

Great Lakes Chronicle

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AUGUST 2008

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Training and Events

2008 Accessible Technology On-line Seminar Series

August 11, 2008 1-2:00 PM CDT.
ADA and Website Accessibility

The Americans with Disabilities Act (ADA) does not explicitly discuss whether it applies to websites, and thus far, there have been few cases. Website accessibility cases courts have reached different conclusions as to whether websites are covered under the ADA. This session will discuss current standards and guidelines of website accessibility and recent legal developments and their potential implications.

<http://www.ada-audio.org/Webinar/AccessibleTechnology/Schedule/>

ADA Audio Conference Series - Special Session

August 12th, 2008 11:00-12:30pm CDT

Update: ADA Restoration Act vs ADA Amendments Act

It has been a year since the ADA Restoration Act was introduced in both the House and the Senate. The intent of this legislation was to address the interpretations of the law by the U.S. Supreme Court that negatively impacted the ability of thousands of Americans with Disabilities from exercising their rights under the ADA. Over the past year the House has passed legislation known as the ADA Amendments Act of 2008 (HR 3195) and the Senate is in the process of considering their version of the bill (S 1881). There has been a great deal of discussion generated via listservs, email and blogs regarding the compromise language used in the ADA Amendments Act and concerns raised by advocates, members of Congress and the business community.

<http://www.ada-audio.org>

U.S. Equal Employment Opportunity Commission Conference

August 18-21, 2008

Examining Conflicts in Employment Law

The U.S. Equal Employment Opportunity Commission (EEOC) will hold its annual federal sector EXCEL (Examining Conflicts in Employment Law) conference from August 18 to 21 at the Chicago Hilton Hotel. The conference features eight plenary sessions, more than 50 workshops, and two specialty tracks: Hearings Preparation, and Advanced Mediation and Negotiation Skills. Participants -- ranging from EEO managers, supervisors and specialists, attorneys, human resource professionals and union officials -- will receive information on recent developments in employment law.

Registration Information available online at

<http://www.eetraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x495c398>

ADA Audio Conference Series

August 19th, 2008 1:00-2:30 pm CDT

Serving Customers with Disabilities: Implications for the Hospitality Industry

A 2001 survey conducted by Open Doors Organization/Harris Poll in cooperation with the Travel Industry Association of America and the Society for Accessible Travel and Hospitality indicated that disabled persons annually spend \$13.6 billion on travel - including \$3.3 billion on air travel and \$4.2 billion on lodging. A second study showed that 75% of people with disabilities report dining outside of their home at least once/week representing an annual expenditure of \$35 billion. Serving customers with disabilities has become a business necessity. Join this session and learn more about

what is being done to assist business in meeting their obligations to customers with disabilities. Register online at <http://www.ada-audio.org>

The Kennedy Center's Leadership Exchange in Arts and Disability conference and training (LEAD)

August 21-24, 2008

This conference and training will touch on a variety of topical issues including:

- Legal issues with representatives of the U.S. Department of Justice Disability Rights office, and Peter Blanck, PhD.
- Marketing and building audiences with Nadine Vogel
- Exploring exciting ways to make inclusive educational programs effective
- Hands on surveying of the physical environment for those renovating, building new facilities or putting on an addition
- Ticketing policies and how to craft good ones.

Broward Center for the Performing Arts

Ft. Lauderdale, FL

<http://www.kennedy-center.org/accessibility/education/lead/conference.html>

National Center on Accessibility

September 8-11, 2008

Retrofitting for Accessibility

The National Center on Accessibility training course "Retrofitting for Accessibility" is designed for maintenance professionals, construction specialists, facility managers, trails supervisors, architects, forest access coordinators, landscape architects, civil engineers, parks planners, visitor services specialists, program development specialists, preservation supervisors, concessionaires, safety officers, and accessibility coordinators. Curriculum emphasis will include application of accessibility standards, barrier removal, safety issues associated with accessibility, and ongoing facility maintenance to assure optimum access for visitors including those with disabilities. This course has an active field-based component that is designed to provide hands-on experiences identifying design problems in existing facilities and viable solutions for improving access.

