

MAY 2014

VOLUME 10 ISSUE 5

Trainings & Events
(Central Standard Time)

Accessibility Online Webinar Series

Open Question and Answer Session: Architectural Barriers Act Accessibility Standards for Trails, Camping and Picnic Facilities, Viewing Areas, and Beach Access Routes
May 1st, 2014 1:30-3:00 CST.

These standards became effective on November 25, 2013 and a previous webinar session was completed on these new standards for Federal facilities (To see Recorded Archive Click Here). This is an opportunity to ask additional questions on the conditions for exception for trails and other elements, the scoping provisions for picnic facilities, or any other scoping or technical provision contained in this rule. Jim Raggio, General Counsel for the Access Board, will review application issues related to covered Federal facilities and respond to questions. Advance questions are encouraged, but will be limited to the first 30 to provide an opportunity for questions during the live session.

Presenters:
Botten, Bill R. - Accessibility Specialist, Office of Technical and Information Services, US Access Board
Greenwell, Peggy H. - Accessibility Specialist, Office of Technical and Information Services, US Access Board
Raggio, James J. - Esq. , General Counsel, US Access Board

For more information visit
[AccessibilityOnline](http://www.access-board.gov/news/1609-board-to-hold-panel-discussions-in-new-york-city-on-may-15) (877) 232-1990

Emergency Management and Preparedness- Inclusion of Persons with Disabilities Webinar Series.

Non Traditional Emergency Shelters and People with Disabilities.
May 8th, 2014 1:30-3:00 CST.

Disasters can be unpredictable in scope, scale and size. In most cases, traditional shelters will meet an incident's needs. However, in some disasters, there may be a need to establish non-traditional shelters to meet 1) disaster survivors' immediate needs or 2) the need to locate

News from the Federal Agencies

U.S. Access Board

Board to Hold Panel Discussions in New York City on May 15, 2014

The Access Board will conduct public briefings on its work and hold several panel discussions on accessibility in New York City on May 15. The agenda also includes public question and answer sessions. The briefings will cover guidelines for outdoor developed areas on federal sites that the Board issued last year and new supplementary guidelines it is developing for emergency transportable housing.

Read More at= <http://www.access-board.gov/news/1609-board-to-hold-panel-discussions-in-new-york-city-on-may-15>

Board Launches Online Guides to the ADA and ABA Standards

The Access Board has launched new online guides on the Americans with Disabilities Act (ADA) Accessibility Standards and the Architectural Barriers Act (ABA) Accessibility Standards. This web-based material features illustrated technical guides that explain and clarify requirements of the ADA and ABA standards, answer common questions, and offer best practice recommendations. It also includes a series of animations on various subjects covered by the standards.

Read More about the Guides at= <http://www.access-board.gov/news/1612-board-launches-online-guides-to-the-ada-and-aba-standards>

Board Sponsored Study Completed on Natural Trail Surface Materials

A study sponsored by the Access Board on the accessibility of trail surface materials was recently completed by the National Center on Accessibility (NCA) at Indiana University. The project assessed the firmness and stability of 11 different types of natural aggregate and treated soil surfaces over a four-year period to determine their effectiveness after exposure to the elements, freeze and thaw cycles, and other factors.

Read More about the Report at= <http://www.access-board.gov/news/1591-board-sponsored-study-completed-on-natural-trail-surface-materials>

U.S. Equal Employment Opportunity Commission (EEOC)

EEOC Sues EZEFLOW USA for Disability Discrimination

EZEFLOW USA, a pipe fittings manufacturer, violated federal law when it refused to give unpaid leave to a veteran with post-traumatic stress disorder (PTSD) and fired him as a result of his disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed. The employee provided the company's human resources representative with a note from his neurologist requesting that the employee be off work for six weeks, and specific driving restrictions, heights and working with heavy machinery during that period.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-23-14.cfm>

residents closer to their community during the recovery phase. Non-traditional shelters may include soft sided structures in open areas as well as mega-shelter sites. Each presents a unique set of circumstances which require specific planning in order to meet the needs of people with disabilities and others with access and functional needs. This webinar will identify specific planning considerations relative to nontraditional sheltering in order to adequately meet the needs of the whole community

