



PACIFIC UPDATE

DBTAC - PACIFIC ADA CENTER

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

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Message from the Director of DBTAC Pacific ADA Center, Erica C. Jones



As we approach the 20th Anniversary of the Americans with Disabilities Act (ADA), let us all celebrate our collective accomplishments and acknowledge further work to be done. There have been great strides and hard work in many sectors, towns, town-

ships, and communities toward the implementation of the ADA. The month of July 2010 will be fulfilled with numerous ADA celebrations and acknowledgment for the most comprehensive civil rights law for persons with disabilities. Please plan an event in your community and feel free to adapt the following Proclamation to suit your needs.

WHEREAS, the Americans with Disabilities Act (ADA) was passed on July 26, 1990 to ensure the civil rights of citizens with disabilities and

WHEREAS, the United States of America affirms the principles of equality and inclusion for persons with disabilities as set forth and embodied in the ADA and

WHEREAS, numerous organizations and affiliates work with constituents and communities to bring forth the promise of hope and freedom that is envisioned by the passage of the ADA; and

WHEREAS, July 26, 2010 celebrates the 20th Anniversary of the Americans with Disabilities Act.

NOW THEREFORE, we do hereby extend greetings and best wishes to all observing July 26, 2010 as Americans with Disabilities Act Awareness Day.

As communities across the United States plan events to celebrate the progress made through the implementation of the ADA, the DBTAC-Pacific ADA Center would like to help publicize these celebrations. To list your event on our web site, www.adapacific.org, please contact us about your event by calling our 800 line 1-800-949-4232 (V/TTY) or, e-mail us at adatech@adapacific.org. By calling your event may be selected for one of four \$500 grants to support your celebration. Thank you for all you do in your community. Let's keep working toward a barrier free society.

Happy Birthday ADA! Best, **Erica**



E-book Settlement

The Justice Department announced separate agreements under the Americans with Disabilities Act (ADA) with Case Western Reserve University in Cleveland, Pace University in New York City and Reed College in Portland, Oregon, regarding the use in a classroom setting of electronic book readers.

Under the agreements the universities generally will not purchase, recommend or promote use of the Kindle DX, a hand-held technological device that simulates the experience of reading a book, unless the devices are fully accessible to students who are blind and have low vision. The universities agree that if they use dedicated electronic book readers, they will ensure that students with vision disabilities are able to access and acquire the same materials and information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

The agreements that the Justice Department reached with these universities extend beyond the Kindle DX to any dedicated electronic reading device. These agreements follow the Jan. 11, 2010 agreement between the Justice Department, Arizona State University, the National Federation of the Blind and the American Council of the Blind concerning the use of electronic book readers.

“Advancing technology is systematically changing the way universities approach education, but we must be sure that emerging technologies offer individuals with disabilities the same opportunities as other students. These agreements underscore the importance of full and equal educational opportunities for everyone.” said Assistant Attorney General Thomas E. Perez.

The terms of the Justice Department’s agreement with each university become effective at the end of the pilot projects a handful of Universities undertook in cooperation with Amazon.com Inc. to test classroom viability of the devices.

DOJ Publishes 3 New Amicus Briefs Re: Olmstead



The U.S. Department of Justice has added three amicus, or “friend of the court” briefs for Olmstead cases in Connecticut, Virginia, and New York .

The decision in Olmstead v. L.C., requires States to eliminate unnecessary segregation of persons with disabilities and to move persons who can function in the community out of segregated facilities.

The Olmstead decision has often been called the Brown v. Board of Education of the disability rights movement. In 2009, President Obama issued a proclamation launching the “Year of Community Living,” and has directed the Administration to redouble enforcement efforts.

In a statement by Assistant Attorney General in charge of the department’s Civil Rights Division, Thomas E. Perez said, “As the Supreme Court determined in the landmark Olmstead v. L.C. case, unjustified institutionalization stigmatizes individuals with disabilities as unworthy of participation in community life. New York, Virginia and Connecticut can successfully provide community-based housing, such as scattered site apartments with supportive services, and the law requires them to do so to prevent unnecessary institutionalization.”



