



PACIFIC UPDATE

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EEOC accepting public comment on new regulations



The U.S. Equal Employment Opportunity Commission (EEOC) issued a Notice of Proposed Rulemaking (NPRM) revising the ADA employment provision of the ADA.

The NPRM is open for public comment for 60 days following its publication in the Federal Register on September 23, 2009. Comments must be submitted on or before November 23, 2009. The EEOC is requesting public comment on how best to regulate the newly passed ADA Amendments Act (ADAAA) of 2008. The EEOC encourages the public to offer its views and suggestions. The Commission has also issued a question and answer guide on the NPRM.

A brief overview of the ADAAA:

- directs EEOC to revise that portion of its regulations defining the term “substantially limits”;
- expands the definition of “major life activities” by including two non-exhaustive lists:
- the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
- the second list includes major bodily functions (e.g., “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions”);
- states that mitigating measures other than “ordinary eyeglasses or contact lenses” shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- changes the definition of “regarded as” so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is “regarded as” disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor;
- provides that individuals covered only under the “regarded as” prong are not entitled to reasonable accommodation.

EEOC will be evaluating the impact of these changes on its enforcement guidance and other publications addressing the ADA. For further information on this Q & A guide or assistance with filling comments contact the Pacific ADA Center at 1 (800) 949-4232. - <http://www.eeoc.gov/ada/>

Rep. Ed Markey Introduces 21st Century Communications & Video Accessibility Act of 2009

Before Congress adjourned on June 26, Rep. Ed Markey (D-MA) introduced the “21st Century Communications and Video Accessibility Act of 2009” (H.R. 3101). This comprehensive measure would modernize disability accessibility mandates in the Communications Act, bringing existing requirements up to date as TV and phone services connect via the Internet and use new digital and broadband technologies. - <http://www.coataccess.org/>

Tracking employment data on people with disabilities

Expectation + opportunity = full participation

Starting February 2009, the U.S. Department of Labor began issuing employment and unemployment data on people with disabilities. This information will assist the nation in understanding how changing labor market conditions affect Americans with disabilities. Although it is widely believed that this group typically faces a higher rate of unemployment than individuals without disabilities, official estimates were not available until now.

“Now that so many Americans are suffering job losses, there is a tremendous amount of attention being paid to employment problems and solutions affecting the general population. Americans with disabilities typically experience similar employment difficulties — even when there is a robust economy. The economic downturn may just exacerbate their struggle. These data will go far toward efforts to increase the employment of people with disabilities,” said John Davey, deputy assistant secretary for the department’s Office of Disability Employment Policy (ODEP).

ODEP is sponsoring the collection of these data by the department’s Bureau of Labor Statistics (BLS) using the Current Population Survey (CPS), which provides comprehensive information on the employment status of the civilian, non-institutional population 16 years of age and older. Six disability questions have been added to the CPS to satisfy a requirement specified in Executive Order 13078, signed by President Bill Clinton, to measure the employment status of people with disabilities on a timely basis.

BLS and ODEP will publish on their Web Sites at www.bls.gov/cps/cpsdisability.htm and www.dol.gov/odep, respectively — data on individuals with disabilities. The disability data to be released will be updated monthly.

ODEP is leading a 21st century federal response to the historic underemployment of people with disabilities. In collaboration with other government agencies, public and private employers, and additional stakeholders, ODEP facilitates the development and implementation of innovative policies and practices necessary to achieve a fully inclusive workplace. ODEP’s work primarily falls into three categories: employers and the workplace, workforce systems, and employment-related supports, which include education and training, health care, reliable transportation, affordable housing and assistive technology.
- <http://www.dol.gov/odep/>

The U.S. Department of Labor announced “Expectation + Opportunity = Full Participation” as the official theme for October’s National Disability Employment Awareness Month. It is intended to urge employers, as they seek to fill positions, to embrace the richness of America’s diversity by considering

the talents of all workers, including workers with disabilities.

This year’s theme emphasizes the vision of the Labor Department’s Office of Disability Employment Policy (ODEP): a world in which people with disabilities have unlimited employment opportunities. Early selection of an annual theme for upcoming National Disability Employment Awareness Month helps the private sector; federal, state and local governments; and advocacy organizations plan events and programs that showcase the abilities and skills of job seekers

and working Americans who have disabilities.