Learning Objectives :

- Identify functional needs support services (FNSS) planning considerations for a nontraditional shelter response
- Identify specific issues that will need to be discussed, in advance, with partners and vendors to ensure accessibility and accommodation for people with disabilities and others with access and functional needs
- Identify FNSS related considerations when conducting long term nontraditional shelter operations

Presenters:

[Tatro, Kari](#) - Executive Vice President of Emergency Management Operations, BCFS HHS

For more information visit

[AccessibilityOnline](#) (877) 232-1990

ADA Legal Webinar Series

“Qualified” Under the ADA :The New Legal Battleground After the ADA Amendments Act

May 21st, 2014 1:00 - 2:30 CDT

Before the ADA Amendments Act (ADAAA), a significant number of ADA cases were dismissed because plaintiffs could not prove they had a disability. Five years after the ADAAA's implementation, fewer cases are being dismissed based on the definition of disability. As a result, the litigation landscape is shifting and the new legal battleground is whether plaintiffs are "qualified." This session will first review how qualified is defined in the ADA and interpreted by the Equal Employment Opportunity Commission, and then focus on how qualified is being treated in the courts. Be sure to join us for this session so that you're on top of this critical legal issue.

Speakers:

[Taylor, Barry](#)- Vice President of Civil Rights and Systemic Litigation
[Weisberg, Rachel M.](#) - Staff Attorney

EEOC Wins Summary Judgment in American Tool & Mold Disability Case

A federal judge ruled in favor of the U.S. Equal Employment Opportunity Commission (EEOC) that a Clearwater, Fla.-based company, American Tool & Mold, Inc. (ATM), violated federal disability discrimination law by withdrawing a job offer because of the applicant's old back injury. ATM designs and manufactures injection molds for plastics.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-21-14.cfm>

Professional Freezing Services to Pay \$80k under Consent Decree Ending Disability Discrimination Suit

The federal district court in Chicago has entered a consent decree requiring Professional Freezing Services, LLC to pay \$80,000 and provide other relief in order to resolve a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC),. In its lawsuit, the EEOC charged that Professional Freezing violated the Americans with Disability Act (ADA) when it refused to hire William Harvel because he had prostate cancer.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-21-14a.cfm>

Riviera Consulting Company to Pay \$100,000 to Settle EEOC Disability Discrimination Suit

A San Jose-based business has agreed to pay \$100,000 to a former employee fired because of his vision impairment and to implement new policies and training to settle a federal disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC),. The EEOC charged that Farhang Dahmubed was hired and then quickly fired as a senior bookkeeper at Riviera Consulting & Management Consulting, LLC within one month because of his retinitis pigmentosa, and without any interactive process to find a reasonable accommodation for newly created job duties related to driving.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-15-14.cfm>

Upper Chesapeake Health System to Pay \$180,000 to Settle EEOC Disability Discrimination Lawsuit

Upper Chesapeake Health System, Inc. will pay \$180,000 and furnish significant equitable relief to settle an EEOC disability discrimination and retaliation lawsuit, the U.S. Equal Employment Opportunity Commission (EEOC) announced. The EEOC charged that the health care system failed to reassign an employee as a reasonable accommodation after it removed her from her position as a pulmonary function technologist at its Bel Air, Md., medical center based on its perception that her disability interfered with her ability to do her job. Usher's syndrome is

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-15-14a.cfm>

Direct Optical to Pay \$53,000 to Settle Disability Discrimination Suit

Direct Optical, Inc., an optical store in Farmington Hills, Mich., will pay \$53,000 and furnish other relief to settle a disability discrimination and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC),. According to the EEOC's lawsuit, Direct Optical denied an optician's request for the reasonable accommodation to bring her service dog to work because of her generalized anxiety disorder.

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).

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.Equip for Equality.

For more information visit [ADA Audio Conference](http://www.ada-audio.org) site at <http://www.ada-audio.org> or call (877) 232-1990.

