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## Talent for a Winning Team! National Disability Awareness Month

The official theme for the National Disability Employment Awareness Month, observed nationwide in October, has been conceptualized and announced by the U.S. Secretary of Labor, Elaine L. Chao. According to Chao, the 2007 theme, "Workers with Disabilities: Talent for a Winning Team," reflects the main objectives of the U.S. President's "New Freedom Initiative." The President's Initiative promotes the integration of people with disabilities, a rich source of skill, talent, and ambition, into all aspects of community life, and focuses particular attention on increasing their representation in the workforce.

Based on congressional designation, the nation commemorates National Disability Employment Awareness every October. The activities for heightening consciousness of this month's campaign are led by the Office of Disability Employment Policy (ODEP) under the Department of Labor Office.

During the announcement of the official theme, Roy Grizzard, ODEP's past Assistant Secretary of Labor, elaborated that "America's employers benefit when they provide opportunities for Americans with disabilities to work. A winning team will include people with disabilities."

*"I call on all Americans to celebrate the vital contributions of individuals with disabilities... to give all our citizens the opportunity to live with dignity, work productively, and achieve their dreams."*

**- George W. Bush, July 26th, 2007**

## Americans With Disabilities Act Sees Possible Restoration After Seventeen Years

On July 26, 1990, the ADA was signed into law. Its purpose was to establish a national civil rights act intended to eliminate discriminatory practices in employment, private businesses and operations of state and local governments based on the presence, perception or association of a disability. The objective has been to increase participation of people with disabilities in the broader society. Decisions by the Supreme Court, the advent of the Internet, technological changes and advancements in medicine have all contributed to a widening gap of equal access in the original intent of the ADA.

The ADA Restoration Act of 2007 is bi-partisan legislation that means to restore the initial meaning of the ADA, ensuring that being “not disabled enough” no longer hampers the lives of people with varying degrees of disability.

House Majority Leader Steny H. Hoyer has pointed out that this Act will restore the original intent of the ADA by such things as amending the definition of disability and revising the standard whether someone receives protection under the law based on mitigating measures -- such as

eyeglasses or medication -- when determining who is and is not “qualified.”

The language change in the ADA Restoration Act removes the hurdle of people claiming discrimination having to first prove the degree of disability, thus allowing the discrimination claim to be heard and not being granted consideration because the claimant failed to demonstrate that the law covered them. “The Supreme Court’s interpretation has created a vicious circle for Americans with disabilities,” said Congressman Jim Sensenbrenner, co-sponsor of the Act. “It has created a broad range of people who benefit from ‘mitigating measures’ such as improvements in medicine, who still experience discrimination from employers, yet have been labeled ‘not disabled enough’ to gain the protections of the ADA. This is unacceptable.”

This past July, current President George Bush stated “On the anniversary of the Americans with Disabilities Act, we celebrate our progress towards an America where individuals with disabilities are recognized for their talents and contributions to our society ... I call on all Americans to celebrate the vital contributions of individuals with disabilities as we work towards fulfilling the promise of the ADA to give all our citizens the opportunity to live with dignity, work productively, and achieve their dreams.”

## Justice Department Reaches Settlement with YMCA Childcare Centers Over Policies Relating to Children with Autism

WASHINGTON – On August 6th the Justice Department announced a settlement agreement with the West End YMCA, headquartered in Ontario, Calif., that resolves an investigation into alleged discrimination under the Americans with Disabilities Act (ADA). The agreement covers associated YMCA branches in Ontario, Chino, Upland, and Rancho Cucamonga, California.

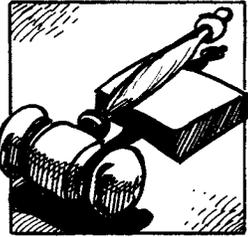
The underlying complaint filed with the Justice Department alleged that the West End YMCA terminated a child from its after-school childcare program because the child has autism. Under the agreement, the West End YMCA will implement policies and procedures to ensure that children with disabilities are afforded a full and equal opportunity to participate in and benefit from YMCA childcare programs. Procedures for requesting reasonable modifications to the childcare program will be published in the organization’s parent handbooks, and YMCA staff involved in childcare

decisions will be trained on ADA obligations in the childcare setting. The West End YMCA also agreed to pay monetary damages to the complainant.

“Ensuring that children with disabilities, and their families, have equal access to reliable childcare goes to the heart of the ADA’s promises and protections,” said Wan J. Kim, Assistant Attorney General for the Civil Rights Division. “I commend the West End YMCA for working with us, and I hope that this agreement will be a model for other childcare providers.”

