



PACIFIC UPDATE

DBTAC - PACIFIC ADA CENTER

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

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DIRECTOR'S MESSAGE

What's in a name?

As we embark on the next iteration of the Pacific DBTAC we invite you to participate and avail yourself of our services.

Once again we have a new variation on our name, **DBTAC – Pacific ADA Center**.

Past names have included: Pacific Disability and Business Technical Assistance Center, Pacific DBTAC, Pacific ADA & IT Center, etc.

Regardless of a name change we continue to be ready and willing to provide technical assistance on the Americans with Disabilities Act (ADA) via a toll-free telephone hotline **1-800-949-4232** or **e-mail adatech@adapacific.org**.

Providing approved materials from federal agencies and other quality players is still a valued service, in addition to customized ADA training to meet your needs.

Visit our new, improved web site at www.adapacific.org

We are proud to announce a research initiative that will lead to important information and outcomes in the area of employment of people with disabilities. Two of the exciting research projects are entitled: **Employment Strategies for People with Disabilities** and **Understanding Employer Disability Practices**, respectively.

Our past success has led to initiatives that have the potential to change paradigms in both policy and practice.

This is an exciting time and we hope you will join us. Join our mailing list and our listserv to receive updates and our free Newsletter. Stay in tune with up to date news regarding the Americans with Disabilities Act.

We appreciate your interest in the DBTAC – Pacific ADA Center and your commitment toward creating a barrier-free society.

Best Regards, Erica C. Jones

RULING ON WEBSITE ACCESS FOR BLIND

Bob Egelko, *S.F. Chronicle*

A retailer can be sued for making its Web site inaccessible to the blind, a federal judge in San Francisco has ruled.

Run by the nationwide Target stores chain, www.target.com is covered by federal and state laws that entitle people with disabilities to have equal access to business and government services, U.S. District Judge Marilyn Hall Patel ruled in refusing to throw out a suit against the company. She rejected Target's argument that the discrimination laws prohibit only physical barriers to a company's stores or products.

"The purpose of the statute is broader than mere physical access" and includes the removal of all barriers to "a disabled person's 'full enjoyment' of services or goods," Patel

said, quoting from the Americans with Disabilities Act.

She did not decide whether Target's Web site is accessible to the blind, and denied an injunction that would have required the retailer to make immediate changes. But the National Federation of the Blind, a plaintiff in the case, said the ruling was an important victory.

"We are pleased that the court recognized that the blind are entitled to equal access to retail Web sites," said the federation's president, Marc Maurer.

The suit said the site lacked simple features that would enable the blind to use it: an embedded code that can be read by software to provide a vocal description of the page, and links that allow a blind person to navigate the screen with a keyboard instead of a mouse.

Target denied the allegations and submitted statements from three blind people who said they were able to use the Web site. Patel said the facts were in dispute and it would be premature to order changes now.

Youth Baseball League Allows Parent To Provide Sign Language Interpreting For Deaf Son

A settlement between the parents of a deaf boy from Kauai, Hawaii and one of the nation's largest youth sports organizations ensures that young players with disabilities will have an equal opportunity to play baseball and softball, the U.S. Justice Department said.

The U.S. Justice Department's Civil Rights Division brokered the out-of-court agreement. It resolves a complaint filed by Beth and James Tokioka on behalf of their son, Justin Kapono "Pono" Tokioka, against the PONY leagues. The family petitioned the government after the boy was denied access to a sign-language interpreter at the 2005 Mustang (ages 9-10) state tournament in Hilo because PONY officials enforced a rule that states only three uniformed coaches and players can be in the dugout during games. PONY is an acronym for Protect Our Nation's Youth.

"We're extremely proud," James Tokioka said, "because it not only will accomplish correcting a situation with PONY baseball, it will also set a landmark case for other sports organizations that if a kid who has a disability, whether it's a hearing impediment or whatever that disability may be, they need to have accommodations for it."



In its investigation, the Justice Department determined that PONY violated the Americans with Disabilities Act. The department found the league denied the boy an equal opportunity to participate when it said James Tokioka, who had acted as his son's interpreter in practices and in games on Kauai, could not be inside the dugout to give him sign-language instructions from coaches. PONY

Baseball Inc., a nonprofit headquartered in Washington, Pa., agreed to make changes to its policies and pay \$30,000 in damages to the Tokiokas.

In exchange, the Justice Department agreed not to institute or be a party to any lawsuit filed against PONY based on its investigation.

