



In This Issue

Department of Transportation Alters Guidelines on Service Animals.....1

Toll Free Hotline for Air Travelers with Disabilities.....2

Supreme Court Defines "Employee" Under the ADA.....2

Supreme Court Gets Disability Rights Case.....2

Justice Department Announces Agreement with SFX Entertainment, Inc. Regarding Disability Rights Matter.....3

"Disability" Under the ADA Further Defined to Include Obesity.....3

Settlement Between Waste Management Company and Disabled Worker.....3

Employee With Facial Disfigurement Files Under Employment Discrimination.4

Worker with Bipolar Disorder Files Employment Discrimination Lawsuit.....4

California District Court Rules AMC's Stadium-Style Theaters Discriminate Against Patrons Who Use Wheelchairs.....5

EEOC Reaches Settlement for Disability Bias in Agricultural Industry.....6

Sidewalk Access Covered under Title II of the ADA.....5

News Briefs Courtesy of the DOJ.....6

Accessible IT News

Beyond Web Accessibility: Technology Accessibility Policies in Higher Education.....6

New Available Training on Section 508.....7

Pacific Update

Pacific ADA and IT Center

Pacific Disability and Business Technical Assistance Center

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

August 2003



Our new mailing address is:

Pacific ADA and IT Center (Pacific DBTAC)
555 12th Street Suite1030
Oakland CA, 94607-4046

Our new telephone number is: (510) 285-5600
Our new fax number is: (510) 285-5614

Our Technical Assistance Hotline
remains unchanged
1-800-949-4232

Department of Transportation Alters Guidelines on Service Animals

The Department of Transportation has issued new guidelines that broaden the scope of service animals that may board airplanes. Passengers who rely on cats, monkeys or other animals for emotional support may now be able to bring the animals into a plane's seating compartment under revised federal guidelines. Only guide dogs were previously permitted.

DOT officials say, "the decision to change regulations was based on the capability of animals, other than dogs, to help with functions, such as pulling wheelchairs or alerting a person with epilepsy that a seizure is imminent. Passengers, however, must show proof from a doctor or psychologist that the animal is required to help with a mental health condition."

Toll Free Hotline for Air Travelers with Disabilities

The U.S. Department of Transportation is calling on all disability organizations to promote public education about its Toll-Free Hotline for air travelers with disabilities.

The Toll-Free Hotline for disabled air travelers has been in operation since August 2002 and is available for callers from 7 a.m. to 11 p.m. Eastern Time, seven days a week. The Hotline serves two main purposes: (1) education and (2) assistance in resolving disability-related air travel problems. It exists as an educational service to inform air travelers with disabilities about their rights under the Air Carrier Access Act and the Department's implementing regulations 14 CFR Part 382 (Part 382). Hotline operators are well versed in the ACAA and Part 382 and can provide callers with on the spot general information about the rights of air travelers with disabilities. The Hotline operators also respond to requests for printed consumer information about air travel rights of the disabled.

The Hotline can also assist air travelers with disabilities in resolving real time or upcoming issues with air carriers. For example, there have been a number of incidents in which Hotline Duty Officers have contacted air carriers and convinced them to accept service animals and electric wheelchairs on board flights, to stow folding wheelchairs in the cabin, and to provide requested wheelchair assistance.

Air travelers who want information about the rights of persons with disabilities in air travel or who experience disability-related air travel service problems may call the Hotline to obtain assistance at: 1-800-778-4838 (voice) or 1-800-455-9880 (TTY).

Supreme Court Defines "Employee" Under the ADA

In *Wells v. Clackamas* (April 22, 2003) the Supreme Court further defined who is to be considered an employee for the purposes of the ADA. Congress exempted businesses with fewer than 15 employees from the 1990 Americans With Disabilities Act. But lawmakers did not spell out who should be considered an employee.

In a 7-2 decision, the court ruled against a disabled woman who contended that a small company's partners and shareholders should be counted as employees. In this case, an Oregon medical clinic sued by a former employee argued that it was too small to be subject to the ADA. The clinic, owned by a group of doctors, said the doctors were not employees.

