



Pacific Update

ADA and IT Center

Pacific Disability and Business Technical Assistance Center

Serving California, Arizona, Nevada,
Hawaii, & the Pacific Basin
Spring 2004

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What's New

AMERICANS WITH DISABILITIES ACT (ADA) UPDATE TRAINING

The Pacific ADA & IT Center (Pacific Disability Business and Technical Assistance Center) presents a one-day ADA training update provided by representatives from the Department of Justice and the Equal Employment Opportunity Commission. The training will focus on the latest information and case law impacting the ADA, and will take place on the following dates and locations:

San Francisco, CA

WHEN: May 20, 2004 (8:30 a.m. – 5:00 p.m.)

WHERE: Hyatt Regency Hotel
5 Embarcadero Center

COST: \$75 **REGISTRATION DEADLINE:** 5/11/04

Los Angeles, CA

WHEN: May 21, 2004 (8:30 a.m.-5:00 p.m.)

WHERE: Four Points Sheraton Hotel
Los Angeles Airport

COST: \$75 **REGISTRATION DEADLINE:** 5/11/04

U.S. ACCESS BOARD UPDATE TRAINING

The Pacific ADA & IT Center (Pacific Disability Business and Technical Assistance Center) presents an all-day workshop provided by representatives from the U.S. Access Board, the federal agency responsible for issuing the Americans with Disabilities Act Accessibility Guidelines (ADAAG). This workshop will focus on the latest revision of ADAAG (new ADAAG) and will be geared towards architects, engineers, and those who are interested in accessible building design.

WHEN: July 12, 2004 (8:30 a.m. – 5:00 p.m.)

WHERE: Oakland Marriott Hotel
1001 Broadway Avenue
Oakland, CA 94607

COST: \$75 **REGISTRATION DEADLINE:** 6/25/04

REGISTER EARLY-SPACE IS LIMITED

To register for these events, please call **1-800-949-4232** or visit **www.pacdbtac.org**. Each participant will receive a confirmation letter.

ADA NEWS

SUPREME COURT LIMITS DISABILITY RIGHTS

BARNHART v. THOMAS, 02-763

The Supreme Court ruled unanimously that the federal government does not owe financial subsidies to people whose physical or mental disabilities allow them to do only jobs that no longer exist. The court ruled in the case of a disabled former elevator operator who applied for federal Social Security disability payments after her employer installed new elevators and eliminated her job in 1995.

Pauline Thomas had heart and back ailments, among other health problems. Poor health had already forced Thomas to change jobs once — from housekeeping to running an old, manual elevator at the Hudson County administration building in Jersey City, N.J. Thomas did not claim she was physically unable to perform her last job — the standard disability claim. Instead, she argued that technology has all but abolished her last occupation, and she could not do anything else.

The government denied Thomas' claim, but the Philadelphia-based 3rd U.S. Circuit Court of Appeals eventually ruled in her favor. The Supreme Court reversed that action in a short, matter-of-fact ruling.



SUPREME COURT RULES ON ADA EMPLOYMENT CASE

RAYTHEON CO. v. HERNANDEZ, 02-749

The Supreme Court gave companies some leeway to refuse to rehire recovering drug addicts and alcoholics, but without the broad ruling that employers sought.

Justices ruled 7-0 that Hughes Missile Systems

(Raytheon Co.) has a legitimate reason to refuse to rehire workers who break rules, including former employees with addictions. But the court avoided the more significant question, whether the more than 5 million workers with substance abuse problems have workplace protection under the Americans With Disabilities Act.

The court ordered the 9th U.S. Circuit Court of Appeals to reconsider the case of an Arizona missile plant worker who lost his job after testing positive for drugs. Joe Hernandez, a 25-year employee, quit in 1991 after a test showed he had used cocaine. More than two years later, after completing drug and alcohol treatment, he was turned down when he tried to get rehired. The company had an unwritten policy against rehiring workers who broke rules - such as not using drugs - and argued that thousands of other employers have the same rule.

The appeals court ruled that a jury should decide if Hernandez was a victim of discrimination under the ADA. The law specifically protects people who are clean after being treated for their addiction, but allows companies to discipline those who use substances on the job.



TENNESSEE V. LANE UPDATE

This term, the United States Supreme Court will hear another case involving the constitutionality of the public services provisions of Title II of the Americans with Disabilities Act (ADA).