Attorney General Alberto R. Gonzales highlighted the case at the U.S. Business Leadership Network National Conference, saying "After the Department of Justice got involved, the league agreed to alter its rules to allow players the use of sign language interpreters during games, and to make other accommodation for disabled athletes. I can tell you, from my own experience playing baseball when I was young, that even something that might seem so small can make a tremendous difference in a young boy's life."

Catholic School Violated ADA Law

A high school operated by the Roman Catholic Archdiocese of Los Angeles violated the Americans with Disabilities Act when it refused to renew a blind teacher's contract because he missed a deadline to secure funding for a classroom aide, a federal judge has ruled.

In a legal order U.S. District Judge Stephen G. Larson ruled in favor of Jeffrey Jenkins, who taught religion and social studies at Daniel Murphy Catholic High School for 14 years before his dismissal in 2004. Mr. Jenkins stated in court papers that from 1990 to 2000, he used some of his Supplemental Security Income money to pay for a part-time, sighted aide to help him.

After losing his SSI benefits, Mr. Jenkins said he paid for the aide himself and later taught without assistance for several months. He alleged that eventually Principal Jeff Guzman

warned he would not renew the teacher's contract unless funding for an aide was obtained. Mr. Jenkins finally received funding from a close friend and informed school officials of his intent to return for the 2004-05 academic year, according to court papers. School officials claimed his contract was not renewed because he missed an April 15 deadline to confirm that he had secured funding, although Mr. Jenkins contended the school was closed at that time for Easter vacation.

A court hearing was scheduled for January 9th to determine monetary damages, said Jenkins' attorney, Michael Seplow.



Supreme Court to Decide Mental Illness Severity Threshold for Death Penalty

The U.S. Supreme Court set April 18, 2007 as the date to hear arguments in the case of Panetti v. Quarterman, involving a Texas death row inmate with schizophrenia, to determine when a mental illness is severe enough to make execution impermissible under the Constitution.

Although the Supreme Court ruled in 1986 that the Eighth Amendment's ban on cruel and unusual punishment would prohibit executions of those with mental illness, the decision (Ford v. Wainwright) stopped short of providing a definition of mental illness which could be used when determining competency for execution.

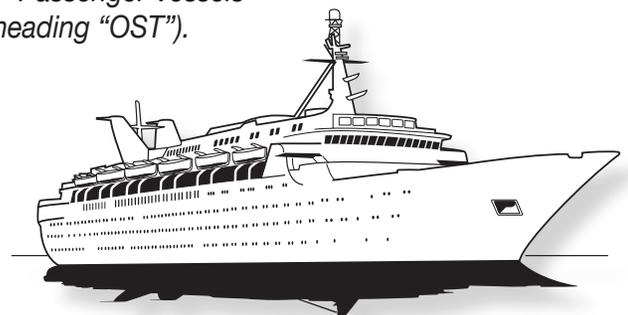
DOT UPDATE

DOT Proposes New Regulations for Vessel Operators

The U.S. Department of Transportation has proposed new regulations under the Americans with Disabilities Act (ADA) to ensure access to vessels for passengers with disabilities. Published on January 23, the proposal, which is intended to ensure access to programs and services provided by vessel operators and prohibits discriminatory practices and policies. The regulations would apply to vessels of all types and sizes that provide transportation or other services to the public, including cruise ships, ferries, water taxis, gaming and excursion boats and other types of craft.

The rule bans practices that discriminate on the basis of disability, such as denial of service, program restrictions, and price discrimination, and specifies conditions upon which certain policies, such as advance notice of the need for accessible accommodations, would be considered ac-

ceptable. It also covers responsibilities for ensuring access to vessel services and programs, including accommodation of mobility aids, assistive devices and service animals, as well as access to landside facilities serving vessels, such as terminals and floating docks. Additional information, including received comments, is posted on DOT's site at <http://dms.dot.gov/reports/fr.htm> (see "ADA - Passenger Vessels" under the heading "OST").



NCD UPDATE

NCD Looks at Technology Trends

The National Council on Disability (NCD) has released a policy paper that explores key trends in information and communication technology, highlights the potential opportunities and problems these trends present for people with disabilities, and suggests some strategies to maximize opportunities and avoid potential problems and barriers.

Many of the same technological advances that show great promise of improved accessibility also have the potential to create new barriers to people with disabilities.

The paper discusses technology trends that present opportunities, improved availability, usability, affordability, as well as trends that have the capability to cause accessibility problems.