Gatlinburg, Tennessee

<http://www.ncaonline.org/index.php?q=node/695>

2008 Legal Issues Webinar: Employment and the ADA

September 23rd, 2008

Direct Threat/Safety in the Workplace

What does the ADA require when an employee poses a potential threat to health and safety in the workplace? This session will review the ADA and its regulations, EEOC guidance and recent case law and provide employers with information about conducting an individualized assessment and the role of reasonable accommodations to address the potential threat.

http://www.ada-audio.org/Webinar/Legal_webinar_Registration.htm

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<http://www.adagreatlakes.org/WebForms/ContactUs/>

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News from the Federal Agencies

U.S. Access Board

The U.S. Access Board is holding an informational meeting regarding rule making for passenger vessels. The meeting will take place on August 11, 2008 from 9:00 to 5:00 at the Board's offices in Washington D.C. The purpose of the meeting is to assist the Access Board in developing accessibility guidelines under the Americans with Disabilities Act for passenger vessels. Read more about the U.S. Access Board's informational meeting at http://www.access-board.gov/pvaac/fr-notice_2008-07-07.htm

U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development has charged a Puerto Rico Homeowner Association with discriminating against a disabled homeowner. The complaint alleges that the Palacios del Rio II, Inc., Homeowner Association and Desarrolladora del Rio, Inc., demanded that Victor Rolon-Cruz remove support railings that allow him easier access to his single-family home and to prevent potential injury. Mr. Cruz, who is 74-years-old, suffers from several medical conditions that impair his mobility and require him to use a cane. Read more about the Palacios del Rio II, Inc. complaint at <http://www.hud.gov/news/release.cfm?content=pr08-102.cfm>

The U.S. Department of Housing and Urban Development has charged Arbors Owners' Association, Inc., of Las Vegas, NV, and its management agent, First Columbia Community Management, Inc., with violating the Fair Housing Act. The charge alleges that they refused to provide a homeowner with a disability a parking space close to his condominium. The charge will be heard by a United States Administrative Law Judge. Read more about the Arbors Owners' Association, Inc. charge at <http://www.hud.gov/news/release.cfm?content=pr08-109.cfm>

U.S. Department of Justice

The U.S. Department of Justice announced that the public hearing held on the Proposals to amend its Americans with Disabilities Act (ADA) Regulations will be rebroadcast on www.ada.gov. The public hearing was held on July 15, 2008 in Washington D.C. The Department intends to offer a re-broadcast of the public hearing soon. The re-broadcast will be provided in Windows Media and Real Media formats with real-time captioning. Visit the Department's web site to get the latest information about the rebroadcast. Read more about the re-broadcast at <http://www.ada.gov/NPRM2008/nprmwebcastinfo.php>

The U.S. Department of Justice announced the release of its updated technical assistance CD ROM. It contains a complete collection of the Department's ADA materials. It includes the Department's regulations, architectural design standards, and technical assistance publications. Documents on the CD ROM are provided in a variety of formats, including HTML and text. Read about How to Order the CD at <http://www.ada.gov/cdorderform/adatacd1.htm>

The U.S. Department of Justice has entered into a consent decree with New Century Travel, Inc., Philadelphia, PA. New Century Travel operates over the road busses on the East coast. The consent decree prohibits New Century from discriminating on the basis of disability in the provision of its transportation services. Additionally, New Century when purchasing or leasing a new bus will purchase or lease an accessible vehicle or insure that they provide equivalent services. Read more about the New Century Travel, Inc. consent decree at <http://www.ada.gov/newcentury.htm>

The U.S. Department of Justice has reached a settlement agreement with Kanawha County Public Library Board, West Virginia under the Americans with Disabilities Act (ADA). The settlement agreement is the Department's 157th under Project Civic Access, which is an initiative to bring government entities into full compliance with the requirements of Title II of the ADA. Read more about the Kanawha County Public Library Board settlement at <http://www.ada.gov/kanawhawvlibs.htm>

The U.S. Department of Justice has reached a settlement agreement with the Raynor Country Day School located in Speonk, NY. The Department launched an investigation after two complaints alleging violation of Title III of the Americans with Disabilities Act (ADA). The complaints alleged that two children were denied admittance into a summer

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camp because the children had diabetes. The agreement requires the development of policies and practices that insure access to programs and services by children with diabetes. It also requires the school to make reasonable modifications when needed to provide access to its programs and services. Read more about the Raynor Country Day School agreement at <http://www.ada.gov/raynor/raynorsa.htm>

The U.S. Department of Justice announced it had reached a settlement agreement with Medical Weight Loss Clinic of Southfield, MI under Title III of the Americans with Disabilities Act (ADA). The agreement resolves a complaint filed with Department alleging that the clinic refused to serve a prospect client because the individual has HIV disease. The agreement requires the staff of the clinic to undergo training regarding the requirements of the ADA to insure that clinic staff doesn't discriminate on the basis of disability. Read more about the Medical Weight Loss Clinic settlement agreement at <http://www.usdoj.gov/opa/pr/2008/July/08-crt-592.html>

