

JUNE 2013

VOLUME 9 ISSUE 7

Trainings & Events
(Central Standard Time)

ADA Audio Conference Series
Service Animals in Post Secondary
Education Settings June 18, 2013
1:00 - 2:30 CDT

Recent revisions to the regulations implementing Title II and III of the ADA have put an increased focus on the issue of service animals in a variety of settings. Post secondary institutions face unique challenges around service animals when it comes to their policies and procedures in student housing, classroom spaces and public areas. This session will explore the different scenarios that often play out in post secondary education and discuss the interplay between laws governing non-discrimination in housing versus equal access to programs and services. Join this panel of presenters for a discussion of the issues and engage with them in an interactive question and answer period..

Presenters

Jeanine Worden - Associate General Counsel for Fair Housing, Office of General Counsel- HUD

Cheryl Kent - Special Advisor for Disability Policy, HUD/FHEO

Sally Conway - Deputy Chief, Disability Rights Section - U.S. Department of Justice

Kathleen Wolfe - Special Litigation Counsel, Civil Rights Division - U.S. Department of Justice

Ramin Taheri - Staff Attorney- Program Legal Group, Office for Civil Right-U.S. Department of Education

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

Accessibility Online Webinar Series

Section 508 - Accessible Web Content

July 11th, 2013 1:30-3:00 CDT.
In the 2010, the Board's Advance Notice of Proposed Rulemaking (ANPRM) on Section 508 proposed to incorporate the Web Content Accessibility Guidelines, also known as WCAG 2.0. The WCAG 2.0 is published and maintained by the World Wide Web Consortium (W3C) and are the internationally recognized standards for web accessibility. WCAG is a somewhat intimidating document, and the linked hyperlinked resources can be confusing for a first time reader. This

News from the Federal Agencies

U.S. Access Board

The Board releases proposed guidelines for passenger vessels for public comment (June 13)

The Access Board has released for public comment proposed guidelines for passenger vessels. Developed under the Americans with Disabilities Act (ADA), the guidelines provide design criteria for large vessels when newly constructed or altered to ensure that they are accessible to people with disabilities. The guidelines address various features of vessel accessibility and include provisions for onboard routes, vertical access between decks, doorways and coamings, toilet rooms, guest rooms, alarm systems, and other spaces and elements used by passengers.

<Read More at= <http://www.access-board.gov/news/pvag-nprm.htm>>

U.S. Equal Employment Opportunity Commission (EEOC)

Federal Court Allows EEOC Disability Case to Proceed, Denying United Parcel Service's Appeal

A federal district court has denied United Parcel Service's (UPS) motion to appeal an earlier ruling in favor of the U.S. Equal Employment Opportunity Commission (EEOC), announced. The contested ruling allowed the Commission's disability discrimination case to proceed to the discovery phase. In its suit, originally filed in 2009, the EEOC alleged that UPS violated the Americans with Disabilities Act (ADA) by allowing only 12-month leaves of absence, failing to provide disabled employees with further reasonable accommodations for their disabilities, and firing them if they exceeded those parameters.

<Read More at=<http://www.eeoc.gov/eeoc/newsroom/release/6-12-13.cfm>>

Fidelity Engineering Corporation Settles EEOC Disability Discrimination and Retaliation Suit

Fidelity Engineering Corporation will pay \$88,500 to settle a federal disability discrimination and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC),. According to the EEOC suit, Jose Arteaga Rivas was a sheet metal mechanic at Fidelity's Sparks, Md., headquarters location. After he was medically released to return to work with no restrictions after heart valve replacement surgery, Fidelity wrongfully assumed that it was "too risky" for him to return to his job and failed to assign him to a vacant position as a reasonable accommodation of his disability, the EEOC alleged.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/6-10-13b.cfm>>

EEOC Sues Professional Freezing Services for Disability Discrimination

The U.S. Equal Employment Opportunity Commission (EEOC) has alleged in a lawsuit it has filed that Professional Freezing Services violated federal law by failing to hire an applicant for its warehouse manager position because he had prostate cancer,. According to the EEOC's administrative investigation, Professional Freezing Services refused to hire William Harvel for its warehouse manager position after learning that he had been diagnosed with prostate cancer.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/6-5-13b.cfm>>

U.S. Supreme Court Denies United Airlines Petition

session will provide a "walk thru" of WCAG and related materials.

