

AUGUST 2013

VOLUME 9 ISSUE 9

Trainings & Events
(Central Standard Time)

AccessibilityOnline Webinar Series

Open Question and Answer Session

September 5th, 2013 1:30-3:00 CDT

The format of this popular session has been changed slightly based on your feedback. The session will be an "open" question and answer session whereby the presenters will accept questions on a diversity of topics including the 2010 ADA Accessibility Standard, the Architectural Barriers Act Accessibility Standard, Section 508, Medical Diagnostic Equipment, Public Rights of Way, or other Board rulemakings or activities. In order to allow time to accommodate questions during the live session the presenters will select questions from among the first 50 submitted in advance on the www.accessibilityonline.org/Pre-SessionQuestions website. This will allow sufficient time for the Board's accessibility and information technology specialists to develop the answers to the "advance" questions prior to the live session. The presenters will respond to questions submitted via the chat area within the webinar platform on the day of the session as time allows.

Speakers:

[Bailey, Bruce](#) - Director, Office of Technical and Information Services, US Access Board

[Bailey, Bruce](#) - Senior Accessibility Specialist and Technical Assistance Coordinator, US Access Board

[Bailey, Bruce](#) - Senior Accessibility Specialist/Information Technology, US Access Board

For more information visit [AccessibilityOnline](#)

ADA Audio Conference Series

Building Blocks for Accessible Health Care

September 17, 2013 1-2:30 CDT

Join us to explore basic tools that health care providers can use to promote accessibility in health care delivery. Most people think that health care is accessible to people with disabilities, but barriers in communication, facility access and medical equipment can prevent people with disabilities from getting the care that they need. The Disabilities Resource Center at UPMC will share the structure of their

News from the Federal Agencies
U.S. Access Board

Board Releases Guidance on Access to Prescription Drug Container Labels - United States Access Board

New guidance is now available from the U.S. Access Board on how to make prescription drug container labels accessible to people with vision impairments or who are elderly. Developed by a stakeholder working group formed by the Access Board, the advisory guidance covers different solutions for making label information accessible, including braille, large print, and auditory technologies.

<Read More at= <http://www.access-board.gov/news/1455-board-releases-guidance-on-access-to-prescription-drug-container-labels>>

Board Releases Proposed Guidelines for Passenger Vessels - United States Access Board

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

<Read More at= <http://www.access-board.gov/news/1380-board-releases-proposed-guidelines-for-passenger-vessels>>

U.S. Equal Employment Opportunity Commission (EEOC)

EEOC Sues Weirton Medical Center for Age and Disability Discrimination

Weirton Medical Center, a community hospital in Weirton, W.V., refused to select a long-time employee for a vacant maintenance department position because of his age and perceived disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed.

<Read More at= <http://www.access-board.gov/news/1455-board-releases-guidance-on-access-to-prescription-drug-container-labels>>

EEOC Sues Kyklos Bearing International For Disability Discrimination

Kyklos Bearing International, LLC (KBI), an Ohio bearings manufacturer, violated federal law by firing an employee because of her cancer, the U.S. Equal Employment Opportunity Commission

approach to accessibility, lessons learned, basic tools and community partnerships developed to reduce barriers to healthcare service delivery. The building blocks for accessible health care can be used in hospitals, physician offices and outpatient centers
Presenters

[Jeanine Worden](#) - Director, Disabilities Resource Center-University of Pittsburgh Medical Center

[Cheryl Kent](#) - Accessibility Manager, City of Bend-Oregon

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

ADA Legal Webinar Series

The Litigation Landscape Five Years After the Passage of the ADA Amendments Act
September 18, 2013 1-2:30 CDT

The ADA Amendments Act was passed in September 2008, and after five years, we are seeing how it is changing the way courts interpret the ADA. This session will review cases interpreting the definition of disability under the ADA Amendments Act and the relevant regulations that have been issued. There will also be a discussion of emerging ADA legal issues in the wake of fewer cases being dismissed for failing to meet the definition of disability.

Speakers:
[http://www.ada-audio.org/Webinar/ADA Legal/Speakers.php#BarryTaylor](http://www.ada-audio.org/Webinar/ADA%20Legal/Speakers.php#BarryTaylor) - 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

Advanced Accessible PDFs – Part 1. Building Accessibility into Source Documents

September 19, 2013 1-2:30 CDT.

The secret to creating accessible PDFs is to build accessibility into the source information, well before the final PDF is created. This session will look at how to prepare your source documents, such as Word, Excel, or Powerpoint so that the requirements for an accessible PDF are built-in from the ground up. We will discuss the correct use of styles and structured markup, as well as other elements such as images and graphs when planning for accessibility.