Without action, the gap between the mainstream technology products being introduced and the assistive technologies necessary to make them accessible will increase, as will the numbers of technologies for which no accessibility adaptations are available.



NATIONAL COUNCIL ON DISABILITY CONGRESSIONAL OUTREACH

The National Council on Disability (NCD) published the first of a number of upcoming monthly two-page briefings for Congress, highlighting major points in the NCD report *The State of 21st Century Long-Term Services and Supports: Financing and Systems Reform for Americans with Disabilities*.

Visit www.ncd.gov for more details.



FCC UPDATE

FCC Reminds Video Programming Distributors of Their Obligation to Make Emergency Information Accessible

The Commission issued a Public Notice to remind video programming distributors, including broadcasters, cable operators, and satellite television services, of their obligation to make emergency information accessible to persons with hearing and vision disabilities. In the case of persons

who are deaf or hard of hearing, Commission rules require that emergency information provided in the audio portion of the programming must be made accessible using closed captioning or other methods of visual presentation, such as open captioning, crawls, or scrolls that appear on the screen. Emergency information provided by these means should not block any closed captioning, and closed captioning should not block any emergency information provided by crawls, scrolls, or other visual means.



DOJ UPDATE

Project Civic Access Update

DOJ settlement agreements resolve cases that are part of the Department's Project Civic Access, a wide-ranging effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. The Department has conducted reviews in 50 states, as well as Puerto Rico and the District of Columbia, and is posting the agreements on its website (www.ada.gov) to help additional communities come into compliance with the Act.

Agreements in region IX include:

Fontana, California; San Luis Obispo, California; Carpinteria, California; San Rafael, California; Seaside, California

Boulder City, Nevada;
North Las Vegas, Nevada,
Carson City, Nevada
Maui, Hawaii; Kaua'i, Hawaii
Tucson, Arizona;
Sedona, Arizona;
Fountain Hills, Arizona;
Flagstaff, Arizona



EEOC Versus Wal-Mart: Back On

The EEOC is once again taking on the retail super-giant, Wal-Mart. The most recent court action resulted in the U.S. Court of Appeals for the Eighth Circuit ruling that the U.S. Equal Employment Opportunity Commission (EEOC) may continue its disability discrimination lawsuit against Wal-Mart Stores, Inc. (EEOC v. Wal-Mart Stores, Inc., Case No. 06-1583)

The EEOC filed suit against Wal-Mart in Jan. 2004 on behalf of Steve Bradley, who has cerebral palsy and uses a wheelchair, after a Wal-Mart store refused to hire Bradley for any position, including greeter or cashier. A federal judge in U.S. District Court for the Western District of Missouri granted summary judgment to the company in August 2005, finding that the EEOC had not presented sufficient evidence from which a jury could reach a verdict in Bradley's favor. The EEOC then filed an appeal that led to a reversal.

This ruling is especially significant because it is the first time the Eighth Circuit has decided the burden of proof lies on the employer when claiming that an employee poses a "direct threat."

In June 2001, Wal-Mart paid \$6 million dollars to settle 13 lawsuits charging the firm with widespread discrimination and violations of the ADA. Even after these lawsuits, Wal-Mart continued to discriminate against Americans with Disabilities; in 2004, the Equal Employment Opportunity Commission filed suit against Wal-Mart on behalf of a Kansas City man confined to a wheelchair. [29 U.S.C. S 706 et seq; Business Journal, 1/20/04.]

Wal-Mart has refused to comply with numerous aspects of the ADA, including providing a reasonable accommodation, engage in the interactive process as required by the ADA, unlawful pre-employment inquiry and refusal to hire.

Regarding all employers covered by the ADA, EEOC has obtained approximately \$325 million under the ADA on behalf of more than 20,000 individuals through its enforcement efforts including settlements, conciliations, mediation, and litigation. Additionally, EEOC has obtained non-monetary benefits for over 10,000 individuals, including reasonable accommodation, policy changes, training and education, job referrals, union membership, and the posting of EEOC notices at job sites.

Advisory Panel to update 508 Standards meets

The Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC), which will provide recommendations on updating the Board's accessibility criteria for electronic and information technology and telecommunications products, held its third meeting February 6 – 8 in the Washington, D.C. area. The Committee is reviewing standards for electronic and information technology procured by Federal agencies issued under section 508 of the Rehabilitation Act and guidelines used to enforce the Telecommunications Act. The panel discussed creating a new framework for the section 508 standards, a framework that could facilitate new technologies and innovations.