Accessible Technology Webinar Series

Web Accessibility Analytics and Open Source Tools for Inspecting and Auditing Web Resources For Accessibility.
May 22, 2014 1:00-2:30 CDT.

Web accessibility analytics is important to provide managers, administrators and developers with objective information about the accessibility of the resources that are part of communicating information about their organization and the services they provide. Data is important to help determine the types of accessibility issues and how to allocate scarce resources to improve accessibility. Analytics provides a way to set measurable goals for accessibility improvements and gives developers a way to verify their accessibility improvements. The Open Web Accessibility Alliance is creating open source tools and web development resources for web developers and designers. The presentation will demonstrate the AInspector Sidebar and FAE 2.0 which are open source tools to help web developers understand the accessibility features and problems with the resources they are developing. In addition to the tools the coding practices web resources will be also presented. The coding practices are designed to help web developers understand the accessibility issues of meeting the requirements of Section 508 and W3C Web Content Accessibility Guidelines (WCAG) 2.0 requirements. The rules used in the tools support compliance with W3C WCAG 2.0 Level A and AA Success Criterion. Since the tools are open source they can be customized to meet the accessibility policies and priorities of each organization.

Presenters:

[Gunderson, Jon](#)- Coordinator of IT Accessibility

For more information visit [ADA Audio Conference](http://www.ada-audio.org) site at <http://www.ada-audio.org> or call (877) 232-1990.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-14-14.cfm>

Strad Oilfield Services to Pay \$65,000 to Resolve EEOC Disability Discrimination Finding

In a successful conciliation, Strad Oilfield Services, operating in Minot, N.D., will pay \$65,000 in damages to resolve a disability discrimination charge filed with the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. An investigation by the EEOC's Minneapolis Area Office revealed that Strad fired an employee shortly after it learned of his diabetes, ignoring the fact that the employee was still able to perform the job according to a fitness-for-duty test.

Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/4-8-14.cfm>

U.S. Department of Justice (DOJ)

Civil Monetary Penalties Inflation Adjustment under Title III

On March 28, 2014, the Department issued a Final Rule that adjusts for inflation the civil monetary penalties assessed or enforced by the Civil Rights Division, including those assessed under title III of the Americans with Disabilities Act of 1990 (ADA). For the ADA, this adjustment increases the maximum civil penalty for a first violation from \$55,000 to \$75,000; for a subsequent violation the new maximum is \$150,000. The new maximums apply only to violations occurring on or after April 28, 2014. This Final Rule, and the civil penalty adjustments made therein, were non-discretionary and required by statute.

Read More at= http://www.ada.gov/civil_penalties_2014.htm

Justice Department Posts New Settlement Agreement to its Web Site

The U.S. Department of Justice entered into a settlement agreement with Florida Ear Nose Throat and Facial Plastic Surgery Center. The agreement resolves a complaint that had alleged violation of title III of the Americans with Disabilities Act (ADA) for failure to insure effective communication. As part of the settlement the Center agrees not to discriminate on the basis of disability, furnish necessary auxiliary aids and services to patients and companions with disabilities and to consult with the person with the disability to determine what auxiliary aid or service may be necessary.

Read More at= http://www.ada.gov/han_fl_ent-sa.htm

CDC and DOJ Issue New Journal Article on State Criminal Laws and HIV

A journal article, co-authored by the Department of Justice and the Centers for Disease Control and Prevention, examining state laws that criminalize potential HIV exposure and encouraging states with HIV-specific criminal laws to use the findings of the paper to re-examine those laws; assess the laws' alignment with current evidence regarding HIV transmission risk; and consider whether the laws are the best vehicle to achieve their intended purposes.

Read the Document at= <http://www.ada.gov/aids/HIV-criminalization-paper.htm>

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).

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AccessibilityOnline Webinar Series

Accessible Assembly Areas
June 5th, 2014 1:30-3:00 CDT.