ODEP is the nation’s first assistant secretary-led office that addresses policies that impact upon the employment of people with disabilities. The office provides national leadership on disability employment policy by developing and influencing the use of evidence-based disability employment policies and practices, building collaborative partnerships, and delivering authoritative and credible data on the employment of people with disabilities.

As background for National Disability Employment Awareness Month, Public Law 176, enacted by Congress in 1945, designated the first week in October as “National Employ the Physically Handicapped Week.” President Harry S. Truman designated the (now former) President’s Committee on Employment of People with Disabilities to carry out the law. Congress changed the name to “National Disability Employment Awareness Month” in 1988. The responsibility for leading the nationwide recognition was transferred to the newly created ODEP in 2001.

- <http://www.dol.gov/odep/>



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DOJ Files Employment Discrimination Lawsuit

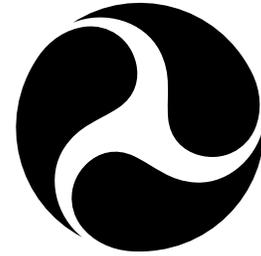
The Justice Department filed a lawsuit in federal court in Los Angeles charging Ventura County, California, with discrimination in its employment practices by refusing to hire a qualified applicant because she is deaf.

The applicant for a children's social services position was given high ratings during her initial interview where the questions were standardized and job-related. Following a second interview conducted by different staff whose questions focused on the applicant's deafness, she was not hired. At the time of her application, she had worked in the same capacity for Los Angeles County for more than eight years and had excelled in her position.

"The Americans with Disabilities Act was enacted to protect individuals with disabilities from exactly this kind of discrimination. The ADA prohibits employers from making hiring decisions based on stereotypes and unfounded assumptions about how a deaf employee will perform the job, or about the costs involved in providing reasonable accommodations for a deaf employee," said Loretta King, Acting Assistant Attorney General for the Civil Rights Division. "The Civil Rights Division is committed to protecting the promise of equal employment opportunities for all individuals with disabilities."

Title I of the ADA prohibits employers, such as Ventura County, from discriminating against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement or discharge of employees; employee compensation; job training; and other terms, conditions and privileges of employment. An employer may not deny employment opportunities to a job applicant or employee who is otherwise qualified if the denial is based on the need to make reasonable accommodations for the applicant or employee.

- www.usdoj.gov



U.S. Department of Transportation

DOT Update to Airline Travel

The Department of Transportation issued an update to its regulations implementing the Air Carrier Access Act on May 13, 2009. The regulations were updated to incorporate changes in business practices. They have also been reorganized and renumbered. These new regulations now address almost every accessibility issue that a passenger with a disability may face on board the aircraft and in an airport. The updated ACAA regulations became effective May 13, 2009.

Key changes include:

- The new regulations apply to both U.S. and foreign carriers
- New requirements for airport and aircraft accessibility and changes in airport services including reservations, facilities, in flight and aircraft acquisitions
- 48 hour notification and changes requirements for passengers who use respiratory assistive devices
- How airlines must provide effective communication for passengers who are deaf or hard-of hearing
- 48 hour notification that a customer is bringing an emotional support animal or psychiatric service animal on board the aircraft

Keep up to date with news that you can use and updates from the Pacific ADA Center, sign up for our e-mail updates at www.adapacific.org

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FEDERAL UPDATES

ACTIVE RULEMAKING

The U.S. Access Board continues to make progress on guidelines; it is developing or updating in a variety of areas. The Board approved the text of final guidelines for Federal outdoor developed areas and the text of proposed guidelines for accessible public rights-of-way. The Board will proceed with the remaining steps that must be completed before these guidelines can be published, including adding figures and advisory notes, drafting companion discussions of the rules, and preparing cost impact assessments. At the same time, work will proceed on several other rulemaking initiatives. Further information on the Board's efforts include:

- **Final Guidelines for Federal Outdoor Developed Areas:** The guidelines for outdoor developed areas will cover access to trails, beach access routes, and picnic and camping areas on sites managed by the Federal government. They will address how, and to what extent, access can be achieved in light of challenges and constraints posed by terrain, the degree of development, construction practices and materials, and other factors. The Board is finalizing the guidelines based on input received from the public on a proposed version published in 2007. In response to the proposed guidelines, the Board received comments from Federal Land Management Agencies, professional and trade groups, individuals with disabilities, disability groups, trail and park operators and designers, and state, and local parks, and recreation agencies. The comments addressed all sections of the proposed guidelines, including provisions covering trails and outdoor recreation access routes, beach access routes, picnic areas, and camp sites, and called attention to compliance concerns and areas where further guidance is needed.