Though the ADA does not define who is an employee, Justice John Paul Stevens said the court was convinced by the standards used by the Equal Employment Opportunity Commission who is responsible for enforcing the ADA's employment guidelines. The EEOC says someone is not an employee if, for example, that person cannot be fired or is liable if a company loses money.

This decision which limits the scope of covered entities, mainly affects professional-service companies such as law firms, medical practices and accounting offices.



Supreme Court Gets Disability Rights Case

The Supreme Court said it would decide whether states can be sued

for failing to install wheelchair ramps or other accommodations for people with disabilities. At issue is the scope of Title II of the Americans with Disabilities Act of 1990. States have argued they should be shielded from lawsuits under the act because the Constitution's 11th Amendment protects states from being sued against their will. The latest case, *Tennessee v. Lane*, has more compelling facts.

George Lane was summoned to court in 1996 to face misdemeanor charges in Benton, Tenn., a tiny foothills town in the eastern part of the state. He eventually pleaded guilty to driving with a revoked license in the accident in which he lost his leg. Beverly Jones, a court reporter and mother of two, contends she can't get into many courtrooms for jobs. She also was injured in a car accident. The two sued under the Americans With Disabilities Act, which bans job discrimination against the disabled and requires the government to provide "services, programs or activities" to people with disabilities.

Justice Department Announces Agreement with SFX Entertainment, Inc. Regarding Disability Rights Matter

The Justice Department filed on June 11, 2003 a consent decree in federal court under which SFX Entertainment Inc. will adopt a new policy allowing patrons with diabetes to keep their medical supplies and food with them inside concerts.

SFX owns, leases and / or operates more than one hundred concert venues in the United States. Individuals with diabetes need to regularly monitor their blood sugar and must take insulin at specific times. They must eat food when necessary to avoid a condition of low blood sugar, as well as take insulin to avoid a high blood sugar level. Both conditions can pose serious danger to their health.

The consent decree, filed in the U.S. District Court for the Eastern District of Pennsylvania, resolves a lawsuit brought by the U.S. Justice Department v. SFX Entertainment Inc. in April 2002. The complaint alleged that SFX Entertainment Inc., which does business as Clear Channel Entertainment, violated the Title III of the Americans with Disabilities Act (ADA) by establishing and enforcing a policy prohibiting individuals from keeping their diabetic supplies and food with them at concerts. The complaint further alleged that individuals with diabetes were forced by SFX's policy to choose between being barred from concerts or taking unreasonable health risks.

“Disability” Under the ADA Further Defined to Include Obesity

In Connor v. R.P.H Management, Inc. (April 17, 2003) a federal judge has refused to dismiss a lawsuit against McDonald's, filed by a New Haven man who claims he was not hired because he is overweight.

Joseph Connor had filed the lawsuit last year against the fast food chain, claiming that it discriminated against him, in violation of the Americans with Disabilities Act and the Connecticut Fair Employment Practices Act. Connor, who weighs 420 pounds, claims that McDonald's violated the laws

when it regarded him as morbidly obese and refused to hire him based on that perception. Further, he alleges that his obesity is a disability, and the restaurant chain violated the CFEPA by deliberately not hiring him.

U.S. District Judge Stefan R. Underhill concluded that Connor must be given the opportunity to prove that he is protected under the law. McDonald's had argued that obesity, except in special cases where the obesity is due to a physiological disorder, is not a “physical impairment” within the meaning of the ADA. This is the first time a Connecticut court is saying that obesity may be a disability under state discrimination law.



Settlement Between Waste Management Company and Disabled Worker

In Brown v. Browning-Ferris, Inc. (March 5, 2003) the U.S. Equal Employment Opportunity Commission (EEOC) announced a settlement of an employment discrimination lawsuit filed under the Americans with Disabilities Act of 1990 (ADA) on behalf of a qualified former employee with Crohn's disease who was terminated by Browning-Ferris, Inc., a waste management company.

Deborah Brown, a boom truck driver and trash compactor repairperson, was fired from Browning-Ferris due to her disability despite her insistence and the insistence of her medical specialists that her external environment had no relation to her Crohn's disease, and that she safely and effectively had worked around waste throughout her nearly 10-year career.