This session will provide a review of the assembly area standards affecting wheelchair spaces, companion seats, and designated aisle seats in the 2010 ADA Accessibility Standards and the Architectural Barriers Act Accessibility Standard. Representatives from the Department of Justice, Disability Rights Section will discuss additional changes made to the ADA regulation affecting wheelchair space dispersion, accessible route connections, and other changes related to assembly areas. Presenters will also focus the content of this session on your questions submitted in advance.

Presenters:
[Pace, Rex](#) - Senior Accessibility Specialist and Technical Assistance Coordinator, US Access Board

[Adams, Mary](#) - Senior Architect, Disability Rights Section, Department of Justice

[Perry, Diane](#) - Architect, Disability Rights Section, Department of Justice

For more information visit
[AccessibilityOnline](#)

Consent Decree between the Justice Department and State of Rhode Island Announced

The United States Department of Justice entered into the nation's first statewide settlement agreement vindicating the civil rights of individuals with disabilities who are unnecessarily segregated in sheltered workshops and facility-based day programs. The settlement agreement with the State of Rhode Island resolves the Civil Rights Division's January 6, 2014 findings, as part of an ADA Olmstead investigation, that the State's day activity service system over-relies on segregated settings, including sheltered workshops and facility-based day programs, to the exclusion of integrated alternatives, such as supported employment and integrated day services.

Read More at= http://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state

Great Lakes In Focus

Board Issues Guidelines for Emergency Transportable Housing

The Access Board has issued guidelines that address access to temporary housing provided by the government in emergencies and natural disasters. The new requirements supplement the Board's accessibility guidelines for facilities covered by the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA) by adding provisions and exceptions specific to emergency transportable housing units. While the ADA and ABA Accessibility Guidelines address residential dwelling units, it was determined in the aftermath of Hurricanes Katrina and Rita that further detail was needed on addressing access to emergency transportable housing units. Such units are used to provide temporary housing for those whose homes have been destroyed or damaged by a disaster until permanent housing is found. Sized for transport over roadways, they have a smaller footprint than other types of housing and pose unique accessibility challenges and considerations.

The supplemental rule covers access for people who use mobility aids as well as communication access for people with hearing loss. When grouped on sites, at least 5% of units must be accessible for people with mobility disabilities and a minimum of 10% of unit pads must be designed to accommodate accessible units. When units are located on the property of homeowners, commercial sites leased by the government, or military installations, access must be provided according to a needs assessment. The required number of units with accessible communication features is also based on a needs assessment regardless of the type of site.

The guidelines require certain elements and clearances to address usability within the confined living space typical of units. These include requirements for kitchen water spray units, shower seats, floor surfaces, and bedroom clearances. Certain exceptions in the guidelines for residential facilities are not permitted for emergency transportable units. Examples include exceptions that allow later installation of grab bars and shower seats in dwelling units where walls are properly reinforced, or that permit removable base cabinetry below sinks and lavatories. The rule also includes new exceptions for operable parts, ramps and kitchen work surfaces. Weather alert systems also must be accessible and include visual output in those units required to have accessible communication features. In addition, smoke alarms must have integrated visual notification devices with a secondary power source in communication accessible units.

The supplementary guidelines are based on recommendations from a Board advisory panel, the Emergency Transportable Housing Advisory Committee, which included representation from disability groups, industry and code groups, and government agencies. The Board released a proposed version of the guidelines for public comment in 2012.

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The Board's ADA and ABA Accessibility Guidelines serve as the basis for enforceable standards issued by other agencies. The Department of Housing and Urban Development (HUD) maintains standards for residential facilities covered by the ABA, which applies to federally funded facilities. The provisions for emergency transportable units will become mandatory under the ABA when adopted by HUD in the pending update of its ABA Standards. The Department of Justice (DOJ) maintains standards under the ADA which apply to state and local government facilities, places of public accommodation, and commercial facilities.

The Board will hold a public briefing on the rule as part of a town hall meeting in New York City at Jacob K. Javits Federal Building on May 15. This will be followed by a panel discussion on rebuilding efforts after Super Storm Sandy.

