

OCTOBER 2011

VOLUME 8 ISSUE 1

Trainings & Events
(Central Standard Time)

**Accessibility Online
Webinar Series**

**Accessible Retail Stores and
Spaces**
October 6th, 2011 1-2:30 CT

Retail stores and spaces may be located in variety of settings ranging from shopping malls and strip malls to spaces within airports, stadiums, government buildings and many other venues. Elements and spaces associated with retail environments, such as accessible routes, parking, checkout aisles, sales and service counters, queues and waiting lines, are all a part of the 2010 ADA Accessibility Standards. This session will review in detail requirements in the standards for these elements and spaces.

For more Information Visit:
[Accessibility Online Webinar Series](#)

**ADA Audio Conference
Series**

ADA Case Law Update
October 18, 2011 1-2:30 CDT.

Join us for this popular yearly session and learn what the courts and federal agencies have done to shape the ADA through their decisions and settlements. This session will review key issues that are currently before the courts and analyze the trends. Discussion will include some of the trends in case law at the lower courts which may have an impact on decisions at all levels, including issues that may find their way to the Supreme Court. In addition, presenter will review how the courts are interpreting the ADA Amendments

News from the Federal Agencies

U.S. Equal Employment Opportunity Commission (EEOC)

**DXP Enterprises Sued By EEOC for Disability and Age
Discrimination**

The U.S. Equal Employment Opportunity Commission (EEOC) alleged in a lawsuit it has filed that the company fired a female employee because it regarded her as disabled because of a prior back injury. The suit also stated that references were also made about the employee's age.

Read more about DXP Enterprises Sued By EEOC for Disability and Age Discrimination at <http://www.eeoc.gov/eeoc/newsroom/release/9-27-11g.cfm>

**EEOC Sues DuPriest and Sons for Firing Long-Term Employee
Because Of Disability**

The U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit that DuPriest and Sons Holding violated federal law by laying off a senior employee because of his diabetes and kidney disease. The EEOC charged in its lawsuit that the employee was chosen for termination soon after he informed the employer that he would need dialysis.

Read more about EEOC Sues DuPriest and Sons for Firing Long-Term Employee Because Of Disability at <http://www.eeoc.gov/eeoc/newsroom/release/9-27-11e.cfm>

EEOC Sues BAE Systems for Disability Discrimination

BAE Systems, Inc. engaged in disability discrimination against an employee the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it has filed. The EEOC lawsuit alleges that BAE fired the employee because of his disability, morbid obesity, and because it regarded him as disabled.

Read more about EEOC Sues BAE Systems for Disability Discrimination at <http://www.eeoc.gov/eeoc/newsroom/release/9-27-11a.cfm>

**EEOC Sues D.O.E. Technologies and doeLegal for Disability
Discrimination**

The U.S. Equal Employment Opportunity Commission (EEOC) has filed suit against D.O.E. Technologies, Inc. and its wholly owned subsidiary, doeLegal, LLC alleging that it violated federal law when they failed to accommodate the disability of a hard-of-hearing employee and instead fired him. The EEOC lawsuit stated that the

Act of 008.

For more information visit [ADA Audio Conference site](#) at <http://www.ada-audio.org/Schedule/#fy2011session14> or call (877) 232-1990.

Accessibility Online Webinar Series

Accessible Marinas and Boating Facilities

November 3rd, 2011 1-2:30 CT

The 2010 ADA Accessibility Standard and the Architectural Barriers Act Accessibility Standards include scoping provisions for recreational boating facilities. Facilities covered by these standards include municipal marinas, Federal boating facilities, and private sector marinas and boating facilities. Learn more about boat slip scoping and special technical provisions that apply to gangways connecting floating facilities, clear space requirements at accessible boat slips, and parking at specialized facilities.

For more Information visit [Accessibility Online Webinar Series](#)

employee had made repeated requests for a reasonable accommodation for his disability. The employee asked the companies to provide the reasonable accommodations of permitting him to work in a quiet area to make sales calls, since background noise can adversely affect his hearing ability, or that he be allowed to telecommute.