Session Objectives:

1. Understand the concepts of styles and structured markup in

(EEOC) charged in a lawsuit it has filed. According to the EEOC lawsuit, KBI terminated Donique Price based on her status as a cancer survivor. The company claims it fired Price because she had medical restrictions which limited her ability to lift and no light-duty work was available.

<Read More at= <http://www.access-board.gov/news/1380-board-releases-proposed-guidelines-for-passenger-vessels>>

EEOC Sues Midwest Regional Medical Center For Disability Discrimination

Midwest Regional Medical Center, an acute care hospital and for-profit Oklahoma limited liability corporation, violated federal law by firing an employee because of her cancer and cancer treatment, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/7-30-13a.cfm>>

EEOC Sues OhioHealth / Riverside Methodist Hospital for Disability Discrimination

OhioHealth Corporation, doing business as Riverside Methodist Hospital in Columbus, Ohio, violated federal law by failing to accommodate and then firing an employee with narcolepsy the U.S. Equal Employment Opportunity Commission (EEOC) alleged in a lawsuit it filed. According to the EEOC' lawsuit, Laura Stone, who had worked for the hospital since 2006, was diagnosed with narcolepsy in August 2009 and was later medically restricted to working a day shift position. Stone provided notice of her disability and requested a reasonable accommodation in the form of reassignment to one of several vacant day shift positions for which she was qualified. Rather than reassign Stone, the EEOC charged, the hospital placed her on medical leave and subsequently fired her because of her disability.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/8-7-13.cfm>>

New Digest of EEO Law Issued by EEOC

The U.S. Equal Employment Opportunity Commission (EEOC) announced the latest edition of its federal sector *Digest of Equal Employment Opportunity*. This quarterly publication, prepared by the EEOC's Office of

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Word, Excel and PowerPoint
2. How to use and apply styles and structure to Word and PowerPoint documents\
3. How to set accessibility options in PDF convertors, such as Adobe Acrobat

Speakers:

[Judith Stark](#) - Accessible Information Technology consultant, Pacific ADA Center

For more information visit [ADA Audio Conference site](#)

AccessibilityOnline Webinar Series

Accessible Playground Surfaces

October 3rd, 2013 1:30-3:00 CDT

The Access Board and the National Center on Accessibility recently completed a longitudinal study on playground surfaces. The purpose of the study was to examine how various surfaces performed over time in terms of accessibility and safety. Details on engineered wood fiber, poured in place rubber, rubber tiles, and other hybrid surface systems performed during the study will be addressed in this session.

Presenters:

[Peggy H. Greenwell](#) - Accessibility Specialist, Office of Technical and Information Services, US Access Board

[Jennifer Skulski](#) - Director of Marketing & Special Projects, National Center on Accessibility-Indiana University

For more information visit [AccessibilityOnline](#)

Federal Operations (OFO), features recent agency decisions and federal court cases of interest.

<Read More at= <http://www.eeoc.gov/federal/digest/index.cfm>>

EEOC Sues MPW Industrial Services For Disability Discrimination

MPW Industrial Services, a provider of industrial cleaning, facility management and labor support services, fired an employee because of his disability the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed. Company records show that it discharged Semko just hours after hiring him because he was "deemed 'not medically qualified'" by its nurse. The company, however, never requested any additional medical information from Semko's doctor regarding his medical condition. The EEOC asserts that the company terminated Semko because of his disability.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/7-16-13.cfm>>

\$100,000 Consent Decree Ends Disabilities Act Lawsuit Against Giant Staffing Agency

Staffmark Investment LLC, one of the nation's largest commercial staffing companies, will pay \$100,000 under a consent decree entered June 25, 2013 which ended a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC alleged that Staffmark violated the Americans with Disabilities Act (ADA) when it terminated a woman with a prosthetic leg because of her disability.

<Read More at= <http://www.eeoc.gov/eeoc/newsroom/release/7-15-13.cfm>>

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U.S. Department of Justice (DOJ)

Justice Department Reaches Settlement Agreement with the City of Henderson, NV

The settlement agreement resolves a complaint filed under title II of the Americans with Disabilities Act (ADA). The complaint alleged that the Henderson Police Department failed to insure effective communication during an interaction with two individuals that are deaf during a domestic incident. In order to resolve the complaint Henderson will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to all members of the public who are deaf or hard of hearing, where such aids and services are necessary to ensure effective communication, so that they may participate in or benefit from the Police Department's services, programs, or activities on an equal basis with others.