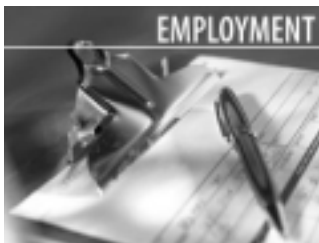
A Consent Decree settling the case was entered by Judge Marvin J. Garbis in the United States District Court for the District of Maryland. Under the settlement, Browning-Ferris will pay full back wages and compensatory damages to Ms. Brown. In addition, Browning-Ferris is enjoined from violating the ADA and must post notices advising its employees of their right to be free from disability-based discrimination.



ADA or Accessible IT Questions? Call 1-800-949-4232 (V/TTY) OR go to our website: www.pacdbtac.org

Employee With Facial Disfigurement Files Under Employment Discrimination

In *Robichaud v. R.P.H. Management, Inc.* (March 7, 2003) the U.S. Equal Employment Opportunity Commission (EEOC) filed an employment discrimina-



tion lawsuit that directly addresses the ADA definition of disability. The suit alleges that McDonald's discriminated against Samantha Robichaud when it denied her the opportunity for promotion to a management position and constructively discharged her due to a cosmetic disfigurement known as Sturge Weber Syndrome.

Ms. Robichaud, who has a "Port Wine Stain" covering a significant portion of her face, began her employment with McDonald's as a cook. Her acceptance of that position was premised upon the assurance that she would have the opportunity for promotion to management. In order to be eligible for a management position, an employee must show proficiency in handling several areas of the restaurant, including the front counter serving customers. Ms. Robichaud was removed from the front counter because of her appearance. Ms. Robichaud was later constructively discharged when she was told that she would never be promoted to a management position because of her appearance.

This is the first lawsuit EEOC has filed in Alabama involving facial disfigurement and it points to the fact that in the employment arena, the ADA requires a focus on what people can do, not how they are perceived. Under the ADA's three-prong definition of disability an individual may either: a) have a physical or mental impairment that substantially limits one or more major life activities b) have a record of such an impairment, or c) being regarded as having such an impairment. In this case, Ms. Robichaud was regarded as having an impairment because of her facial disfigurement despite the fact that her condition did not pose any functional limitations. This case has not yet been decided.



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(510) 285-5600 (V/TTY);
(510) 285-5614 (Fax);
adatech@pdbtac.com

Or Write:

Pacific ADA & IT Center
Pacific DBTAC
555 12th Street, Suite 1030
Oakland, CA 94607-4046

www.pacdbtac.org

email: adatech@pdbtac.com

Worker with Bipolar Disorder Files Employment Discrimination Lawsuit

In *EEOC v. Voss Electric Company* (March 20, 2003) a settlement of a disability discrimination lawsuit was announced on behalf of a former worker with bipolar disorder.

In its lawsuit, the EEOC alleged Voss, a distributor of commercial lighting products, violated the Americans with Disabilities Act of 1990 (ADA) by terminating a long-time employee of its Oklahoma City facility who needed in-patient care due to bipolar disorder, a psychiatric disability. Rather than allow the employee the additional time off recommended by his physicians, Voss fired him by taping a termination letter to the front door of his home, the EEOC said in the suit.

The court ruled that the EEOC had submitted evidence that the former employee's mental illness, at the time of his termination, severely impaired a number of his major life activities, including thinking, interacting with others, communicating with others, and the ability to take care of himself, according to the EEOC. Voss then argued that, at the time of his termination, the former employee was unable to perform the essential functions of his job.

The court, however, ruled that a jury should determine whether the employee was entitled to a reasonable medical leave to enable him to recover sufficiently to return to his former position. After the court's ruling, the parties reached an agreement embodied in a consent decree approved and signed by the court.