Under Title III of the ADA, private childcare providers are prohibited from discriminating on the basis of disability, and must make reasonable modifications to policies, practices and procedures to afford individuals with disabilities the opportunity to participate and benefit from the childcare services.





## Ruling Helps Parents of Disabled Children

In May 2007, a Supreme Court decision gave parents of children with disabilities the right to go to court

without an attorney to challenge their school district's individualized plan for their child's education.

The 7-2 decision involved an interpretation of the federal law that gives all children the right to a "free appropriate public education," regardless of disability. Millions of children receive benefits under the law, the Individuals with Disabilities Education Act. Most federal appeals courts have ruled that when a dispute brings families and school districts into court, the parents cannot proceed without an attorney.

The court's analysis, in a majority opinion by Justice Anthony Kennedy, was based on the conclusion that the statute guarantees rights not only to children, but also to their parents.

## HOSPITALITY UPDATE

### DOJ Settlements Will Ensure Accessibility of Casino Resorts in Las Vegas and Mississippi

The U.S. Department of Justice announced two comprehensive settlements with casino resorts under the Americans with Disabilities Act (ADA). Under the settlement agreements, each casino resort has agreed to ensure that its facility complies with the new construction standards of the ADA.

Settlement agreement: U.S.A. and Mandalay Corporation, resolves a compliance review of the Mandalay Bay Casino Resort in Las Vegas, Nevada.

Settlement agreement: U.S.A and Circus Circus Mississippi Inc., settles a complaint against the Gold Strike Casino Resort in Tunica, Mississippi.



UNITED STATES ACCESS BOARD

## Public Provides Input on Updated Guidelines for Buses and Vans

The Board released for public comment a preliminary draft of revisions updating its accessibility guidelines for buses and vans covered by the Americans with Disabilities Act (ADA). In response, vehicle manufacturers, transit operators, trade associations, consumers, disability groups, and others provided feedback on the draft changes. By the close of the comment period, the Board received approximately 80 comments by email, mail, and fax. The Board will use this input to refine the draft.

The released draft includes revisions to bring the guidelines, which were first published in 1991, up-to-date. Changes include the addition of provisions for new or variant forms of service, such as bus rapid transit. In addition, the Board is revisiting various specifications, such as minimum space requirements for

wheelchairs, due to the increasing diversity of mobility aids now on the market.

The Board will also issue draft updates of other sections of the vehicle guidelines, which, in addition to buses and vans, cover rail cars, trams, and other modes of transportation. The input received on the recent and upcoming drafts will be used to prepare an official proposal, which will also be made available for comment.

For further information, contact Dennis Cannon at [cannon@access-board.gov](mailto:cannon@access-board.gov), (202) 272-0015 (v), or (202) 272-0082 (TTY).

## NCD UPDATE

### 2 New reports from NCD

At its summer quarterly board meeting, the National Council on Disability (NCD) released two reports. *The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA* report describes a two-year retrospective study and review of the impact the ADA has had on the lives of Americans with disabilities over the past sixteen years, with particular focus on the four major goals of

the ADA-equality of opportunity, full participation, independent living, and economic self-sufficiency.

The second report, *Implementation of the Americans with Disabilities Act: Challenges, Best Practices, and New Opportunities for Success* reflects the experiences and ideas of ADA stakeholders from around the country, including small and large businesses, employers, judges and legal professionals, governmental entities, and individuals with disabilities, concerning ADA implementation. Through this extensive stakeholder input, NCD learned of the many strategies for ADA implementation that have been successful, as well as obstacles that are preventing ADA implementation. For further information or to see the reports in full, go to [www.ncd.gov](http://www.ncd.gov).

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## National Council on Disability Selects California's Mike Collins as its Executive Director

The National Council on Disability (NCD) Announced that Michael C. Collins of Sacramento, California, would become NCD's new executive director.

NCD is an independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. It is composed of 15 members who are appointed by the President and confirmed by the U.S. Senate.

Mr. Collins was the first executive director of the California State Independent Living Council, which was created in 1997, and comes to NCD from this position. He is a long-time disability advocate who is very familiar with disability and long-term care-



related programs and services, the wide variety of disability civil rights laws, and vocational rehabilitation practices and regulations at the federal and state levels. Mr. Collins is also very familiar with the concerns and characteristics of people with all types of disabilities, as a peer, consultant, trainer, and through administration of a statewide agency addressing their needs on a daily basis.