At issue in the case, called State of Tennessee v. George Lane and Beverly Jones, is whether Congress had the constitutional authority to require states to pay money damages for violations of Title II of the ADA. A negative ruling might suggest that Congress did not have the power to enact many of the core provisions of Title II and diminish plaintiffs' ability to enforce their civil rights in court. Plaintiffs George Lane and Beverly Jones, both with paraplegia, sued Tennessee for failing to ensure that courthouses are accessible to individuals with disabilities. Both plaintiffs were denied

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access to courtrooms on the second floors of buildings lacking elevators and filed suit under Title II of the ADA in 1998. The Tennessee Attorney General moved to dismiss the case on sovereign immunity grounds, arguing that Congress did not have the authority to subject the state of Tennessee to suit. The U.S. District Court denied the state's motion and ruled that the case could go forward. The Tennessee Attorney General appealed to the U.S. Court of Appeals for the Sixth Circuit, which affirmed the trial court's decision, and again said that the case could proceed. The Tennessee Attorney General then appealed again – this time to the United States Supreme Court. Five years after filing their lawsuit, Lane and Jones have yet to have their day in court.

The federal appellate courts have been split over whether private individuals can sue the state for money damages under Title II. In five appellate circuits, covering 24 states, the courts have ruled that individuals with disabilities cannot sue their states under Title II. In three other circuits, covering 10 states (including Tennessee), the courts have ruled that individuals can sue for money damages only under very limited circumstances, namely, in cases implicating constitutional concerns.

Limiting the Title II remedy to recognized constitutional violations or to violations based on the Due Process Clause would impose arbitrary limitations on the reach of the remedy because it would exclude situations where Congress was well within its power to legislate under Section 5 of the Fourteenth Amendment, and where the states have demonstrated a record of invidious discrimination on the basis of disability. Not only would such a ruling weaken the effectiveness of Title II by eliminating the ability of plaintiffs to obtain damages against the states, it would eliminate one of the fundamental bases of congressional power to require the states to provide access to public facilities. While there are two other possible sources of congressional power to require access—Section 504 of the Rehabilitation Act, based on the Spending Clause, and injunctive actions against state officials based on the Commerce Clause. These sources of

Congressional power are also under attack. Thus, the result in Lane could have implications far beyond the damages remedy and even beyond Title II itself.

**FOR ADA Technical Assistance call
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website: www.pacdbtac.org**

JURY RETURNS RECORD VERDICT AGAINST COUNTY OF RIVERSIDE FOR REFUSING TO ACCOMMODATE EMPLOYEE WITH MENTAL DISABILITY

The California Department of Fair Employment and Housing (DFEH) announced recently that a jury has awarded a Riverside County employee \$460,000 in a mental disability discrimination case filed against the County of Riverside. The award is the largest jury verdict in California's DFEH history.

DFEH filed the civil case in Riverside County Superior Court on behalf of the complainant, a 50-year old former Sheriff's investigator. The employee filed a discrimination complaint with DFEH after he suffered a head injury and eventually was diagnosed with a mental disability. The disability no longer allowed him to carry a gun so he could not perform the duties of a Sheriff's Investigator. The County denied his request for disability accommodation to work as a gardener, truck driver, or other non-peace officer position as recommended by his doctor. Further, the County instructed him not to accept employment outside the Sheriff's Department.

HIGH COURT INTERESTED IN THEATER'S ADA CASE

The U.S. Supreme Court in January of 2004 signaled interest in an appeal by a Regal Entertainment Group unit on whether a disability-rights law bars movie theater stadium-style seating that forces people in wheelchairs to sit near the front row.

Regal Cinemas, part of the world's largest movie theater chain, is appealing a ruling it says will

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impose “devastating” costs on companies that have built thousands of theaters in which most seats must be reached by climbing stairs. Regal Entertainment was created by merging bankrupt theater chains that include Regal Cinemas, United Artists and Edwards Theatres.

AMC Entertainment Inc. and Loews Cineplex Entertainment Corp., the second- and third-largest U.S. chains, support Regal’s appeal. Stadium-style theaters have rows of tiered seating to allow a clear view of the screen. The theaters have several rows of non-tiered seating in front, and, in the absence of ramps, patrons in wheelchairs usually must sit in that area. Federal rules enacted under the Americans With Disabilities Act require wheelchair areas to provide “lines of sight” similar to those for other patrons. The ADA bars discrimination against people with disabilities in employment, government services and in public accommodations such as restaurants and movie theaters.

A lower court ruling means thousands of movie theaters “must now be destroyed or expensively retrofitted,” lawyers for Regal said in court papers filed in Washington.

The National Association of Theatre Owners said in a brief supporting Regal that retrofitting movie theaters probably would cost hundreds of millions of dollars.

DEPARTMENT OF JUSTICE ANNOUNCES SETTLEMENT AGREEMENT WITH HOTEL CHAIN TO INCREASE ACCESS TO DEAF CUSTOMERS

The United States Department of Justice announced a settlement agreement with the Ramada Limited Atlantic Avenue, in Virginia Beach, Virginia, under Title III of the Americans with Disabilities Act of 1990.