The Pacific Update is Moving to Electronic Delivery

The Pacific Update, our periodic newsletter, will soon be available in digital formats! We will discontinue our printed version of the Update allowing us to take advantage of new technologies while reducing our use of paper. The Pacific Update will be available via email delivery and direct download from www.adapacific.org.

To update your address or provide a new email you can submit your information on our website or simply call 1-800-949-4232 (V/TTY). You can also receive updates from our Facebook and Twitter pages. Find us on Facebook as DBTAC Pacific ADA Center, and on Twitter as ADApacific. You can also go to our website and follow the Facebook and Twitter links at the top right corner of the home page.

Federal Courts Split: Employment Discrimination & Independent Contractors

Contractors who believe they have been the victims of employment discrimination have as much right to sue as employees, the 9th U.S. Circuit Court has ruled. The three-judge panel rejected arguments by the attorney for Yuma Regional Medical Center (in Arizona) that only its workers are protected by the federal Rehabilitation Act. That means independent contractors can bring claims against companies in federal court.

This ruling could pave the way for the issue to be taken up by the U.S. Supreme Court to resolve conflicts across the nation. One other Federal Appeals Court has reached the same conclusion, but two others have ruled contractors have no rights under the Americans with Disabilities Act.

In the 9th Circuit case, Court records show that Lester Fleming is an anesthesiologist who has sickle-cell anemia. In 2005, Fleming applied for a position as an anesthesiologist at Yuma Regional Medical Center. But the hospital, after learning of his condition, told him it would not be able to accommodate his operating-room and call schedules. Fleming declined to accept the conditions, effectively canceling the contract. He then sued the hospital for



breach of employment contract and employment discrimination. Appellate Judge Jay Bybee, writing for the unanimous court, said the 1973 law was designed to be the first major legislation protecting

people with disabilities in the country. It allows individuals to sue any program or activity that gets federal financial assistance for discrimination.

Judge Bybee said the law covers “all of the operations” of an organization, not just employment. The Rehabilitation Act also says that courts should refer to Title I of the Americans with Disabilities Act in determining the standards for deciding whether someone has been the victim of discrimination. The ADA covers only employees, not contractors.

Based on that, the hospital argued it cannot be sued by Fleming. “When Congress said that the Rehabilitation Act should use the ‘standards’ applicable to employment discrimination claims brought under Title 1, we think Congress meant for us to refer to Title I for guidance in determining whether the Rehabilitation Act was violated,” the judge wrote. The case is Fleming vs. Yuma Regional Medical Center.

The 2010 ADA Symposium



When: June 20-23 2010 Where: Denver, Colorado

For more information: 1-800-949-4232 (V/TTY), www.adasymposium.org

This three day conference is designed to provide the latest information on ADA regulations and guidelines, implementation strategies, and best practices through dynamic, interactive sessions. The ADA Symposium is also designed to bring together the many different groups that work with or are effected by the ADA in their work and daily lives to network, problem solve, and share solutions.

The 2010 ADA Symposium provides two and half hour sessions (with break) to allow plenty of time for indepth training, discussion, and questions. Participants create a customized schedule by selecting sessions that meet their needs and interests from a schedule of 48 sessions from a wide variety of topics.

This year’s symposium will include:

- Advanced Design and ADA Coordinator Program
- Sessions Covering the ADA -Amendments Act and New Regulations and
- General Sessions on All Titles of the ADA

Presenters include representatives from the United States Departments of Justice, Labor, Education, Transportation, the EEOC, and the United States Access Board. Additionally their will be ample opportunities for networking with other’s directly involved in ADA implementation throughout the United States.

Registration fee includes six meals, two keynote speakers, and special activities in celebration of the 20th Anniversary of the ADA!

Genetic Information Nondiscrimination Act (GINA)

GINA prohibits discrimination by health insurers and employers based on individuals' genetic information. Genetic information includes the results of genetic tests to determine whether someone is at increased risk of acquiring a condition (such as some forms of breast cancer) in the future, as well as an individual's family medical history.