Read more about EEOC Sues D.O.E. Technologies and doeLegal for Disability Discrimination at <http://www.eeoc.gov/eeoc/newsroom/release/9-26-11a.cfm>

Lang's Marina Restaurant Sued by EEOC for Disability Discrimination

A St. Mary's, Ga. seafood restaurant violated federal law by firing an employee because of his disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it has filed. The EEOC lawsuit stated that Lang's Marina Restaurant hired James Wilson as a kitchen helper in February 2009. After working one shift without incident, the restaurant's manager told Wilson that he was being terminated because his prosthetic leg posed a safety hazard for the company.

Read more about Lang's Marina Restaurant Sued by EEOC for Disability Discrimination at <http://www.eeoc.gov/eeoc/newsroom/release/9-26-11f.cfm>

Hawaiian Electric Company Sued by EEOC for Disability Discrimination

According to the EEOC lawsuit a mail machine operator with HECO applied for the position of meter reader with the company in about April 2010. The operator, who has an eye condition, was able to conduct the task of reading and recording changes in electric meters at different customer locations, according to the EEOC. HECO denied him the position of meter reader that same month due to his visual impairment and the EEOC stated that he was able to perform the position.

Read more about Hawaiian Electric Company Sued by EEOC for Disability Discrimination at <http://www.eeoc.gov/eeoc/newsroom/release/9-29-11s.cfm>

Great Lakes In Focus

U.S. Transportation Secretary Ray LaHood Takes Action to Make Websites and Kiosks Accessible to Air Travelers with Disabilities

The U.S. Department of Transportation (DOT), in its ongoing effort to ensure equal access to air transportation for all travelers, today proposed a regulation that would require airlines to make their websites accessible to individuals with disabilities and ensure that their ticket agents do the same. DOT also proposed that airlines make automated airport kiosks at U.S. airports accessible to passengers with disabilities. U.S. airports that jointly own, lease or control such kiosks with airlines would also

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

Great Lakes ADA Center
University of Illinois at Chicago
Department of Disability and Human Development (MC 728)
1640 West Roosevelt Road, Room 405
Chicago, Illinois 60608-6904

have responsibility for ensuring the accessibility of automated airport kiosks.

"I strongly believe that airline passengers with disabilities should have equal access to the same services as all other travelers," said U.S. Transportation Secretary Ray LaHood. "The Department of Transportation is committed to ensuring that airline passengers are treated fairly, and today's action is part of that effort."

Under the proposed rule, airlines would be required to make their websites accessible to persons with disabilities over a two-year period. Websites would be required to meet the standards for accessibility contained in the widely accepted Website Content Accessibility Guidelines. The requirement would apply to U.S. and foreign carriers with websites marketing air transportation to U.S. consumers for travel within, to or from the United States. Small ticket agents would be exempt from the requirement to have accessible websites.

In addition, airlines and airports that use automated kiosks for services such as printing boarding passes and baggage tags would have to ensure that any kiosk ordered 60 days after the rule takes effect is accessible. Standards for accessibility would be based on standards for automated transaction machines set by the Department of Justice in its 2010 Americans with Disabilities Act rule. This requirement would apply to U.S. and foreign carriers and U.S. airports that own, lease or control automated airport kiosks at U.S. airports with 10,000 or more annual boardings. The proposal asks for comment on the cost and feasibility of retrofitting existing kiosks to make them accessible.

This proposal is the latest in a series of DOT rulemakings to implement the Air Carrier Access Act (ACAA). In the ACAA rule issued in May 2008, DOT required carriers, among other things, to make discounts available to passengers with disabilities who cannot use inaccessible web sites and therefore must make telephone or in-person reservations. Also, if passengers with disabilities are unable to use the kiosk because it is not accessible, carriers are required to provide equivalent service, such as having an airline employee assist in operating the kiosk. However, these provisions do not give passengers with disabilities, especially those with visual and mobility impairments, independent access to the websites and kiosks, and in this final rule the Department committed to exploring how to make websites and kiosks accessible.