- **Proposed Guidelines for Public Rights-of-Way:** The Board's guidelines for public rights-of-way will cover access to sidewalks and streets, including street crossings, access for pedestrians with vision impairments, on-street parking, and constraints posed by terrain and space limitations, among other topics. The Board previously released drafts of the guidelines for public input but must follow up with an official proposal and comment period before the guidelines can be finalized. In addition to the feedback received on earlier drafts, the upcoming proposal will incorporate information gained through close coordination with counterpart agencies and research on rights-of-way issues the Board has sponsored or promoted. The proposed guidelines also will be responsive to issues further identified through the Board's extensive outreach and training program on rights-of-way accessibility.

- **Other Rulemaking Initiatives:** Other Access Board rulemaking efforts include new guidelines for passenger vessels, updates to guidelines for transportation vehicles, and a joint refresh of the section 508 standards for electronic and information technology and guidelines for telecommunications products issued under the Telecommunications Act. In addition, the Board plans to develop supplements to its facility guidelines that will incorporate provisions specific to emergency transportable housing. Further information on these rulemakings is available on the Board's website at www.access-board.gov.

GUIDANCE ON ACCESSIBLE PEDESTRIAN SIGNALS



Product innovations and improved technologies have enhanced the accessibility of pedestrian signals now on the market. Low-volume audible signals and tactile features have been incorporated into the design of products to provide access to pedestrians with vision impairments more effectively. The industry standard, The Manual on Uniform Traffic Control Devices, includes specifications for accessible pedestrian signals which derive from recommendations developed by a former Board advisory panel, the Public Rights-of-Way Access Advisory Committee.

The Access Board has released new guidance on installing these types of pedestrian signals. "Common Problems Arising in the Installation of Accessible Pedestrian Signals" reviews access features of available products, including locator tones, audible and vibrotactile indicators of crossing cycles, and signal volume and explains important considerations in the placement and orientation of signal devices. The low-volume indicators of current products make proper installation essential in order for signals to be effective. The bulletin uses case studies and field evaluations to illustrate various installation 'do's and don'ts' in relation to common site conditions and factors.

- www.access-board.gov

FEDERAL UPDATES

NCD: New Federal Approach to Disability Policy

After 18 years of national civil rights protection, the disability community continues to struggle with quality of life issues. In a recent report the National Center on Disability (NCD) found that people with disabilities continue to be faced with lack of affordable, accessible housing; difficulty breaking into the job market; poor access to health care; access barriers to technology; and negative public attitudes about people with disabilities. The NCD report identifies 17 specific recommendations to address these and other pressing issues that detract from the quality of life and an equal opportunity to participate in society. For more information about the report or on the NCD please go to www.ncd.gov.



IT UPDATES



Google Book Project: Increase Access To Information

A proposed settlement between Google and book publishers and authors will allow anyone with access to the internet to access the world's great books without traveling to a few select libraries and universities. This project will give huge new advantages to individuals with disabilities in addition to other minority groups that have not had ready access to this information.

With the use of accessible web technologies, the proposed book deal will open up a huge number of new books to users with impairments. Wade Henderson, president and CEO of the Leadership Conference on Civil Rights states "We see access to knowledge as a civil right," and that "Information enables individuals to learn, to create and to pursue their dreams. Access to knowledge defines the meaning of equal opportunity in a democratic society." Further, the United States Student Association believes that education is a right, and should be accessible for any student regardless of their socioeconomic background and identity. For further information please contact the Pacific ADA Center at 1 (800) 949-4232.

Technology allows people with disabilities to text 911

People with limited speech or hearing will be able to send 911 text messages without special equipment or relay centers under new technology tested in Iowa that could eventually be rolled out nationwide. "The successful testing of text messaging to 911 from a wireless telephone is a tremendous emergency-services advancement for individuals who have sensory disabilities," said Richard Ray, chairman of the National Emergency Number Association Accessibility Committee (NENAAC).