California District Court Rules AMC's Stadium-Style Theaters Discriminate Against Patrons Who Use Wheelchairs

The U.S. District Court for the Central District of California ruled in *U.S. v. AMC Entertainment, Inc.*, that the American MultiCinema, Inc., (AMC) movie theater chain violated the ADA by providing accessible seating only in the front rows on the sloped floor of its new stadium-style movie theaters. The Department sued the chain for denying equal access to persons with physical disabilities in over 80 stadium-style movie theater complexes nationwide. The court concluded that AMC violated the ADA by failing to provide its patrons who use wheelchairs with comparable lines of sight to the movie screen. The court held that, while AMC publicizes its stadium-style seating as providing enhanced, unobstructed lines of sight, patrons who use wheelchairs are excluded from the stadium seating section in the vast majority of AMC's stadium-style theaters and instead are left to sit in the few rows of seating on the sloped-floor closest to the screen. These seats are less popular, offer poor views of the screen, and isolate persons who use wheelchairs from the rest of the movie audience. Other issues remain before the court, including how to remedy the line of sight violations and whether the theaters contain other ADA violations that do not involve line of sight issues, such as protruding objects and the lack of accessible auditorium ramps and signage.

EEOC Reaches Voluntary Settlement for Disability Bias in Agricultural Industry

In *U.S. Equal Employment Opportunity Commission v. ConAgra Foods, Inc.* the EEOC announced a conciliation agreement reached with the Nebraska-based foods company with \$27 billion in annual sales. This resolves complaints filed with the EEOC alleging disability discrimination at an onion and garlic dehydration plant in King City, CA. The federal investigation found that workers were denied hire, in violation of the Americans with Disabilities Act (ADA). Providing compensation and job offers for thirty-nine workers, today's agreement is the largest disability settlement ever for the EEOC in the agricultural industry. In addition to the monetary benefits and job offers, ConAgra has

committed to ADA training for all its management staff and posting notices about the agreement for a year.

In July 1999, the Teamsters Local 890 led a strike of 750 workers at 800-worker plant in King City, then owned by Basic Vegetable Products, LP. In November 2000, ConAgra bought the facility, and in August 2001, it successfully negotiated with the union to end the two-year strike with a new contract that would recall workers based on seniority. However, the recall process excluded people who were on leave at the time of the purchase including those out due to work injury or pregnancy. Others were denied jobs due to a history of previous injury or illness, even though they had been doing the work for years and had no restrictions against returning to work.

Sidewalk Access Covered under Title II of the ADA

The U.S. Supreme Court let stand on June 27, 2003 a ruling that the City of Sacramento must make all public sidewalks accessible to Americans with disabilities under a federal anti-discrimination law. Without any comment, the high court rejected an appeal by Sacramento, which had asked the court to overturn a ruling that city sidewalks were covered by the Americans with Disabilities Act of 1990 and therefore have to be accessible.

Sacramento argued the ruling by a U.S. appeals court in California imposed a "staggering" financial burden on thousands of state and local governments. The U.S. Justice Department urged the high court to reject the city's appeal, arguing that the law covered public sidewalks.

The lawsuit said the city of Sacramento was required to alter and even rebuild its sidewalks to widen them. It also asked that the city remove such obstacles as benches, fire hydrants, newspaper racks, mailboxes, trees and utility, traffic signal and telephone poles. It additionally asked the city to get rid of roots and other protruding objects and to make sure sidewalks were level.

A federal judge sided with the city. But the appeals court disagreed and ruled sidewalks were clearly covered by the law. If sidewalks qualify as a public

continued on page 6

Continue from page 5

program, activity or service, then roads, bridges, buildings and other forms of physical infrastructure owned by state or municipal governments would be covered too, the city's lawyers said.

The Justice Department said the cost issue may be addressed in further hearings. Department lawyers said the appeals court held the city may present evidence in hearings before the federal judge that modifying its sidewalks would subject it to "undue financial and administrative burdens" so that it would be exempt under the law.

News Briefs Courtesy of the Department Of Justice

Insurance Company Provides Coverage to Person With Paraplegia — A California resident with paraplegia complained that a large insurance company denied him a supplemental life insurance policy because of his disability. The insurance company agreed to provide the supplemental coverage.

Arena Changes Ticketing Policy and Trains Staff — In California, a parent of an adolescent with Down Syndrome alleged that an entertainment facility refused to modify its ticketing policy that required persons with lottery-awarded wristbands to proceed unaccompanied to the ticket window to purchase their one allotted ticket. The arena modified its policy to allow persons with disabilities to be accompanied if needed. It also agreed to post the policy change on its web site and in its handout materials and to train its staff on the requirements of the ADA.