GINA is broken into 3 titles:

- Title I prohibits insurers from requiring genetic testing or using genetic testing results as a pre-existing condition to deny coverage or set health insurance premiums in group or individual policies.
- Title II bans employers from requiring genetic testing or making any staffing decisions based on genetic testing of employees or their family members.
- Title III contains miscellaneous provisions pertaining to employment. The law prohibits the use of genetic information in making employment decisions, restricts the acquisition of genetic information by employers and others, imposes strict confidentiality



requirements, and prohibits retaliation against individuals who oppose actions made unlawful by GINA or who participate in proceedings to vindicate rights under the law or aid others in doing so. The same remedies, including compensatory and punitive damages, are available under Title II of GINA as are available under Title VII of the Civil Rights Act and the ADA.

Acting Vice Chair Christine Griffin said, "Title II of GINA is an ideal complement to the ADA Amendments Act. With both laws now effective, American workers are protected if they experience discrimination because of their disability or because of impairments they may develop."

The EEOC is charged with issuing regulations implementing Title II of GINA. On March 2, 2009, it published a Notice of Proposed Rulemaking to implement Title II with proposed regulations and received over 40 public comments in response. The final regulations implementing Title II are currently under review by the Office of Management and Budget and will be issued as soon as the review process is concluded.

Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act of 2008



On September 16, 2009, the Commission voted to approve a Notice of Proposed Rulemaking (NPRM) to conform its ADA regulations to the Amendments Act of 2008. The Commission has also issued a question and answer guide on the NPRM and a two-page summary of the NPRM.

The NPRM was published in the Federal Register on September 23, 2009, and accepted public comments that ended on November 23, 2009. You can view all of the comments submitted by going to www.regulations.gov and typing in the keyword "ADA Amendments Act."

During the public comment period, the EEOC and the U.S. Department of Justice (DOJ) Civil Rights Division also offered four full-day Town Hall Listening Sessions to obtain direct input from the business/employer community and the disability and disability advocacy community across the country on EEOC's proposed regulations under the ADA Amendments Act of 2008 (ADAAA).

The EEOC is evaluating all of the comments and may make revisions in response to those comments. A proposed final regulation will be coordinated with various federal agencies before a final regulation is issued.

Job Bias Charges Approach Record High in Fiscal Year 2009, EEOC Reports

Commission Obtains \$376 Million for Victims of Discrimination

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that 93,277 workplace discrimination charges were filed with the federal agency nationwide during Fiscal Year (FY) 2009, the second highest level ever, and monetary relief obtained for victims totaled over \$376 million. The comprehensive enforcement and litigation statistics for FY 2009, which ended Sept. 30, 2009, are posted on the agency's web site at <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>.

Of the total charges filed, 93,277, disability discrimination charges accounted for 23%. This represents the highest percentage since 1997.



NCD Research Initiatives

The National Council on Disabilities' (NCD) list of current and proposed research projects includes studies and reports on:

- The State of Housing in America in the 21st Century—released in January 2010
- Workforce Infrastructure in Support of People with Disabilities: Matching Human Resources to Service Needs
- National Disability Policy: A Progress Report—expected to be released in early 2010
- Developmental Disabilities Assistance and Bill of Rights Act: Implementation Evaluation and Recommendations for Reauthorization – expected to be released in early 2010
- Towards the Full Inclusion of People with Disabilities: Examining the Accessibility of Overseas Facilities and Programs Funded by the United States
- Improving Access to Health Care, Special Education, and Long-Term Services for Marine Corps Family Members with Disabilities
- Keeping Up: Technology's Rapid Changes and Effects on People with Disabilities



EQUAL HOUSING OPPORTUNITY

Landmark Housing Accessibility Agreement

On January 13, 2010 the National Fair Housing Alliance (NFHA) and its member fair housing organizations in Atlanta, GA., Melbourne, FL., and Napa and Marin Counties in California, announced a landmark agreement with the A.G. Spanos Companies to increase housing accessibility for people with disabilities. Under the agreement, the nation's fifth largest builder of residential real estate will retrofit properties in Arizona, California, Colorado, Georgia, Kansas, Missouri, Nevada, New York, North Carolina, and Texas at an estimated cost of \$7.4 million. The agreement also establishes a \$4.2 million national fund to provide retrofitting grants to people with disabilities across the country. For more information see <http://www.nationalfairhousing.org/>.