Final Guidelines for Emergency Transportable Housing - United States Access Board=

<http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/emergency-transportable-housing/final-guidelines-for-emergency-transportable-housing>

The Docket

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. FORD MOTOR COMPANY, No. 12-2484. April 22, 2014

The majority of a panel of judges on the U.S. Court of Appeals for the Sixth Circuit decided on April 22 that the U.S. Equal Employment Opportunity Commission (EEOC) had created issues sufficient for trial in its disability discrimination lawsuit against the Ford Motor Company. The EEOC had charged that Ford violated the Americans with Disabilities Act (ADA) by denying a former employee the opportunity to telework and by firing her after she filed an EEOC charge.

The EEOC sued Ford Motor in 2011, charging that the company's denial of Jane Harris's request to work from home up to four days a week as an accommodation for her irritable bowel syndrome violated the ADA, and that Ford had then retaliated against her by firing her after she filed an EEOC charge. Ford's telecommuting policy authorized employees to work up to four days a week from a telecommuting site. Harris was a resale steel buyer whose job primarily required telephone and computer contact with coworkers and suppliers.

The district court granted summary judgment for Ford Motor, holding that attendance at the job site was an essential function of Harris's job, and that Harris's disability-related absences meant that she was not a "qualified" individual under the ADA. The lower court also ruled that Harris's telework request was not a reasonable accommodation for her job. The district court also said the EEOC could not prove Harris's termination was retaliatory because it was based on attendance and performance issues that pre-dated her charge filing.

The Sixth Circuit panel majority reversed the lower court on both counts. The majority noted that "the law must respond to the advance of technology in the employment context . . . and recognize that the 'workplace' is anywhere that an employee can perform her job duties." The majority held that the "highly fact-specific" question was thus whether presence at the Ford facilities was truly essential, and that a jury should decide that issue. The panel majority also

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held that the EEOC had created a question for the jury about why Ford Motor terminated Harris, and whether it was in retaliation for filing a charge or because of genuine performance problems.

From the ADA Expert

Question: One of my employees would like to bring his service animal into the office as a reasonable accommodation. Normally, I would be comfortable approving a service animal for a person with blindness that uses a guide dog. However, in this case, the employee has a condition involving high blood pressure, and his 'service animal' is his cat. Although he does have documentation of his disability, we are not sure that his cat qualifies as a service animal. Our company has not developed a policy specifically dealing with service animals. How should we proceed?"

Answer:

The Americans with Disabilities Act (ADA) requires covered employers to evaluate requests for reasonable accommodations on a case by case basis. Employers are required by the ADA to provide reasonable accommodations when needed to provide equal access to the application process, when needed to allow a qualified employee the opportunity to perform the job or when needed to provide equal access to any benefit associated with the job.

A disability under the ADA is defined as:

A physical or mental impairment that substantially limits one or more major life activities or:

A record or history of such an impairment or

Being regarded as having such an impairment.

In addition, an applicant/employee must be qualified to perform the job with or without a reasonable accommodation to be protected by the ADA.

An employer has the right to request documentation from an employee requesting a reasonable accommodation when the need for the accommodation or the disability is not readily apparent. You only have the right to receive documentation on the specific medical condition or disability for which the employee has requested the accommodation. You do not have the right to a complete medical history.

You indicate that you have determined from documentation provided by the employee that he is covered by the ADA. A next step would be to get documentation on the animal and whether it is a service animal and how the animal serves as a reasonable accommodation for the employee. It would be reasonable to get information on the service or task the animal performs for the employee and again how the service or task allows the individual to be able to perform his job.

Also, you are never required to provide any reasonable accommodation that would pose an undue hardship. An undue hardship is defined as requiring significant difficulty or expense.

It would not be necessary to create a policy specifically on service animals. If you have a policy and procedure for handling requests for reasonable accommodations then you should be set for responding to employee requests.

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Resources

Questions and Answers About the [Americans with Disabilities Act's Association Provision](#)

[ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT](#)

For additional information on the ADA contact the Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or by completing the Center's online contact form.

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

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).

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