Subcommittee sessions were also held during the meeting. There are eight subcommittees organized by the Committee at its first meeting that are focused on different subject areas such as web and software, audio/video, telecommunications, and general interface. Subcommittees typically deliberate and share information in between full committee meetings. Subcommittee chairs provided progress reports to the full committee on the final day of the meeting.

For further information, visit the committee's website at <http://teitac.org> or contact Timothy Creagan of the Access Board at creagan@access-board.gov, (202) 272-0016 (v), or (202) 272-0082 (TTY). Information on the committee and its meetings is also posted on the Board's 508 Update page.



UNITED STATES ACCESS BOARD
US Access Board Update

Research Completed on the Visibility of Detectable Warnings

A study on the visibility of detectable warnings was recently completed that provides recommendations on color and contrast. Funded by the Federal Highway Administration at the request of the Board, the project used subject testing to determine which color qualities were most visible to people with limited vision. This information will be useful to the Board in the development of guidelines for public rights-of-way, as well others involved in specifying detectable warning products. The research report, "Visual Detection of Detectable Warning Materials by Pedestrians with Visual Impairments," is available on the Board's website.

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(continued from page 5)

Detectable warnings are used to alert people with vision impairments to hazardous drop-offs, such as those along rail station platforms, and to curb-less transitions from sidewalks to streets. ADA design requirements specify a distinctive surface patterning of flat-top domes which previous research has shown to be most detectable by cane or under foot. Existing specifications, which are under review by the Board as part of its work developing new rights-of-way guidelines, also call for a contrast in color between the detectable warning and the surrounding surface for the benefit of those with residual vision. The new study, unlike most of the previous research

on detectable warnings, focused exclusively on visual detection. With 50 test subjects, most of whom were legally blind, researchers tested and compared the effectiveness of 13 colors and patterns against several simulations of common sidewalk surfaces (white and brown concrete, gray asphalt, and red brick). Results of the study underscore the effectiveness of high contrast between warning and sidewalk surfaces. To ensure adequate visual detection, the study recommends a minimum luminance contrast (60%) and a minimum reflectance for the lighter color. The most effective warning colors, according to the results, include federal yellow (against dark adjacent surfaces), brick red (against light surfaces), and black-and-white color combinations, which provided internal contrast.

Board Holds Roundtable on Updating Bus Guidelines

The Access Board held an industry roundtable discussion on issues to address in the update of its accessibility guidelines for transportation vehicles issued under the Americans with Disabilities Act (ADA). These guidelines, which were first published in 1991, cover access to buses, vans, rail cars, and other modes of public transportation. The Board plans to update these guidelines to address new or variant forms of service, such as bus rapid transit.

The recent meeting brought together industry representatives, including bus operators and the manufacturers of buses, vehicle ramps and lifts, and securement devices. Discussion focused on trends in the design of buses, boarding devices, and mobility aids, such as the increasing variety of wheelchairs and powered mobility aids on the market, the prevalence of low floor buses, and other innovations in the design



of vehicles and boarding devices. Issues raised in public forums the Board held last year in Washington, D.C. and Las Vegas were explored as they pertain to boarding access and securement devices.

Based on the input of this latest meeting, as well as the previous forums, the Board plans to prepare draft revisions to the bus guidelines that will be made available for public comment. A follow-up draft will be prepared to cover other parts of the guidelines, including specifications for rail cars. The Board is scheduled to hold a forum on this update at New Jersey's TransAction 2007 Transportation Conference and Expo, in Atlantic City on April 12th. For more information, contact Dennis Cannon at

cannon@access-board.gov (email), (202) 272-0015 (v), or (202) 272-0081 (TTY)

REGIONAL NEWS

Class Action Lawsuit against Caltrans Californians for Disability Rights, Inc. et. al. v. California Department of Transportation

Californians for Disability Rights, Inc., a nonprofit membership organization of persons with disabilities in California is suing the California Department of Transportation saying that many of the department's facilities are inaccessible. Alleged violations in the suit include:

Failure to develop and implement a comprehensive Self-Evaluation Plan and Transition Plan covering pedestrian

California

rights of way and Park and Ride facilities; installation and/or maintenance of pedestrian rights of way which have missing curb cuts, unsafe curb cuts, dangerous slopes and crumbled or uneven pavement, and inadequate or no detectable warnings, amongst other barriers; installation and/or maintenance of Park and Ride facilities with inaccessible paths of travel and non-compliant accessible parking spaces, amongst other barriers; failure to provide accessible alternative routes during construction and accessible information for persons with vision disabilities when sidewalks are closed; and failure to inform local residents which facilities are under the jurisdiction of Caltrans, thereby hindering the complaint process.