Comments on the proposal are due within 60 days of publication in the Federal Register. The proposal is available on the Internet at www.regulations.gov, docket DOT-OST-2011-0177.

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).
Great Lakes ADA Center
University of Illinois at Chicago
Department of Disability and Human Development (MC 728)
1640 West Roosevelt Road, Room 405
Chicago, Illinois 60608-6904

The Docket

Hanson v Caterpillar Inc

A federal district court in Illinois granted summary judgment to an employer in an Americans with Disabilities Act (ADA) case. The Court ruled that an employee of Caterpillar failed to demonstrate that she was regarded as being unable to perform a broad class of jobs in the lawsuit she filed against her employer. As a result she was unable to proceed with her ADA disability claim even though she had been discharged for her inability to perform her assembly line job due to permanent medical restrictions resulting from a neck injury.

Caterpillar did not dispute knowing about the employee's neck condition and thought that she could not perform the job for which she was hired. She was assigned as a regular assembler on the 980 tractor. The question for the court was how broadly Caterpillar viewed her impairment

The court ruled that the evidence showed that the employee was regarded as only limited in relatively narrow ways. The court found that after the employee had revealed her injury and up until her discharge she was allowed to work in a number of capacities. The court found the evidence was undisputed that Caterpillar viewed the employee as being unable to perform only a relatively small field of jobs. No evidence was presented to show that Caterpillar subjectively thought that she was excluded from a "broad class of jobs" or that they took such a view of her employment prospects" as to consider her disabled.

This particular case involved alleged discrimination that took place between 2004- and 2005. The Court based its decision on case law prior to the effective date of the ADA Amendments Act, which applies to discrimination alleged to have taken place on or after January 1, 2009.

- [Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm) (Read More at http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)

From the ADA Expert

Question: My sister is pregnant and she and her husband want to take a Lamaze class at the hospital where she will deliver the baby. Both my sister and her husband are deaf and American Sign Language is their first language. When they asked for an interpreter to participate in the classes they were told that since the doctor has not required them to take the classes the hospital is not required to provide an interpreter. Is the hospital correct that they do not have to provide an interpreter because the doctor has not required they take the classes or should the hospital provide the interpreter?

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

Great Lakes ADA Center
University of Illinois at Chicago
Department of Disability and Human Development (MC 728)
1640 West Roosevelt Road, Room 405
Chicago, Illinois 60608-6904

Answer:

The Americans with Disabilities Act (ADA) requires covered for profit and non-profit businesses to provide the same level of access to information for individuals with disabilities that is provided to individuals without disabilities. In order to achieve effective communication with some one that is deaf or hard of hearing auxiliary aids and services may need to be provided by the business. Examples include qualified interpreters, real-time or closed captioning, writing notes, using a computer terminal, using a TTY, or other effective means of communicating with some one that is deaf or hard of hearing.

The ADA does not require a business to provide a qualified interpreter each time one is requested. The business should consider the duration and the complexity of the information being provided when determining if a qualified interpreter is necessary. Conversations that are short could be communicated effectively by writing notes back and forth. However, in a class where Lamaze is being taught, it is likely because of the duration of the classes and the complexity of the information being provided by the instructor, a qualified interpreter would be necessary.

The fact that the doctor has not required the classes does not lessen the hospital's responsibility for ensuring effective communication with participants with disabilities. This is a service of the hospital and open to the public and therefore the ADA would apply regardless of whether or not it was required by the doctor. A business covered by the ADA is never required to provide an auxiliary aid or service that poses an undue burden or fundamentally alters the nature of the good or service being provided. Even if a particular auxiliary aid or service poses an undue burden or fundamentally alters the nature of the good or service the business should provide effective communication through another means.

For additional information contact the DBTAC Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or via the [online contact form](#)

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

Great Lakes ADA Center
University of Illinois at Chicago
Department of Disability and Human Development (MC 728)
1640 West Roosevelt Road, Room 405
Chicago, Illinois 60608-6904