<Read More at= <http://www.ada.gov/henderson-nv-sa/henderson-nv-sa.htm>>

New DOJ/DOT Joint Technical Assistance Document

The Department of Justice and the Department of Transportation have issued "Joint Technical Assistance on the Title II of the Americans with Disabilities Act (ADA) Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing" and accompanying glossary. This technical assistance document reiterates the longstanding obligation of public entities under title II of the ADA to provide curb ramps where street-level pedestrian walkways cross curbs whenever streets, roadways, or highways are altered. It also responds to questions raised by public entities with respect to whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps.

<Read More at= <http://www.ada.gov/henderson-nv-sa/henderson-nv-sa.htm>>

Consent Decree with Corral of Westland, LLC Posted to DOJ Web Site

The Justice Department alleges that on May 23, 2011, Defendants, through their restaurant manager, improperly expelled Danielle Duford and her four minor children from the Golden Corral restaurant in Westland, Michigan, due to the children's genetic skin disorder, epidermolysis bullosa, thereby denying them the full and equal enjoyment of the goods and services of the restaurant.

<Read More at= <http://www.ada.gov/golden-coral-cd.htm>>

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Great Lakes In Focus

After Year-Long Investigation, Senate HELP Committee Chairman Tom Harkin Releases Report Showing ADA's Promise of Integration is Not Being Met for Many Americans with Disabilities

A Senate Health, Education, Labor, and Pensions (HELP) Committee report unveiled today by Chairman Tom Harkin (D-IA) revealed that 14 years later, many states are failing to live up to the integration mandate of the *Americans with Disabilities Act*. The Supreme Court ruled in *Olmstead v. L.C.* in 1999 that the unnecessary segregation of individuals with disabilities in institutions is a violation of the *Americans with Disabilities Act*, thus directing states to enable community-based long-term care services for these Americans.

The report, titled “Separate and Unequal: States Fail to Fulfill the Community Living Promise of the Americans with Disabilities Act,” is the result of requests for information sent by Chairman Harkin to all 50 states on the progress made to transition individuals out of institutions. Harkin, who is the Senate author of the landmark *Americans with Disabilities Act*, has long sought to ensure that all Americans have a real choice to receive Medicaid-funded care in the community. Today’s report is a comprehensive review of the types of community-based services states provide to individuals with disabilities compared to the institution-based services they must provide.

The report reveals that almost a quarter of a million working-age Americans remain unfairly segregated in nursing homes, and the number of working-age Americans with disabilities confined to nursing homes is actually growing. While progress has been made nationally, by 2010 only 12 states spent more than 50 percent of Medicaid funds on community-based care instead of institutional care.

“The Supreme Court’s decision in *Olmstead* was a landmark moment for the disability community – holding that the ability to live in the community is a protected civil right under the *Americans with Disabilities Act*. Yet my report reveals that 14 years later, many states are still not making a commitment to provide all individuals with disabilities the choice to live in their own homes and communities. This is amazing given that study after study has shown that home and community-based care is not only what people want, but is more cost-effective,” Harkin said. “The report makes clear that we need to honor the anniversary of the ADA by redoubling our efforts to give people with disabilities who remain in institutions a chance to experience the same dignity and freedom—the same shot at the American Dream—as every other citizen.”

“Congress and our federal government can take additional steps to improve progress on *Olmstead* and fulfill the promise of independent living for

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Americans with disabilities that require long-term services and supports,” Harkin continued. “States must set clear benchmarks to make the right to live in the community a real choice for all Americans with disabilities.”

The HELP Committee report makes key policy recommendations to better ensure that the choice to live in the community becomes a reality for all Americans. These recommendations include an amendment to the ADA to clarify and strengthen the law’s integration mandate in a manner that accelerates implementation and clarifies that every individual who is eligible for long-term services and supports (LTSS) under Medicaid has a federally protected right to a real choice in how they receive services and supports. The report also recommends Congressional action to amend the Medicaid statute to end the institutional bias in the program by requiring every state that participates in the Medicaid program to pay for home and community-based services (HCBS)—just as every state is required to pay for nursing homes, for those who are eligible.