Arizona New Minimum Wage Law

There is a basic misunderstanding as to which disabled workers would be exempted from the new Arizona minimum wage, which went into effect Jan. 1, 2007.

Many disabled individuals hold jobs and compete in the workplace with non-disabled workers (non-sheltered work). But there are also many disabled workers who, because of severe physical or cognitive mental incapacity, cannot compete in a non-sheltered work environment.

Federal law allows an exemption from paying federal minimum wage, but not state minimum wage, for employers of workers who are “Disabled for the Work Being Performed.” This concept is what most people do not understand.

Only a worker with a disability that directly impacts the performance of the job tasks is eligible to be paid sub-minimum wage. Non-profit sheltered work centers are required by federal law to have documentation of a worker’s disability and must be able to objectively demonstrate that the disability directly impacts the job performance.

In order to pay commensurate (sub-minimum) wages to disabled workers, the employers must then time study the disabled worker and compare the result to the productivity of a non-disabled worker. The disabled worker is then paid a commensurate wage based on the percent of productivity using the prevailing wage (not minimum wage) as the wage baseline.

The director of the Industrial Commission of Arizona urged employers of developmentally disabled workers to stick to business as usual and not let workers go. The commission will work on rules that can address the issue of formerly exempt workers.

Hawaii Emergency preparedness

The Hawaii State Civil Defense, the DCAB, and the State Department of Health convened a workgroup to develop a plan to address emergency preparedness for people with disabilities in the State of Hawaii. The workgroup developed the “2006 Interagency Action Plan for Emergency Preparedness of Persons with Disabilities and Special Needs.” This plan is a starting point and addresses the defined targeted population with a focus on sheltering. Emergency preparedness information for persons with disabilities is available at the links below:

www.hawaii.gov/health/dcab/interagencyplan/
www.redcross.org/services/disaster/0,1082,0_603_,00.html
www.scd.state.hi.us/sp_needs.html

Nevada EEOC Opens Las Vegas Office

Expanded Presence to Improve Operational Efficiency, Enhance Customer Service

The Las Vegas office, part of the EEOC’s Los Angeles District, is responsible for receiving charge filings of discrimination, conducting investigations, and providing outreach, education and technical assistance to local employers and the public. The office, which is open for business from 8:00 a.m. to 4:30 p.m. (Pacific Time), Monday through Friday, can be reached by phone at 702-388-5099, by fax at 702-388-5094, and by TTY at 702-388-5098 – but first-time callers should contact the agency at 800-669-4000. The office’s jurisdiction includes five southern Nevada counties: Esmeralda, Lincoln, Mineral, Nye and Clark. The EEOC’s San Francisco District Office has jurisdiction for northern Nevada.

“As the nation’s fastest-growing metropolitan area, the people of Las Vegas will be well served by the expanded presence of the EEOC,” Chair Dominguez said at the ribbon cutting. “We look forward to working closely with the local employer, labor, legal and civil rights communities to proactively prevent employment discrimination on one hand, and provide vigorous law enforcement on the other.”

Mandate for Change: Pacific Basin A Voice in Government

Commonwealth of the Northern Mariana Islands Council on Developmental Disabilities provides a voice within local government for people with developmental disabilities, speaking for positive values and advocating change. The Council is funded by the Developmental Disabilities Assistance and Bill of Rights Act.

The Council is unique, bringing together members appointed by our Governor: people with developmental disabilities and their families, representatives of local agencies and service providers, and other interested people. The Council’s mission is to work for improvements in the lives of people with developmental disabilities in public policy and in society.

Pacific ADA Center (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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This newsletter is also available in large print, audiotape, and computer disk formats.

For a free subscription or Technical Assistance please contact us:

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Materials available from the Pacific ADA Center

ADA-Related Materials

- New ADA-ABA Accessibility Guidelines
- Public Rights-of-Way Draft Guidelines
- Work-Home As A Reasonable Accommodation
- The ADA and City Governments: Common Problems
- Access to Hotels - Pocket Pamphlet
- Posters:
Service Animals • Vital Signs • Sign Language Basics
Signs of Hospitality

Accessible Information Technology Materials

- What is Accessible Information Technology
- Making Websites Accessible
- Distance Learning
- Are You Aware of California SB 105

DOJ Toolkit for State and Local Governments

EEOC: Q & A about Healthcare Workers and ADA



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