Mr. Collins was a key participant in California's efforts to implement changes in state policies resulting from the Supreme Court's Olmstead decision that has increased the demand for community-based services. He is an expert in emergency preparedness and homeland security for people with disabilities and is active at local, state, and national levels.

For more information, please contact NCD's Director of Communications, Mark S. Quigley, at [mquigley@ncd.gov](mailto:mquigley@ncd.gov) or by telephone at 202-272-2004 (V), 202-272-2074 (TTY).

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## Amazon.com and National Federation of the Blind Join Forces to Develop and Promote Web Accessibility

The National Federation of the Blind (NFB) and Amazon.com announced that they have agreed to work together to promote and improve technology that enables blind people to access and use the World Wide Web. In a cooperative agreement, Amazon.com pledged its commitment to continue improving the accessibility of its Web site platform, while the NFB committed to contribute its expertise in Web accessibility technologies to help further Amazon.com's efforts.

Marc Maurer, President of the National Federation of the

### IT UPDATE

Blind, stated, "We look forward to working with the developers at Amazon.com, the leader in innovation in online retail, to perfect techniques and technologies that will make the Internet more accessible for users of assistive technology. We are pleased that an industry leader like Amazon.com is committed to full and equal access for the blind on its Web sites and throughout the e-commerce industry. This cooperative agreement demonstrates to the world that the blind are eager to work with leading Internet companies to improve the online experience for everyone, and also that access for the blind goes hand in hand with continued innovation in Internet technology."

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## Accessible Technology Initiative Under Way

The California State University system, including Cal State Long Beach, is undertaking the Accessible Technology Initiative (ATI) to comply with federal and state laws ensuring that individuals with disabilities can obtain classroom and administrative information provided via information technology as well as conventional printed materials.

The CSU Chancellor's Office ATI Web site ([www.calstate.edu/accessibility](http://www.calstate.edu/accessibility)) includes information about the initiative's requirements, timelines, and resources.

The CSU system's ATI has three major priorities:

**Priority One:** *Web Accessibility (Administrative)*

**Priority Two:** *Instructional Materials Accessibility*

**Priority Three:** *Accessible Electronic and Information Technology (E&IT) Procurement*

For more information about the previously mentioned ATI priorities, requirements, timelines, and resources, please visit [www.calstate.edu/accessibility](http://www.calstate.edu/accessibility)

# Hotels.com Sued for Violating The Unruh Act

In a class-action lawsuit filed in Alameda County Superior Court, Judith Smith of Oakland and Bonnie Lewkowicz of Berkeley, both of whom use wheelchairs and helped found the Axis Dance Company in Oakland, said Hotels.com treats accessibility as an optional "amenity," such as a king-size bed or a room with a view. Despite making reservations online and contacting Hotels.com's customer care representatives, the women found that wheelchair-accessible rooms aren't guaranteed, the lawsuit says. Smith and Lewkowicz use wheelchairs and tour the state and country as part of a troupe of dancers with and without disabilities.

"Thus, if an individual who depends on a wheelchair or other assistive device makes a reservation through Hotels.com, she runs a real risk that -- despite having prepaid for the room and made the reservation well in advance -- she will literally not be able to enter or use the room once she arrives at the hotel," according to the suit.

The suit seeks class-action certification and an injunction requiring Hotels.com to modify its policies and practices so that it will guarantee reservations for accessible hotel rooms.

In a statement Hotels.com, a subsidiary of Expedia.com of Bellevue, Wash., said, "We are aware that a lawsuit has been filed. As of this time, we have not been served or reviewed a complaint and cannot provide comment."

The suit could have nationwide implications for the online consumer travel industry, which generated \$79 billion last year, said Sid Wolinsky, an attorney with Disability Rights Advocates in Berkeley, which filed the complaint with a private firm and Public Justice of Oakland.

"If people with disabilities can't use the Internet, they miss out on every possible economic opportunity," said Wolinsky, who noted that no damages are sought in the suit. "This should be a no-brainer for Hotels.com because there's a huge market of people with disabilities who want to travel just like everybody else."

The complaint alleges violation of state laws protecting the disabled and the Unruh Civil Rights Act, which prohibits businesses from discriminating against their customers on a variety of grounds.



