



PACIFIC UPDATE

DBTAC - PACIFIC ADA CENTER

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

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Two Upcoming Events

National ADA Symposium and Expo



The National ADA Symposium & EXPO/Assistive Technology Fair is an annual three day conference on the Americans with Disabilities Act and related disability laws. The ADA Symposium has earned the reputation as the most comprehensive event available on the ADA.

Each year, the Symposium brings representatives from key federal agencies involved in implementing the ADA including the U.S. Dept. of Justice, the U.S. Access Board and the EEOC to provide comprehensive training and updates. All Symposium presenters are nationally recognized experts in their fields. This year's Symposium and Expo will be in St. Louis, MO May 12-14, 2008. For further information contact the Pacific ADA Center at 1 (800) 949-4232.

RESPECT-Ability



RESPECT-ABILITY COALITION

DBTAC - Pacific ADA Center is a proud co-sponsor of the upcoming Respect-**ABILITY** Conference 2008.

The Respect-**ABILITY** Conference 2008 will focus on identifying and sharing effective strategies and best practice models to achieve the Disability Rights Agenda. Join hundreds of persons with disabilities and disability rights advocates from throughout California as we come together to discuss, share and learn about issues that impact the disability community. Learn about emerging issues, strategies and advocacy tools that can help you protect your rights and make positive changes in your community.

Date: March 7 & 8, 2008

Location: LAX Marriott Hotel
5855 West Century Boulevard,
Los Angeles, CA 90045

For more information on how to join the (Respect-**ABILITY** Coalition) or the Respect-**ABILITY** Conference 2008

contact: John Longoria:
(213) 736-8365, (213) 736-8310 (TDD),
or at john.longoria@lls.edu

New Online ADA Course

The Network of 10 ADA Centers offer numerous courses and tutorials on disability-related issues and the Americans with Disabilities Act (ADA), including the opportunity to earn continuing education credit (e.g. CEU, CRCC).

Some of the courses available include a free introductory ADA web course, available in English or Spanish. This course explores the legal requirements and spirit of the Americans with Disabilities Act. For a more in-depth course on the obligations of State and Local governments we offer a free tutorial on the requirements under

title II of the ADA.

Additionally, we offer a free self-paced web course for discovering the best practices for effectively working and interacting with people who have disabilities.

For further information or to register for any of these courses visit:

<http://www.adacourse.org/courses.php>

Update on Wal-Mart disability suit

An employee who claims Wal-Mart Stores discriminated against her after she became disabled would have had her case heard by the U.S. Supreme Court.

In late 2007, the justices said they would rule on a lawsuit which centers on how far employers must follow the Americans with Disabilities Act to accommodate disabled employees.

Specifically, the dispute was whether Wal-Mart was required to provide employee, Pam Huber with an equivalent job after she could no longer perform her job due to disability, or whether the company simply had to allow her to compete for an equivalent job.

Huber's lawyers argued in court filings that the federal appeals courts have split on the issue, and they asked the justices to resolve the split.

Huber was an order filler in a Wal-Mart distribution center in Clarksville, Ark., earning \$13 an hour, when she was hurt in an on-the-job accident. The company agreed she was disabled and no longer able to perform her job.

Huber applied for a new job as a router, which paid \$12.50 an hour, but the job was awarded to another employee Wal-Mart considered more qualified. Huber was offered a janitorial job that paid \$6.20 an hour, her lawyers say in court papers.

Huber sued in 2004, arguing that under ADA rules, she only had to be qualified for the equivalent position, not the most qualified, and she should have been reassigned to the router job.

Wal-Mart said in court papers that the job went to the most-qualified candidate under a "standardized, legitimate, and non-discriminatory" process allowed under ADA rules.

The case, Pam Huber v. Wal-Mart, 07-480, was to be argued in the Court in Spring 2008, but was dismissed Monday, January 14, 2008 under a court rule normally cited when the parties in a case reach a settlement. The terms of the settlement were not disclosed.



Supreme Court Deadlocks on Special Education Case

The U.S. Supreme Court split 4-4 over whether school districts must finance private education for disabled children who have not tried a public special education program first.

After hearing arguments on Oct. 1, the justices said in a one-page statement they were upholding a lower court ruling that a man was entitled to be reimbursed for his disabled son's private schooling in New York City. The action sets no nationwide precedent.

The legal question may be raised before the Supreme Court again in an effort to get a decision with nationwide effect, said Paul Gardephe, an attorney for the father. Until then, the ruling is limited to the 2nd Circuit, which covers New York, Connecticut and Vermont.

The school board was appealing a lower court ruling that the man was entitled to reimbursement. The federal Individuals with Disabilities Education Act requires schools to provide disabled children with a "free, appropriate public education." If the school can't, it must reimburse parents for private education.