Key findings from the report include:

- In the years since the Olmstead decision, nationally there has been a fundamental rebalancing of spending on individuals with disabilities in institutions as compared to spending on home and community based services (HCBS) that allow Americans to be part of their communities. Between 1995 and 2010, states reduced the share of Medicaid spending on institutions, including nursing homes, mental hospitals, and institutions for people with intellectual and developmental disabilities from 79 percent to 50 percent.
- However, only 12 states spent more than 50 percent of Medicaid LTSS dollars on home and community based care by 2010, and the population of working age Americans with disabilities in nursing homes actually increased between 2008 and 2012. This is true even though 38 studies over the past seven years have clearly demonstrated that providing HCBS is more cost-effective than providing services in an institution.
- Widespread inequities in access to HCBS still exist across states. In 2009, the percentage of spending on HCBS LTSS varied from more than 80 percent to less than 20 percent, and 38 states spent less than 50 percent of LTSS costs on HCBS. Hundreds of thousands of people with disabilities remain on waiting lists for community based services.
- Studies show that from 2000 to 2007, nursing home use actually increased among adults age 31 to 65 in 48 states. Current data shows that there are still more than 224,000 individuals younger than 65 in nursing homes—almost 16 percent of the total nursing home population.
- Perceived uncertainty about the potential total cost of providing HCBS to every eligible individual in the state may be preventing states from exercising new federal options for HCBS. Many states have focused more on enrolling people that are currently living in community settings into HCBS programs than on transitioning individuals living in institutional settings back into the community.
- When individuals are transitioned, it remains unclear whether they are transitioned to the most integrated setting possible or merely to

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a “less” institutional setting, and each state defines specific settings very differently.

- Many states’ Olmstead implementation efforts have not involved meeting specific benchmarks designed to transition people with all types of disabilities out of institutions and into the most integrated setting consistently in a way that is cost-effective. No clear reporting system for HCBS programs exists to make it possible to analyze and compare how effectively states are meeting the Olmstead mandate.

Key policy recommendations from the report include:

- Congress should amend the ADA to clarify and strengthen the law’s integration mandate in a manner that accelerates Olmstead implementation and clarifies that every individual who is eligible for LTSS under Medicaid has a federally protected right to a real choice in how they receive services and supports.
- Congress should amend the Medicaid statute to end the institutional bias in the Medicaid program by requiring every state that participates in the Medicaid program to pay for HCBS, just as every state is required to pay for nursing homes, for those who are eligible. State and federal efforts should focus on helping people live in their own homes. Virtually all people with disabilities can live in their own apartment or house with adequate supports. Accordingly, for virtually all people with disabilities, the most integrated setting appropriate is their own home.
- States should more fully examine the enhanced federal funding available under new federal programs designed to encourage states to transition more individuals into community-based settings and shift away from waivers, which allow states to set caps on the number of individuals served. Other federal programs provide significant additional federal resources in exchange for requiring the state to serve all of the eligible populations. Congress and CMS should help states to conduct analyses of the unmet need in individual states.
- DOJ should expand its Olmstead enforcement efforts, to include investigations of segregated employment settings for individuals with disabilities and the inappropriate placement of young people with disabilities in nursing homes, especially in states that are in the bottom quartile of spending on HCBS and/or for discrete subpopulations.

The full report, with executive summary, can be read at www.harkin.senate.gov/documents/pdf/OlmsteadReport.pdf

A copy of responses from states can be www.harkin.senate.gov/documents/pdf/OlmsteadReportStateResponses.pdf

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The Docket [REDACTED]

<KM v. TUSTIN UNIFIED SCHOOL DISTRICT, Court of Appeals, 9th Circuit=

http://scholar.google.com/scholar_case?case=10597121334101747761&hl=en&as_sdt=2&as_vis=1&oi=scholar

A federal appeals court has revived lawsuits on behalf of two deaf or hard-of-hearing high school students who claim they are entitled to one-on-one transcription services in the classroom. The unanimous ruling Tuesday by a three-judge panel of the U.S. Court of Appeals for the 9th Circuit, in San Francisco, does not immediately require that two California school districts provide the transcription services for the two students.

The court held that a valid individualized education program under the Individuals with Disabilities Education Act does not preclude a claim that schools provide a student who has a hearing impairment with more-extensive services under Title II of the Americans with Disabilities Act of 1990.

From the ADA Expert [REDACTED]

Question: There are elements in our facilities, light switches, paper towel dispensers etc. that are mounted above 48 inches. I read that under the 2010 standards the maximum mounting height for side and forward approaches is 48 inches. Do we need to lower all of the elements that are mounted above 48 inches?

Answer:

It is correct that the 2010 ADA standards for accessible design require that any operating controls or mechanisms of newly constructed or altered elements required to be accessible, by a forward or side approach, be mounted no higher than 48 inches from the finished floor. This applies to anything newly constructed or altered on or after March 15, 2012. If the elements in question, light switches, paper towel dispensers etc, were mounted in compliance with the 1991 ADA standards for accessible design then they would fall under the safe harbor provisions of the Department of Justice regulations.

The safe harbor provisions would not require that elements newly

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constructed or altered in compliance with the 1991 standards be altered in order to comply with the 2010 standards. These existing elements would only need to comply when altered on or after March 15, 2013.

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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