ADA HOTLINE

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The Ramada Inn facility has 94 guest rooms, was built in 1974 and has not been altered for the purposes of the ADA since that time. Each room contains a television equipped with closed captioning and electrical outlets for the accessibility equipment used by individuals with hearing impairments. The facility has signage at the front desk informing guests of the availability of teletypewriters (TTY’s) and other communication devices. The hotel has one TTY at the front desk to enable staff to communicate with guests who use TTY’s, such as guests who request wake-up calls, place room service orders, or have other routine telephone communications with hotel staff. In addition, the facility makes available two communication kits at the front desk, each of which includes a TTY, a visual notification device to alert guests of incoming telephone calls, a visual notification device to alert guests to a door knock, and a visual emergency alarm.

The owners agreed to continuously monitor usage of the existing equipment, purchase additional equipment to supply up to the required 9 rooms and maintain all devices in good working condition. They will also ensure that all appropriate hotel staff is trained in all ADA issues including, but not limited to: 1) location of accessible parking and entrances; 2) location and type of accessible guest rooms; 3) accessible features within each accessible guest room; 4) location of accessible routes into and throughout the hotel, where not all routes are accessible; 5) location and use of accessibility equipment (e.g., TTY’s, closed captioned televisions, visual notification devices); 6) all hotel reservations and other policies regarding visitors with disabilities or accessible features.

UPDATES FROM THE ACCESS BOARD

Board Gives Final Approval to New ADA and ABA Guidelines

At its January meeting, the Access Board unanimously approved new guidelines covering access to facilities covered by the Americans with Disabilities Act (ADA). The approved rule overhauls the existing ADA Accessibility Guidelines (ADAAG), which were published in 1991. It also updates guidelines for federally funded facilities required to be accessible under the Architectural Barriers Act (ABA). Both the ADA guidelines and the ABA guidelines, which the Board updated jointly to make them more consistent, specify access in new construction and alterations, and provide detailed provisions for a wide range of building elements and spaces. Even once published by the Board, the new requirements will not be mandatory on the public until further action is taken by the Departments of Justice and Transportation.

Justice Department Publishes ADA Checklist for Polling Places

Under the Americans with Disabilities Act (ADA), state and local governments must ensure access to their programs and services, including voting. The U.S. Department of Justice, which regulates and enforces these requirements, has issued an accessibility checklist for polling places. This new publication is designed to help local jurisdictions in selecting sites for polling places through an evaluation of architectural accessibility. With the checklist, users can identify barriers to access and determine how best to address them. Based on the ADA's design requirements for buildings and facilities, the checklist covers access to parking, passenger drop-off areas, sidewalks, and entrances so that all areas and elements used by voters are accessible.

ASME Workshop Explores Use of Elevators in High-Rise Emergencies

Challenges posed by egress from high-rise buildings have renewed interest in the ways in which elevators can be safely used to evacuate building occupants, including persons with

disabilities, during fires and other emergencies. Under current practice, elevators are typically programmed so that they cannot be used during an emergency except in limited cases by fire fighters and rescue personnel. The American Society of Mechanical Engineers (ASME) International has taken the lead in assessing this practice and held a workshop in Atlanta in March that explored the use of elevators by firefighters and building occupants in emergencies. Most recommendations centered on the use of elevators before they are recalled to a building's egress floor. As a follow-up to the workshop, a steering committee comprised of representatives from each of the sponsoring organizations met at ASME headquarters in New York City to further review workshop recommendations and to determine appropriate next steps.

ACCESSIBLE IT NEWS

FEDERAL LAWS AID THE IMPLEMENTATION OF SECTION 508

In 1998, Congress amended the Rehabilitation Act to require federal agencies to make their electronic and information technology accessible to people with disabilities. Section 508 was enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The law applies to all federal agencies when they develop, procure, maintain, or use electronic and information technology.

Two important new statutes enacted in 2002 may have significant implications for section 508. The first of these, The E-Government Act, signals a new level of centralization and standardization

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in the management of governmental information resources. From the design of Web sites to the informational content of Web pages, federal E&IT practices are likely to come more and more under the management of OMB's new Chief Information Officer.

Congressional Accountability Act
With the separation of powers doctrine under the Constitution, Congress is not automatically covered by many of the laws administered by the Executive Branch, including civil rights laws such as the ADA. In 1995, Congress enacted the Congressional Accountability Act (CAA) that applied a number of major laws to Congress itself and set up mechanisms for their administration. Congress is not subject to the requirements of Section 508. Nor are such "Congressional instrumentalities" as the Library of Congress or the Government Printing Office. In 2001, the Congressional Office of Compliance (which administers the CAA) recommended that Congress bring itself under the provisions of Section 508, however, no action has thus far been taken.