Several justices suggested that the law requires parents to give a district's program a chance before seeking payment for private school.

The father enrolled his son, Gilbert, at the private Stephen Gaynor School in New York, which specializes in helping students with special needs. The nature of Gilbert's disability wasn't disclosed.

For two years, the local public school district paid the cost until it created its own special education system with an individual program for the student. Dissatisfied with the program, the father kept Gilbert in the private school for the 1999-2000 school year and sought reimbursement for the \$21,819 tuition.

After a state hearing panel ruled that the father was entitled to reimbursement, a federal judge sided with the school district. That ruling was overturned by the New York-based 2nd U.S. Circuit Court of Appeals, which reinstated the order that the district pay for the private education.

The case is Board of Education of the City School District of the City of New York v. Tom F., 06-637.



Federal Settlement Agreement Will Make Sylvan Learning Centers more Accessible

The Department of Justice announced a comprehensive settlement agreement under the Americans with Disabilities Act (ADA) with Sylvan Learning Centers L.L.C., which owns and operates over 200 Sylvan Learning Centers in 24 states across the nation. The agreement sets out steps to make Sylvan's tutoring programs and services accessible to people who are deaf or hard of hearing. Sylvan provides tutoring, both in person and online, and personalized instruction to students primarily in grades pre-K through 12.

"Students who are deaf or hard of hearing, like their peers, want opportunities to enhance their learning, and this agreement improves access to the tutoring programs and services at more than 200 Sylvan Learning Centers across the nation," said Rena J. Comisac, Acting Assistant Attorney General for the Civil Rights Division. "I commend Sylvan Learning Centers, L.L.C., for working cooperatively with us to more effectively serve individuals who are deaf or hard of hearing. We hope that this agreement will serve as a model for other tutoring programs so that all children, including those who are deaf or hard of hearing, will have an equal opportunity to benefit from these important educational services."

The settlement focuses on Sylvan's commitment to maintain policies, practices, and procedures to ensure that individuals with disabilities, including individuals who are deaf or hard of hearing, have an equal opportunity to use the services provided by Sylvan. Sylvan will provide auxiliary aids and services, including qualified sign language interpreters, to students who are deaf or hard of hearing when necessary to ensure effective communication.

Auxiliary aids and services include, but are not limited to, providing qualified sign language interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, videotext displays, and other effective methods of making materials that others access by listening and speaking aloud available to students who are deaf or hard of hearing. Sylvan will not charge students for utilizing auxiliary aids and services they need.



DOL Forms Alliance with CVS

The U.S. Department of Labor's Office of Disability Employment Policy (ODEP) and CVS Caremark established an alliance to encourage and promote the employment of people with disabilities through training and education, outreach and communication, technical assistance and other efforts.

CVS Caremark, headquartered in Woonsocket, R.I., employs about 190,000 people and has 6,200 retail and specialty pharmacies, 11 mail service pharmacies and 14 call center locations nationwide.

This alliance will mutually benefit CVS Caremark, the company's workforce and customers, the Labor Department's Office of Disability Employment Policy and the general public," said Karen M. Czarnecki, acting assistant secretary of labor for ODEP. "Hiring, retaining and advancing employees with disabilities is just good business. ODEP and CVS Caremark will share information, guidance and resources that will help to develop model programs for other employers, particularly in the retail and pharmacy services industries."

Through the two-year alliance, ODEP and CVS Caremark jointly will distribute training and education materials to, as well as share effective disability employment practices with, the company's human resources leaders. An implementation team representing both organizations will develop a plan of action.



EEOC Files Delphi Suit

The Equal Employment Opportunity Commission has accused Delphi Corp. of illegally asking employees for medical information and retaliating against those who object.

A lawsuit filed in U.S. District Court in Buffalo said the auto-parts supplier has violated the federal Americans with Disabilities Act since at least 2004 by requiring workers returning from sick leave to sign releases allowing the company to access medical information.

Delphi spokesman Lindsey Williams said company policy prohibited him from talking about personnel matters and pending litigation.

A Rochester, N.Y., employee said he was fired after refusing to sign the release that would have let Delphi check with his doctor about why he missed two days of work in August 2006. The employee said he agreed to allow Delphi to verify with the doctor that he had been unable to work, but he wouldn't allow discussion of his specific medical condition.

EEOC

U.S. Equal Employment
Opportunity Commission

“This law prevents employers from discriminating against individuals with disabilities who are able to do their jobs,” said Spencer Lewis Jr., director of the EEOC’s New York district office.