## REGIONAL NEWS

## California

### Damages Awardable For Unruh Act Violation Without Showing of Intentional Discrimination

Title III of the Americans With Disabilities Act prohibits discrimination against people with disabilities in places of public accommodation. In 1992, the Unruh Act (California Civil Code section 51 et seq.) was amended to include language that a violation of the ADA also constitutes a violation of the Unruh Act. The Unruh Act provides for a minimum of \$4,000 in damages per violation. This case considers the question whether a plaintiff can obtain damages under the Unruh Act for violations of the ADA without a showing of intentional discrimination.

The case is *Wilson v. Haria and Gogri Corp.* Plaintiff Ronald Wilson, age 70, suffered from a number of physical difficulties, which required Wilson to use a cane or wheelchair for mobility. During 2005-2006, Mr. Wilson frequented a Jack-In-The-Box restaurant owned by Defendants Haria and Gogri Corporation. During his many visits, Mr. Wilson alleged that there were several architectural barriers in place that prevented him from enjoying full and equal use of the restaurant.

Relying on a recent California Appellate case, *Gunther v. Lin* (2006) 144 Cal. App. 4th 223, the Defendant argued that the Plaintiff was required to establish proof of intent to discriminate to recover damages under the Unruh Act.

The Wilson court concluded that the Gunther court's reasoning was flawed and that it was not bound to follow it. Looking to the language of the Unruh Act and the Legislative history, the court held that the Legislature intended to include unintentional discrimination within the scope of the Unruh Act. Further, the California Supreme Court has also held that the Unruh Act must be interpreted in the broadest sense possible in order to banish discriminatory practices. The Court, therefore, concluded that a plaintiff may obtain damages without a showing of intent to discriminate. The Plaintiff's motion for summary judgment was granted as to the ADA claim and the Unruh Act claim.

ADA  HOTLINE

**800.949.4232**  
Call Monday through Friday  
8:00 am - 5:00 pm PST

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## Judge rules against Riverside in disabilities lawsuit

U.S. District Judge Stephen G. Larson said Riverside must repair 189 curb ramps and sidewalk segments and pay \$221,000 in damages to a disabled activist who sued the city 10 years ago.

Larson ordered the city to complete the work in four months.

The judge's decision is the latest action in the lawsuit filed in 1997 by Riverside resident John Lonberg, who has used a wheelchair after he was paralyzed by a drunken driver.

John Lonberg of Riverside points out a non-compliant curb in

front of Riverside City Hall. The 10 percent grade of the curb exceeds the 2 percent limit, causing him to have to turn his wheelchair backwards in order to be able to access the sidewalk from the street without catching the front end of the chair on the curb.

Larson noted in his decision that Lonberg took measurements and made photographs of each of the 189 spots identified in his lawsuit as violating the construction standards of the ADA.

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## Update to California's Certified Access Specialist Program (CASP)

Senate Bill 262 authorizes "the State Architect to establish and publicize a program for state certification of access specialist." This legislation required the Division of the State Architect (DSA) to publish a list of certified access specialists no later than October 31 of each year. The purpose of the Voluntary Certified Access Specialist Program is to establish a state body for voluntary certification of

competence as a Certified Access Specialist. The program is designed to ensure that the individuals participating in this certification program are knowledgeable with state and federal accessibility laws and regulations and possess the expertise to promote access to facilities for persons with disabilities. DSA proposes to adopt regulations that would implement the CASP program.

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## Oakland Sued For Failure To Include People With Disabilities In Disaster Planning

The Disability Rights Advocates (DRA) filed a lawsuit against the City of Oakland to address the city's failure to adequately plan to meet the mass care and shelter needs of people with disabilities in an emergency. The suit highlights a national problem, and one made especially evident during Hurricanes Katrina and Rita, which people with disabilities had their lives put at risk because of a lack of planning for this vulnerable population. The case is the first of its kind in the country.

Plaintiffs – the California Foundation for Independent Living Centers (CFILC), Californians for Disability Rights, Inc. (CDR), and Marian Gray (an Oakland taxpayer) – charge that the City of Oakland has violated federal and state civil rights laws designed to provide people with disabilities equal access to emergency shelter services. Plaintiffs are seeking only injunctive relief.

### The City's violations include:

- The failure to conduct adequate surveys of the accessibility of potential shelter sites, resulting in a list that contains many inaccessible shelters;
- The failure to revise the City's Mass Care and Shelter Plan from the 1980s to address the needs of men, women, and children with disabilities;
- The failure to make arrangements to provide prescriptions, medical supplies and equipment, or accessible transportation to people with disabilities in an emergency.