Hotel Adopts ADA Guidelines — In California, a person with mobility impairment complained that a hotel and conference center failed to provide the accessible room she had previously reserved. The hotel joined a national reservation system that eliminates the double booking of accessible rooms. The hotel also trained its staff on the ADA, developed an emergency evacuation plan for guests with disabilities, and agreed to make its guest transportation services accessible.



Accessible IT News

Beyond Web Accessibility: Technology Accessibility Policies in Higher Education

A growing number of institutions of higher education have developed Web accessibility policies, guidelines, and/or standards. Some use well-recognized standards and guidelines, such as those produced by the World Wide Web Consortium (W3C) or the federal Access Board in response to Section 508, while others have developed their own standards.

Web accessibility, however, is only one piece of the accessibility puzzle in higher education. A tremendous variety of electronic and information technology (E&IT) is utilized in today's postsecondary education environment, including information kiosks, computing labs, computer-assisted classrooms, and classrooms enhanced with other technologies such as interactive whiteboards, handheld wireless computers, display projectors, and countless other technologies. Often these technologies present access barriers to otherwise qualified students, faculty and/or staff.

Many access problems could be prevented, or at least minimized, if campus-wide proactive measures were established. These include effective strategic partnerships, institutional policy, and support and training. When the wide range of characteristics of potential students and instructors is considered in the design and purchase of E&IT resources, they are accessible to a broad audience; just as when architects consider a wide range of characteristics of potential visitors, they design buildings that can be used by everyone, including visitors who use wheelchairs and those who are blind. Designing inclusive environments that are accessible to everyone, with and without disabilities, minimizes the need for individual accommodations.

But, how can an institution begin the process of developing its policies, procedures, and guidelines/standards for assuring the development and purchase of accessible E&IT? Areas for consideration include:



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Continued on page 7

Continue from page 6

- Designate a person or department to be responsible for coordinating the development of, updating of, and publicity for policies and procedures regarding accessible E&IT. Include all key stakeholders in the process.
- Review policies and guidelines that have been created by other organizations.
- Consult with legal experts to understand what legal requirements apply to your institution.
- Develop a campus-wide policy statement and guidelines for all electronic and information technology used in, purchased by, and developed by the institution. Disseminate accessibility policy and guidelines throughout the organization.
- Provide regular training and support regarding accessibility of E&IT.
- Regularly evaluate progress toward accessibility.

Some states have implemented E&IT accessibility policies, including Minnesota, New York, North Carolina and Texas. Also, the World Wide Web Consortium (W3C) maintains an international list of policies, which includes U.S. state policies. In some cases, state policies may also cover state educational entities.

New Available Training on Section 508

The U.S. Access Board, the federal agency that authored the standards for



accessibility of electronic and information technology under section 508 of the Rehabilitation Act, is developing a series of interactive web-based tutorials on different sections of the standards. These tutorials provide advanced guidance on how IT products can conform to the Section 508 standards. Upcoming tutorials include:

- software applications and operating systems
- desktop and portable computers

- self contained, closed products, such as information kiosks
- calculators
- fax machines

These courses will be available as part of the on-line "508 Universe" program, available on the website of the Federal Information Technology Accessibility Initiative, at <http://www.section508.gov>. This website also provides a user-friendly introduction to the law, information on buying compliant products, and previously released courses on designing accessible websites and accessible video and multimedia.

Pacific DBTAC Staff:

Executive Director

Erica C. Jones

Technical Assistance Specialist

Joanna Fraguli

David Hass

Denise Thompson

Accessible IT Coordinator

Stewart Hersey

IT Specialist

Allison Wong

Administrative Assistant

Lori Ruth

Linda Speed

Clerk

Khadija Washington

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Materials Available from Pacific ADA and IT Center

Title I

- Reasonable Accommodations under the ADA
- Inquiries and Medical Examinations
- FMLA, the ADA and Title VII

Title II

- ADA Guide for Small Towns
- The ADA and City Governments Common Problems
- ADA and Law Enforcement

Title III

- Guide for Small Businesses
- Service Animals
- Department of Justice - ADA Technical Assistance CD-ROM



Please call 1-800-949-4232 for pricing

For a copy of these documents, contact Pacific DBTAC at 1-800-949-4232 (V&TTY)

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