The U.S. Department of Justice has reached a consent decree settling a suit it had filed against the City of Colorado Springs Police Department. The suit alleged the Colorado Springs Police Department of retaliating against Lance Lazoff. The suit stated that the department failed to promote Lazoff to sergeant in retaliation for his association and assistance to his wife who successfully pursued a class action lawsuit against the department under the Americans with Disabilities Act. Lazoff will be promoted to sergeant along with back pay and back pension contributions. Read more about the City of Colorado Springs Police Department consent decree at <http://www.usdoj.gov/opa/pr/2008/July/08-crt-632.html>

Great Lakes in Focus

The Job Accommodation Process: Steps to Collaborative Solutions

Clearly, all employers want their employees to use the correct tools on the job in order to boost productivity and thereby the bottom line. For some employees, employers may find that workplace accommodations are necessary to maximize efficiency.

A reasonable accommodation is any change in the work environment or in the way things are usually done that enables an individual with a disability to participate in the application process, to perform the essential functions (or fundamental duties) of a job, or to enjoy equal benefits and privileges of employment that are available to individuals without disabilities. Accommodations help employers not only hire new workers with disabilities, but also keep workers who may become disabled.

The process for making such accommodations is no different in principle than implementing workplace procedures designed to build productive work environments. As with all such procedures, open lines of communication and clearly defined steps help to facilitate the process and achieve positive outcomes for both employers and employees.

Steps to Successful Accommodations

Notify Employees: Employers covered by the Americans with Disabilities Act (ADA) are required to post notices describing the employment provisions of the ADA. It is advisable for employers to have a process in place for facilitating accommodation requests and take steps to ensure that all employees are aware of and understand it.

Facilitate Requests

If an individual with a disability seeks an accommodation, generally he or she is responsible for informing the employer of the need. Individuals do not have to use the word "accommodation," but they must indicate that they have difficulty carrying out their tasks due to a disability.

Analyze Jobs

To facilitate the accommodation process, it is prudent for employers to develop and maintain a detailed description for each job that lists its essential functions and duties. Such descriptions should focus on a job, not a person. For example, a warehouse position may require that boxes be stacked on shelves. The essential function of this job is that boxes be

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stacked, not that a person lift boxes.

When developing job descriptions, all aspects of a job must be taken into consideration. In addition to specific tasks, descriptions should include details such as scheduling and location, equipment necessary to complete the job, any health and safety requirements, and conduct requirements. Consider the following example:

Specific tasks for a receptionist's job may include answering and accurately directing phone calls, greeting and checking in visitors, and transcribing and filing documents. The receptionist must use a phone and computer. He or she must be available in the office lobby during regular office hours and be pleasant to callers and visitors.

If these are essential functions of the job, they should be included in the job description and accommodation process.

Identify Functional Limitations

When a reasonable accommodation is needed to perform essential job functions, the employer and employee should discuss the employee's functional limitations and determine where they intersect with his or her duties. Again, the focus should be on a person's essential job tasks and the physical functions necessary to complete them, not his or her disability. Typically, such functions can be described in "I-N-G" action verbs: walking, pushing, reading. Again, using the receptionist's job as an example, consider the following:

Perhaps the person hired for the position uses a wheelchair and cannot roll his or her wheelchair under the reception desk in the office lobby. Perhaps he or she has dyslexia and cannot accurately write down phone numbers in messages. Perhaps he or she has severe repetition motion syndrome and has difficulty typing.

It is important to identify the type of accommodations that might be available to allow this otherwise qualified individual to perform the specific tasks.

Determine Potential Accommodations

Sometimes, an employee with a disability is aware of the modifications he or she needs to perform certain tasks. Other times, devising an effective accommodation requires creative and collaborative thinking. It is important to remember that accommodations are not limited to adjustments to a physical work environment. They may involve changes to the way a job is done or structured, modified workplace policies and procedures, adjusted work schedules, swapping or eliminating marginal functions or perhaps even changes to corporate culture. Or, they may entail procuring assistive technology or services such as readers or interpreters.

If the receptionist uses a wheelchair, potential accommodations may include elevating the desk on blocks, or putting in an adjustable height counter (which would also accommodate anyone else filling in), or remodeling to replace the desk with one that could be used with a wheelchair.

For the worker with dyslexia, potential accommodations may include installing a voice mail system, or creating a color-coded phone directory and accompanying switchboard, or exchanging the job's phone-answering duties for another employee's tasks.

If the person has repetitive motion syndrome, potential accommodations may include providing an ergonomically designed keyboard, or installing voice recognition software on a computer, or re-assigning duties, or allowing a job share with another employee.