FCC Urges Service Providers to Register VRS & IP Relay Service Users

With technological innovations, people have multiple options for communication methods. Individuals with speech and or hearing disabilities are following along with these trends and are rapidly migrating from traditional TTY to more advanced telecommunications methods, both for peer-to-peer communications, and for relay services. This newer Internet-based equipment includes, but is not limited to, wireless devices, videophones/videocams, computers, and instant messaging technologies. The range of options makes it possible for people to choose the modality that, for the individual and given the circumstances and resources at hand, is most responsive to his or her communication preferences.

According to the FCC, in order for this technology to be most beneficial to people with disabilities in emergency 911 communications, providers are being instructed to register all their users with a local ten-digit telephone number with their local information. They are also given the option to include a ten-digit toll-free number that is linked to their local ten-digit number. The goal is to assure all phone users have their own ten-digit local number, regardless of using relay or voice to satisfy 911 requirements for IP-enabled service providers. Whatever service provider an individual registers with becomes the default service provider although there is the option of changing providers at any time.

This registration process was to be completed by November 13, 2009, but has been extended until July 1, 2010.

<http://www.fcc.gov/cgb/consumerfacts/tendigit-faqs.html>



State of California to pay unprecedented \$1.1 billion to make walkways accessible to disabled

In an unprecedented court settlement, Caltrans will spend \$1.1 billion over the next 30 years to repair and improve sidewalks, crosswalks and park-and-ride facilities across the state of California to make them accessible for people with disabilities.

The agreement applies to about 2,500 miles of sidewalk, crosswalks, and park-and-ride facilities that are owned and maintained by Caltrans along state roads and highways. "It's about time," said Ben Rockwell, 64, of Long Beach, CA, a wheelchair user and a plaintiff in the class-action lawsuit. "While this work might not be finished in my lifetime, I hope that future generations will see better access throughout all areas of the state because of what has been done here."

The settlement agreement provides that Caltrans will spend \$1.1 billion over the next 30 years to remove access barriers along existing pedestrian facilities and within existing Park and Ride facilities. Caltrans will allocate funding to access barrier removal work according to the following schedule: \$25 million per year for

the first five years; \$35 million per year for the following ten years; \$40 million per year for the following 10 years; and \$45 million per year for the last five years. The annual allocations will come from dedicated federal and state transportation funding. In addition, Caltrans has agreed that when it resurfaces one of its roadways (an ongoing activity statewide), it will upgrade existing but non-compliant curb ramps and/or install new curb ramps where they are lacking along the sidewalks adjacent to the resurfacing project. Many thousands of additional access barriers will be remedied through this commitment. The settlement agreement also requires that Caltrans follow federal and state accessibility guidelines when undertaking new construction or alterations of sidewalks and/or Park and Ride facilities in California

"This settlement is a win-win," said Gov. Arnold Schwarzenegger. "It would be inexcusable to continue to delay these modifications. Instead of debating this through the legal process for the next decade, costing millions of taxpayer dollars, we are taking action to get this work completed."

Disaster Planning to Address Needs of People With Disabilities

In a sweeping legal settlement between Disability Rights Advocates (DRA) and the City of Oakland, CA, the city has agreed to adopt an emergency plan which incorporates the needs of people with all types of disabilities.

The suit was filed in 2007 against the City of Oakland to remedy the lack of consideration of people with disabilities in its emergency preparation plan. Plaintiffs – the California Foundation for Independent Living Centers ("CFILC"), Californians for Disability Rights, Inc. ("CDR"), and Marian Gray (an Oakland taxpayer) were represented by Disability Rights Advocates

(DRA), a non-profit law center that specializes in civil rights cases on behalf of persons with disabilities in Berkeley, California.



After the lawsuit was filed, Oakland immediately began to work with DRA in cooperative negotiations. The City then hired a consultant to evaluate its existing plans and to recommend improvements that would make the City more responsive to its disabled and elderly residents. These recommendations became the foundation of the new plan, known as the Functional Needs Annex for Mass Care and Shelter.

This newsletter is also available in large print, audiotape, and CD. formats. For a free subscription or Technical Assistance please contact us:

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Curbing Accessible Parking Abuse

Disabled parking placards offer those who require them an efficient way to increase their mobility. Due in part to the fraudulent use of the accessible spaces there is a growing dilemma that these spots are not available to those for which they were originally intended. In addition, California's Department of Motor Vehicles (DMV) allows for autos displaying disabled parking placards and tags to park at metered parking for no charge. "The abuse of disabled placards takes money out of our coffers and undermines the parking needs of people who legitimately use the placards," says Executive Director/CEO Nathaniel P. Ford Sr., of the San Francisco Metro Transit Agency.