Speakers:

Bailey, Bruce - Accessibility Specialist
Information Technology Specialist
US Access Board
For more information visit [AccessibilityOnline](#)

ADA Legal Webinar Series

The anatomy and myth of the ADA drive-by lawsuit

July 17, 2013 1-2:30 CDT

Has the Americans with Disabilities Act become a tool of scam artists and unethical attorneys who seek to line their pockets instead of eliminating discrimination? The truth, as usual, is considerably different than what is often represented by the media, anti-civil rights forces and a legitimately scared but reactionary business community. Attorney J. Aaron McCullough will review recent trends in ADA litigation that have been labeled as "drive-by" lawsuits across the nation including some of the media reports documenting these events. This webinar will focus on the legal reality behind the lawsuits.

Learning Objectives:

- *Learning to distinguish ADA Title III cases from the typical "drive-by" lawsuit
- *Understanding how to enforce Title III rights through available remedies and avoid the label of "drive-by" lawsuits.
- *A review of defenses against this type of "drive-by" lawsuit for the business community
- *A review of relevant recent case law.

Speakers:

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

Accessible Technology Webinar Series

Update on Accessible Information and Communication Technology (ICT) Policy

July 25, 2013 1-2:30 CDT.

This presentation will provide an update on US policy regarding accessible information and communication technology (ICT). It will cover the current status and activities of major policy initiatives, largely in the federal arena, such as Section 255, Section 508, Section 503, Communication and Video Accessibility Act, and the ADA. It will include information that will let attendees participate in making policy through public comment processes.

Session Objectives:

- *Attendees will understand the current status of laws, regulations, and other policy initiatives that create a mandate for accessible ICT.
- *Attendees will be able to improve their

The U.S. Supreme Court issued a written order denying United Airlines' petition for high court review of a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC). This means the Seventh Circuit Court of Appeal's Sept. 7, 2012 decision will stand, holding that "reasonable accommodation" under the Americans with Disabilities Act (ADA) may require employers to provide employees with

disabilities with "reassignment to a vacant position" when the employee cannot be accommodated in his or her current position.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/5-30-13.cfm>>

EEOC Issues Revised Publications on the Employment Rights of People with Specific Disabilities

U.S. Equal Employment Opportunity Commission (EEOC) today issued four revised documents on protection against disability discrimination, pursuant to the goal of the agency's Strategic Plan to provide up-to-date guidance on the requirements of antidiscrimination laws. The documents address how the Americans with Disabilities Act (ADA) apply to applicants and employees with cancer, diabetes, epilepsy, and intellectual disabilities.

<Read the Documents at= <http://www.eeoc.gov/laws/types/disability.cfm>>

U.S. Department of Justice (DOJ)

Dear Colleague Letter Issued regarding Hepatitis B Discrimination

The Departments of Justice, Education and Health and Human Services issued a joint letter to the nation's medical schools, dental schools, nursing schools, and other health-related schools regarding hepatitis B discrimination. In the letter, the departments express concern that some health-related schools may be making enrollment decisions based on an incorrect understanding of the hepatitis B virus, resulting in discrimination.

<Read the letter at= <http://www.ada.gov/hepatitis-b-letter.htm>>

DOJ Launches Revised Web Site

In the first re-design of the ADA website since 2002, the Department of Justice launched a redesigned ADA website. The new design incorporates improved navigation and usability features making it easier to find information on ADA technical assistance, enforcement, and regulations. The new design incorporates improved navigation and usability features making it easier to find information on ADA technical assistance, enforcement, and regulations.

<Read the Documents at= <http://www.eeoc.gov/laws/types/disability.cfm>>

Justice Department Reaches Settlement Agreement with SuperShuttle

The Justice Department has reached a settlement with SuperShuttle, a shared-ride transportation company based in Arizona, to resolve a complaint that it discriminated against a blind person who uses a service animal.

<Read More at= <http://www.ada.gov/supershuttle.htm>>

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

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Department of Disability and Human Development (MC 728)
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advocacy for themselves and their clients.

*Attendees will be able to participate in ongoing policy consultations as consumers and professionals.

Speakers:

[Jim Tobias](#) - Inclusive Technologies
For more information visit [ADA Audio Conference site](#)

Great Lakes In Focus

US Labor Department's Office of Disability Employment Policy announces theme for National Disability Employment Awareness Month October 2013

"Because We Are EQUAL to the Task" is the theme of this year's National Disability Employment Awareness Month. Chosen by the U.S. Department of Labor's Office of Disability Employment Policy, the theme reflects the reality that people with disabilities have the education, training, experience and desire to be successful in the workplace.

"When I was growing up, many people doubted what I could do just because I was blind. But because I had people in my life who instilled in me an expectation of work and showed me opportunities to be successful, I completed college and became known for what I *can* do," said Kathy Martinez, assistant secretary of labor for disability employment policy. "I urge all employers to benefit from the skills of workers with disabilities by giving them, including our returning veterans, a chance to show that they, too, are *equal* to the task."