Determine Reasonable Solutions

The ADA requires employers to provide reasonable accommodations for qualified applicants or employees with disabilities unless doing so would cause undue hardship. Undue hardship refers not only to financial difficulty, but also to accommodations that are unduly extensive or disruptive or would fundamentally alter the nature or operation of the business.

Determination of undue hardship takes into account the nature and cost of the accommodation, the business's overall

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financial resources, the number of persons it employs and the accommodation's impact on the business and its expenses and resources. When cost is a concern, an employer should explore whether funding is available from an outside source, such as a state rehabilitation agency.

Fellow employees' or customers' fears or prejudices do not constitute undue hardship.

Make the Accommodation

An employer has the final say on which accommodation is implemented, based on factors such as cost, effectiveness and business feasibility. However, accommodations work best when both the employer and employee participate in the process and the employee's needs and preferences have been taken into consideration in making the decision.

Monitor Effectiveness

Not all accommodations produce the desired outcome. If the accommodation is not working, the employer and employee should start the process again.

Like most sound management practices, the accommodation process is enhanced by collaboration. Moreover, by requiring employers and employees to work together and think creatively about how various tasks are accomplished, it may help uncover strategies that lead to a more positive and productive workplace for all employees.

Three tax incentives are available to help businesses offset the costs of accommodations and improve employment opportunities for employees with disabilities.

- The Small Business Tax Credit (IRS Code Section 44, Disabled Access Credit) can be used by certain small businesses for architectural changes, equipment or services such as sign language interpreters.
- The Architectural/Transportation Tax Deduction (IRS Code Section 190, Barrier Removal) can be used by businesses of any size to make architectural and transportation modifications.
- The Work Opportunity Tax Credit (WOTC) benefits certain employers who hire certain targeted low-income groups, including Social Security Insurance recipients or certified vocational rehabilitation referrals.

Source: U.S. Department of Labor, Office of Disability Employment Policy

Resources

Small Employers And Reasonable Accommodation <http://www.eeoc.gov/facts/accommodation.html>

The ADA: Your Responsibilities as an Employer <http://www.eeoc.gov/facts/ada17.html>

Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act <http://www.eeoc.gov/policy/docs/accommodation.html>

Veterans With Service-Connected Disabilities And The Americans With Disabilities Act (ADA): A Guide For Employers <http://www.eeoc.gov/facts/veterans-disabilities-employers.html>

Work At Home/Telework as a Reasonable Accommodation <http://www.eeoc.gov/facts/telework.html>

The Docket

Martin Desmond v. Federal Bureau of Investigation <http://pacer.cadc.uscourts.gov/common/opinions/200807/07-5139-1125074.pdf>

The US Court of Appeals for the District of Columbia reversed a lower district court ruling and found that post-traumatic

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stress disorder qualify as a disability under the Rehabilitation Act of 1973. The plaintiff in the case, Martin Desmond, alleged that he was forced to resign from the FBI New Agent Training Unit when his superiors learned that he suffered from PTSD.

In its ruling, the court explained that under the Rehabilitation Act a plaintiff is disabled if "(1) he suffers from an impairment; (2) the impairment limits an activity that constitutes a major life activity under the Act; and (3) the limitation is substantial." Finding that PTSD qualified as a "mental impairment" and that sleep constituted a "major life activity," the court concluded that the condition was covered by the Act. The case was remanded for further proceedings back to the lower court.

From the ADA Expert

Question. I am an architect designing a single user toilet room for a retail store. This is new construction. Can the door swing into the toilet room or must it swing out of the room?

Answer: The door can swing into the toilet room, however there are other considerations when designing this room. A door is not permitted to swing into the clear floor space for any fixture in the toilet room. For example, clear floor space for a paper towel dispenser, the lavatory/sink, water closet or any fixture in the room should be clear of the door swing.

A 60 inch turning space would be required in the room and all of the fixtures in the room would have to be located along an accessible route. The clear floor space, turning radius and accessible route may overlap. The door can swing into the turning radius and accessible route as long as it does not swing into the clear floor space for any of the fixtures. Proper maneuvering clearances at the door must also be provided.

The requirements for a toilet room may be found in the ADA Standards for Accessible Design, 4.22, Toilet Rooms.

For additional information contact the DBTAC - Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or email us via our online contact us form at <http://www.adagreatlakes.org/WebForms/ContactUs/>.

Suggested Resources

ADA Standards for Accessible Design <http://www.ada.gov/reg3a.html#Anchor-42424>

Guide to ADAAG Provisions <http://www.access-board.gov/adaag/about/guide.htm>

ADA Title III Technical Assistance Manual <http://www.ada.gov/taman3.html>

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