It is the mission of the NENAC to develop and deliver training and other resources which will promote the professionalism and competency of its membership thereby enhancing our individual and collective ability to protect the lives and property of people with disabilities while adhering to principles of equal access to our governmental services.

- www.nena.org

California SB 1608

California law authorizes a person to sue a business owner for violations of the laws prohibiting discrimination against a person with a disability. Some view this as a legitimate form of advocacy and say such penalties are necessary to ensure businesses comply with federal and state law. In recent years, there have been an increasing amount of lawsuits filed against businesses asserting that violations of the ADA are preventing individuals with disabilities from accessing the offered goods and services. This increase in litigation and a desire to provide a more equitable resolution of potential violations has prompted the state legislature to enact a bi-partisan measure to promote increased ADA compliance through education and the formation of a disability access commission, with the complementary goal of reducing the need for litigation.

New legislation requires architects licensed in the state of California to complete education on disability access requirements in order to renew their licenses. This education will be overseen by the newly created Commission on Disability Access. The commission will also make reports and provide updates to the legislature.

This new legislation also enacted California's Construction-Related Accessibility Standards Compliance Act (Civil Code 55.51-55.54). The provision establishes a new program intended to facilitate increased accessibility and reduce litigation. A business receiving a certification of a state certified access specialist (CASp) will be entitled to a temporary stoppage to litigation in addition to an early evaluation conference to address the alleged violation.

Hawaii Court sets Higher Special Ed age limits

Federal Judge David Ezra has ruled that Hawaii public schools must provide special education services to students with disabilities until they become 22 years of age, rather than 20 as in the past. John P. Deller and Matthew C. Bassett of the Hawaii Disability Rights Center represented the Plaintiff, B.T., a 20 year-old man with autism. The Attorney General represented the Department of Education.

Since 1975, the DOE has terminated special education services at age 20, thus effectively ending public education for students with disabilities at that age. Students who are not disabled, however, have been allowed to attend school after reaching 20 by obtaining the permission of the school principal. In a 24-page opinion, Judge Ezra found that the DOE seems to have approved "every single overage general education student and barred almost every single overage special education student." What emerges, he wrote, "is a picture of blatant discrimination" in violation of two federal laws, the Individuals With Disabilities Education Act

(IDEA) and Section 504 of the Rehabilitation Act of 1973.

The Court went on to rule that "because Hawaii schools provide education through 21 years old for general education students, it must provide a FAPE for overage special education students" when the student's IEP team so recommends. The IEP team includes school officials and parents of disabled students. Disagreements may be resolved in proceedings before a hearings officer and by appeals to court.

It is not expected that all of Hawaii's special education students will remain in school until they are 22, but Ezra's decision will provide important benefits to hundreds with severe or moderate disabilities who have had to rely on adult programs in the past. Those programs are not as well funded, and they usually do not provide the same level of individualized service that is required by IDEA.

- <http://www.hawaiidisabilityrights.org>

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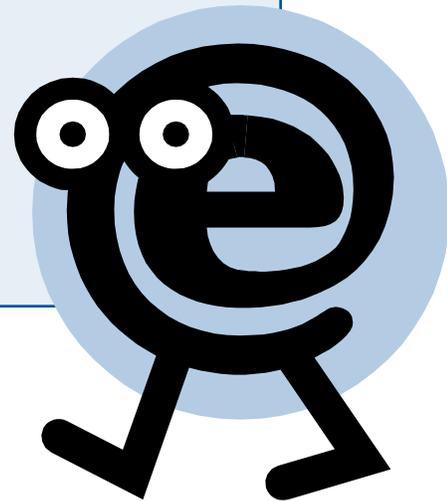
CENTER UPDATES

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- *www.adapacific.org - For more information about the Pacific ADA Center and our activities*
- *www.accessibletech.org - For tips and techniques on making technology accessible to people with disabilities*
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**EEOC - ADA-Compliant
Employer Preparedness For the H1N1 Flu Virus**

**US Access Board—Common Problems Arising
in the Installation of Accessible Pedestrian Signals**

Department of Justice series: Expanding Your market

- **DOJ - Maintaining Accessible Features in Retail Establishments**
- **DOJ - Maintaining Accessibility in Museums**
- **DOJ - Accessible Information Exchange: Meeting on a Level Playing Field**



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