This year's theme echoes the message of ODEP's ongoing Campaign for Disability Employment to promote positive employment outcomes for people with disabilities and expand ideas about what youths with disabilities can do when they receive encouragement and support for their ambitions. Conducted in collaboration with business and disability organizations, the campaign emphasizes that, at work, it is what people *can* do that matters. More information about the Campaign for Disability Employment is available at <http://www.whatcanyoudocampaign.org>.

Recognized in some form since 1945 when Congress designated a week in October as "National Employ the Physically Handicapped Week," National Disability Employment Awareness Month is a culmination of ODEP's year-long efforts to raise awareness about the value of employing people with disabilities. The theme is announced well in advance of October to enable communities throughout the nation to plan announcements and activities to recognize the month and celebrate the many and varied contributions of America's workers with disabilities. Such activities include proclamations, public awareness programs and job fairs that enhance awareness, create opportunities, or showcase the abilities and talents of workers with disabilities.

Resources for participation and more information are available on ODEP's Web pages at <http://www.dol.gov/odep/> by selecting NDEAM from among the topics listed.

The Docket

<Kroll v White Lake Ambulance Authority= www.ca6.uscourts.gov/opinions.pdf/12a0276p-06.pdf>

A federal district court in Michigan has ruled in favor of an employer defendant in an Americans with Disabilities Act (ADA) lawsuit alleging that the employer had violated the ADA. A part-time emergency medical technician (EMT) was unable to persuade the Court from issuing a summary judgment in favor of her employer. The employee was required to attend psychological counseling after coworkers raised concerns about her emotional well-being and ability to safely care for patients. The employee had claimed that her employer violated the ADA's medical examination prohibition. The Court ruled that the employer sufficiently established that the counseling was job-related and consistent with business necessity. This was based on evidence that her mental health was impairing her job performance and possibly placing patients' health at risk, the Court stated

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From the ADA Expert

Question: I have an employee who was given a verbal warning for not meeting the plant's production standards. The next step is a written warning with a possible progression that could lead to termination. Prior to a written warning the employee disclosed that he has a disability and that is why he hasn't been able to meet his production quotas. The employee stated that he was covered by the Americans with Disabilities Act (ADA) and that we shouldn't hold him to the same production standards as other employees. Is this correct? How do we handle the employee's disclosure of his disability?

Answer:

The Americans with Disabilities Act (ADA) prohibits covered employers from discriminating on the basis of disability in all employment practices. Employers may hire, fire or promote the most qualified individual that he/she chooses. The ADA prohibits a covered employer from making that employment decision on the basis of disability.

The first thing to consider here is whether this employee is covered by the ADA. The ADA prohibits discrimination against qualified applicants or employees with disabilities. 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 of such an impairment or:

Being regarded as having such an impairment.

The ADA requires that employers engage in an interactive process with an employee who has requested a reasonable accommodation. An employee does not need to use the phrase "reasonable accommodation" in order to make a request. The employee could indicate to a supervisor that he/she is having trouble doing the job and it is because of an impairment or medical condition. When this request is made as part of the disciplinary process, an employer should put the disciplinary process on hold while exploring the issues related to the employee's identification of a disability and the need for reasonable accommodation.

During the interactive process an employer may request documentation of the impairment and potential reasonable accommodations when the disability or the need for the accommodation is not readily apparent. The employer has the right to request documentation to substantiate that a disability is present which meets the definition of disability under the ADA and whether the limitation is directly related to performance of the job tasks. The medical information that an employer receives must be kept confidential and separate from the employee's regular work file.

If an employer determines that the employee is covered by the ADA and that the limitation is related to performing the job task(s), then the employer should begin the process of identifying potential accommodations. An employer is not required to lower production standards as a form of reasonable accommodation. An individual with a disability must be able to perform the essential functions of the job with or without a reasonable accommodation to be considered a qualified individual with a disability. The obligation of an employer is to provide an accommodation that would allow the individual with a disability to meet the production standards set for all employees.

An employer should consult with the employee during the process of identifying an effective accommodation. An employer is not required to provide the employee's preferred accommodation as long as the employer can demonstrate that the accommodation provided is effective. Once an effective accommodation has been identified, the employer should provide an opportunity for the accommodation to be implemented and re-examine whether or not the performance issue, which was the original subject of the disciplinary action, is resolved. If not, the employer may continue with the disciplinary action as the individual is not a "qualified" individual with a disability and is subject to the same disciplinary action as employees without disabilities.

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Resources

[The ADA: Your Responsibilities as an Employer](#)

[Section 902 Definition of the Term Disability](#)

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

[Small Employers And Reasonable Accommodation](#)

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/>

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