities in partnership with the **Southeast DBTAC**, a project of the Center for Assistive Technology and Environmental Access (CATEA) at the Georgia Institute of Technology in Atlanta. During its 2001-2006 grant cycle, the Southeast DBTAC provided funding for professional development opportunities for faculty, the improvement of training materials for distribution, the establishment of a panel to solicit advice from students with disabilities, the assessment of campus accessibility in the area of educational information technology, and the expansion of procurement policies.

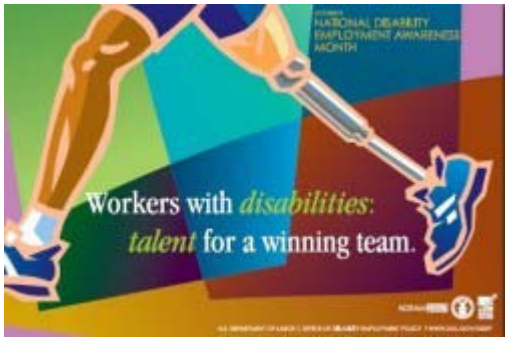
While outcome indicators for this initiative are primarily anecdotal, they suggest the following:

- Increased input from students with disabilities regarding barriers
- Increased interest from faculty in accommodating students who have learning disabilities
- Increased awareness of technology department staff regarding students with disabilities and their information technology needs
- Policies for purchase of accessible copiers, computers, workstations, and removal of physical barriers in the computer labs and distance learning rooms
- The addition of a disability service director to the information technology planning committee.

It appears that the project contributed to more students with disabilities completing programs of study and an increase in their graduation rate of 20 percent in three years, according to program staff estimates. This project removed barriers to students with disabilities at BRCC and, in many cases, improved educational services for all students.

Furthermore, the changes that the initiative wrought appear to have been institutionalized within the culture of the campus and are memorialized in policies, practices, and procedures that will continue to serve the long-term technology needs of students with disabilities.

2007 National Disability Employment Awareness Month (NDEAM) "Talent for a Winning Team"



It is time again to start preparing for the 2007 National Disability Employment Awareness Month (NDEAM). Patches of color (blues, greens, browns and purple) serve as the backdrop to the 2007 NDEAM poster. The theme, Workers with Disabilities: Talent for a Winning Team, is depicted by a runner's legs, one of them prosthetic, sprinting to success while crossing the patchwork. The words "October 2007 is National Disability Employment Awareness Month" appear in the upper right corner of the poster. The lower right corner includes the words "U.S. Department of Labor, Office of Disability Employment Policy" and the agency's web site address.

A print copy of this poster is available in 20 x 30 inch or 10 x 15 inch sizes. Please send your request to NDEAM@dol.gov. You may also download a PDF version of the 2007 poster at www.dol.gov/odep/documents/e449c330_aeb3_44c7_b953_a33552937fea.pdf.

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Over 300 participants in the 2007 Northwest Florida ADA Torch Relay march along 9th Ave. near Pensacola Junior College to celebrate the 17th anniversary of the ADA becoming law.

Greg McLeod, left, walks with City Councilman Mike Wiggins in the ADA Torch Relay at Pensacola Junior College.

The 17th Anniversary of the Americans with Disabilities Act (ADA) July 26, 2007

Over the past 17 years, the DBTAC: Southeast ADA Center and its Affiliate Network have achieved significant results concerning voluntary ADA compliance.

In preparation for the ADA Anniversary each year, the Southeast DBTAC captures its collective achievements and offers informative materials for use in ADA anniversary events across the region.

The 2007 ADA Anniversary Packet is available online at www.sedbtac.org/ada/publications/ada_anniversary/index.php. The Packet includes a wealth of information about the ADA, statistics, "ADA Promising Directions in the Southeast," Case Law Summaries of Decisions in the Southeastern Circuit Courts, and much more. The public is encouraged to use these materials throughout the year in their ADA implementation efforts.

Lara Burnside, who leads the Human Resources Department at The Studer Group, was the guest speaker at the ADA Torch Relay event held at Pensacola Junior College. Lara is a member of the Southeast DBTAC's Business Leadership Council.