The issue is not isolated to California. Nationally and internationally governments are investigating various programs to curtail the misuse. For example, the state of Illinois has established a website that allows citizens to file anonymous complaints about suspected violators to the secretary of state. The City of Boston, MA, has assembled teams of bike police to patrol for violators and other counties like Albany, NY, are stepping up their enforcement at some of the busier shopping days of the year.

Other countries are pursuing efforts to curtail misuse of disabled parking. Australia has begun implementing a nationwide Disabled Parking Permit to make it harder to misuse by further defining who is entitled to the permit. In the U.K. The Transport Minister of Wales has announced a wide-ranging plan to improve how the Country implements its rules of handling accessible parking. One effort will be to work closely with local authorities to improve enforcement.

Here in California disabled placards are issued by the DMV and local jurisdictions provide direct enforcement to curtail abuse. Assembly Bill (AB) 144 (Ma, D-San Francisco), which took effect January 1, 2010, allows for increased penalties for the abuse of disabled parking placards. Penalties for fraudulent use could be as much as \$1000 and as little as \$250. The local jurisdiction will determine where the penalty will be set.

IT NEWS

Efforts Under Way to Make the Web More Accessible

Experts say accessibility features make a better Internet for all. It's like a curb ramp, you build it and it's not only a better sidewalk for users with mobility impairments, but for people toting strollers, luggage, and delivery people.

"Web sites nowadays are the virtual front door of a business. If you can't get in, you can't get your business done and they just lost a customer," said Dmitri Belser, the executive director of the Center for Accessible Technology in Berkeley, CA, which has worked with Intel Corp., Gap Inc., and others.

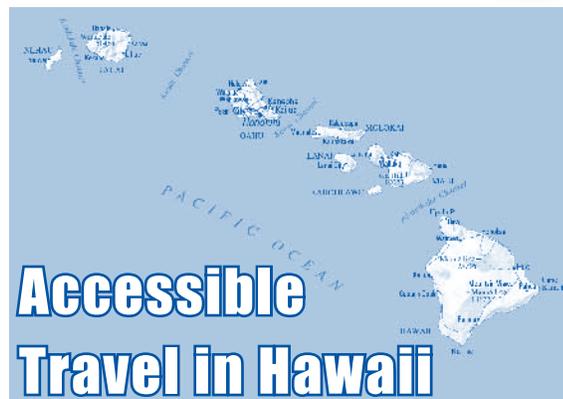
While most federal government Web sites are required by law to be accessible, companies have no legal obligation to incorporate the features. But Jim Thatcher, who developed the IBM screen reader, said the threat of civil rights lawsuits has motivated some companies.

Last year, Target Corp. agreed to pay \$6 million in damages to plaintiffs in a California class action lawsuit who were unable to use its Web site. Apple Inc. also reached an agreement with the state of Massachusetts to alter the program iTunes to make it accessible to the blind. And Yahoo recently made upgrades to its home page to add labels that make it easier for people using screen readers to jump around the page.

Google Inc., whose programmers have used the Yahoo lab, recently introduced automatic machine-generated captions for videos on its YouTube site to make them accessible to persons who are deaf or hearing-impaired.

"It's all about being aware," said Shawn Henry of the World Wide Web consortium, an organization that develops internet standards. "Often if you don't know anyone with a disability, you don't think about it. Hopefully, the trend towards compliance continues." For further information on accessible information technology visit us online at

www.accessibletech.org.



Hawaii Disability and Communication Access Board (DCAB) has developed a series of visitors guides for travelers with disabilities. The guides include information on the accessibility of Hawaii's airports, accessible transportation, and other resources of importance to persons with disabilities. The guides pertain to traveling to the islands of Oahu, Hawaii, Maui and Molokai, and Kauai. There is also one pertaining to the Air Carrier Access Act. For more information see

<http://www.state.hi.us/health/dcab/travel/index.htm>

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