The City of Oakland is particularly disaster prone and susceptible to a variety of emergencies, including earthquakes, fires, landslides, and terrorist attacks. Since 1983, the City of Oakland has experienced eight Presidential-declared disasters, including the 1989 Loma Prieta earthquake, 1991 Oakland Hills Firestorm, the 1997 El Nino winter storms, and the 1998 La Nina winter storms. United States Geological Survey scientists have concluded that there is a 62% probability of one or more major earthquakes (magnitude 6.7 or greater) striking the Bay Area between the years 2003 and 2032.

The 2000 United States Census estimated that 23% of Oakland's population is disabled. As such, over 84,000 Oakland residents may not receive the emergency shelter services they need during an emergency.

## Arizona

### Update: Arizona Minimum Wage Act and Activities Performed By Individuals With Disabilities

In the last issue of the Pacific Update, we reported on Arizona's new minimum wage law and its potential impact on sheltered work. Unlike competitive employment, where the individual must be able to perform the essential functions of the position with or without a reasonable accommodation, the compensation received under sheltered work is commensurate with performance and many times designed primarily for the benefit of the individual rather than the employer. The article explained that the increase in AZ minimum wage to \$6.75 that went into effect January 1, 2007 did not contain a provision for sheltered work, potentially obligating employers that sponsor sheltered work programs to compensate workers for work not performed.

Subsequently, the Industrial Commission of Arizona has issued a policy statement after a review of sheltered work activities performed by individuals with disabilities to determine if those individuals meet the definition of "employee" under the Arizona Minimum Wage Act. Through its review of US Supreme Court decisions pertaining to the Federal Labor Standards Act (FLSA), the commission holds that if the principal purpose of the relationship between employer and individual is to benefit the individual performing the work (for personal, pleasurable, rehabilitative or other purposes) then the individual is not considered an employee subject to minimum wage, however, if the principal purpose of the relationship was for the benefit of the employer, then the individual would be considered an employee and be covered by the Arizona wage law.

## Hawaii

### Hawaii Establishes Requirements for Providing Alternative Communication in State Programs

In July, the state of Hawaii, Department of Health amended Chapter 11-218 of the Hawaii Administrative Rules.

The purpose of this amendment was to update guidelines for providing effective communication to people with disabilities in programs and activities of state departments and agencies. The amendments establish guidelines for communicating effectively with individuals who have disabilities impairing their communication. The new chapter establishes guidelines, definitions, qualification standards and credentials of providers, recommended fee schedules and the rights of consumers to receive effective communication. For further information contact the Disability and Communication Access Board at (808) 586-8121 or online at <http://www.hawaii.gov/health/dcab/home/>.

## Nevada

### Limited Nevada School Voucher Proposal Approved

The Nevada State Senate voted unanimously Wednesday for a limited voucher measure that would allow special education students to attend private schools.

SB158, introduced by Sen. Barbara Cegavske, R-Las Vegas, now moves to the state Assembly for final legislative action.

In earlier testimony, Cegavske said her "special needs scholarship" bill would allow children with individualized education programs to enroll in private schools and public schools other than those that they are zoned to attend.

Cegavske said children with special needs require a higher degree of individualized attention than students in regular education programs, so it's preferable to provide the widest array of options to special needs students when selecting a school.

Under SB158, the Department of Education would administer the program. The agency would be responsible for granting, revoking and certifying the eligibility of the participating schools. The eligible school chosen by the parents would get the proportionate cost of the public funding to provide instruction to the child.

## Pacific Basin

### ADA compliance improvements made at Saipan, CNMI Airport

The Commonwealth Port Authority (CPA) was approached by Pacific Development Incorporated Yoichi Matsumura, requesting CPA's assistance with their disabled passengers.

Matsumura explained that they possess a specially equipped bus that transports disabled passengers that use wheelchairs. However, there is no designated loading or unloading zone for this bus at the higher bus parking area located at the international airport terminal.

After planning between CPA's Engineering and Maintenance departments, a layout was prepared and the maintenance department quickly began the necessary work. In one week, the new designated parking for a vehicle carrying disabled passengers was completed.

This project, as well as other ongoing improvements at the Saipan International Airport, shows how dedicated and committed the Commonwealth Port Authority is to improving the traveling public's experience in the CNMI.

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This newsletter is also available in large print, audiotape, and computer disk formats.

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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**
- **Poster: Service Animals**
- **Poster: Vital Signs**
- **Poster: Sign Language Basics**
- **Poster: Signs of Hospitality**



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