The Library of Congress and the Government Printing Office have announced that they will voluntarily comply with Section 508's requirements. In addition, the U.S. House of Representatives has recommended that all offices and committees make their Web sites voluntarily 508-compliant; House Information Services is assisting offices in this effort. Moreover, the upgraded Senate Web site will be 508 compliant.

NEW TECHNOLOGIES CAN HELP ALL STUDENTS EXCEL REGARDLESS OF DISABILITY

As educators nationwide set about the tough task of making sure all students—including those with disabilities—achieve at high levels of proficiency as required by the No Child Left Behind Act (NCLB), many are looking to technology to help accomplish this task.

The good news is that new developments in assistive technologies are producing tools that are better able to help all students achieve, regardless of their disabilities. The

good news is that new developments in assistive technologies are producing tools that are better able to help all students achieve, regardless of their disabilities. The bad news is that federal funding for these technologies under the Individuals with Disabilities Education Act (IDEA) hasn't kept pace with the need.

Currently, IDEA calls for the federal government to contribute 40 percent of the average daily school expenditures to teaching students with disabilities. One way of accomplishing the task is by integrating the principles of "universal design" into IDEA. Universal design calls for the development of products that can be used by people with the widest possible range of capabilities, either directly or through the use of assistive technologies. For example, a universally designed web browser would enable students with a wide range of disabilities to access information online—either directly through the browser itself, or by being compatible with assistive technologies such as screen reading devices.

Education and disability-rights groups want the reauthorized version of IDEA to:

- Incorporate projects that promote the development of universal design concepts in technologies and educational materials, and authorize corresponding increases in the levels of funding for research, development, and personnel training;
- Require entities that receive federal assistance to ensure the accessibility of their project deliverables, including print materials, electronic media materials, web sites, videos, software, CD-ROMs, and DVDs;
- Require educational programs supported through federal assistance to ensure the accessibility of their learning materials; and,
- Establish a priority for projects that emphasize educational personnel training and preparation, particularly with respect to universally designed technologies and assistive technology devices, and authorize corresponding increases in funding for these projects.

BROAD RANGE OF TOOLS AND TECHNOLOGIES AIDS IT ACCESSIBILITY

Federal IT specialists working to make Web sites and other electronic documents accessible to people with disabilities have an increasing range of tools and techniques to help them although achieving compliance with Section 508 of the Rehabilitation Act Amendments of 1998 still remains a challenge. Of particular difficulty is tagging images on Web sites; there are often problems with missing tags and forms. Web designers' choices about navigation methods can also be critical. For example, for someone who is blind, the best method of presenting information on a Web page in an accessible manner is plain text; but for people with cognitive issues, text is the least appropriate method of accessibility. It is recommended that designers segment information into limited chunks to accommodate the needs of users who have different types of disabilities and have users with varying types and degrees of disabilities test the site.

When it comes to products for deaf or hard-of-hearing users, sometimes technology alone cannot be sufficient. That's because translating for the deaf involves subtle cultural issues that no technology can fully overcome. For instance, Hewlett-Packard Co. officials demonstrated a PC application that accepts live voice input, converts it to on-screen text, then converts the text to video images of sign language. The liCommunicator software draws on a library of thousands of short clips of a professional sign linguist.

Because it links text to the video clips, the signing produced is in word-for-word order, not idiomatic English. And several deaf observers noted that it produced an inordinate amount of finger-spelling, letter-by-letter spelling of words by the signer. The video output is mechanical and disconcertingly unlike American Sign Language. Hewlett-Packard officials said that as more whole signed words are added into the library, the amount of finger-spelling would decrease.

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Pacific DBTAC is funded by a grant from the National Institute on Disability and Rehabilitation Research (NIDRR) to the Public Health Institute. Pacific DBTAC is authorized to provide information materials and assistance to individuals and entities covered by the Americans with Disabilities Act. However, you should be aware that NIDRR is not responsible for the enforcement of the ADA. The information, materials and technical assistance, including information contained in this newsletter, are intended solely as information guidance and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA

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Materials available from the Pacific ADA and IT Center

From the US Access Board

- Accessibility Guidelines for Recreation Facilities
- Accessible Amusement Rides
- Accessible Boating Facilities
- Accessible Fishing Piers and Platforms
- Accessible Golf Courses
- Accessible Swimming Pools and Spas
- Accessible Sports Facilities

From the Department of Justice

- ADA Guide for Small Towns
- Accessible Temporary Events: A Planning Guide
- Department of Justice- ADA Technical Assistance CD-ROM
- Commonly Asked Questions about the ADA and Law Enforcement

Please Call 1-800-949-4232 for pricing

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