EEOC Files Medical Privacy Suit

The U.S. Equal Employment Opportunity Commission is suing the operator of Hawaii’s 7-Eleven stores, saying it improperly disclosed a Haleiwa employee’s medical information.

The U.S. EEOC filed suit in U.S. District Court, alleging that 7-Eleven of Hawaii Inc. violated the Americans with Disabilities Act and Civil Rights Act.

Robert Galam, formerly a sales associate at the 7-Eleven store in Haleiwa, says when he applied for a position at Turtle Bay Resort, his employer told Turtle Bay about his heart condition, which was confidential medical information.

He is seeking compensation for the losses that resulted from the disclosure of the information.

FREE ADA HAT !!!



The Pacific ADA Center is seeking feedback about your satisfaction with our website.

Please go to
<http://www.adapacific.org/survey.htm>

Fill out the survey and enter your contact information.

We will randomly select individuals to receive professionally designed commemorative hats that celebrate the 15th anniversary of the ADA. Winners will be chosen each week while supplies last. Take the survey and secure your piece of ADA history.

New Material Available From the Pacific ADA Center

*EEOC releases new guidance material:
Employment Tests And Selection Procedures*

This fact sheet provides technical assistance on some common issues relating to the federal anti-discrimination laws and the use of tests and other selection procedures in the employment process. Call now to order a free copy.



800.949.4232
Call Monday through Friday
8:30 am - 5:00 pm PST

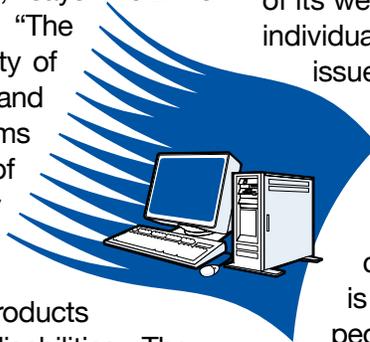
AOL, Google, Microsoft, Yahoo! Unite to Advance Online Media Captioning

AOL, Google, Microsoft, and Yahoo, leading providers of Web-based video, have joined with media access pioneer WGBH/Boston to develop solutions that will increase the amount of online video accessible to people who are deaf or hard of hearing.

“More and more people are turning to the Internet to get their news, watch programs and other video,” says WGBH’s Director of Media Access, Larry Goldberg. “The scarcity of captions online is due to a variety of challenges, including a proliferation of media and text formats and players, editing of programs originally distributed with captions, and lack of clear online caption production and delivery requirements. The founding members of the ICF (Internet Captioning Forum) are all companies long dedicated to making their products and services accessible to people with disabilities. They recognize that working together on this challenge is the best, fastest and most practical way to get more captioned video on the Web.”

The collaboration is expected to yield a range of solutions and tools, among them:

- A database for online media distributors, populated by major captioning providers, of previously captioned programs. This tool will facilitate the location and reuse of existing caption files.
- Technical and standards documents, case studies and best practices for accomplishing pervasive online video captioning.
- Demonstrations of innovative practices to preserve captions while editing and digitizing captioned videos.



District Court Certifies Nationwide Class Action Against Target.Com In Website Accessibility Suit

U.S. District Judge Marilyn Hall Patel granted class-action status to a lawsuit alleging that Target Corp. is in violation of California law and the Americans with Disabilities Act because screen-reading software doesn’t work on parts of its website, essentially making it unusable for individuals with visual impairments. The central issue is that customers who are blind are unable to make purchases on Target’s website independently.

The President of the National Federation of the Blind, Dr. Marc Maurer, commented on the court’s ruling: “This is a tremendous step forward for blind people throughout the country who for too long have been denied equal access to the Internet economy. All e-commerce businesses should take note of this decision and immediately take steps to open their doors to the blind.”

Larry Paradis of Disability Rights Advocates, one of the lead counsels for the class, commented on the court’s decision: “Target Corporation has led a battle against blind consumers in a key area of modern life: the Internet economy. The court’s decision makes clear that people with disabilities no longer can be treated as second-class citizens in any sphere of mainstream life. This ruling will benefit hundreds of thousands of Americans with disabilities.”

REGIONAL NEWS

Hawaii

Lingle Tags \$2.5M For Upgrades At 13 Oahu Schools

Gov. Linda Lingle has released \$2.5 million for ongoing improvements at 13 public schools in O’ahu’s Central District to comply with accessibility guidelines of the Americans with Disabilities Act. These corrective measures include adding walkways, ramps, parking stalls, elevators and other modifications to building interiors and exteriors.

“Making sure our public schools are accessible to all students continues to be a priority of my administration,” Lingle said in a news release. “It

is important to release money for accessibility improvements in one of O’ahu’s most populous school districts.”

The funds will finance improvements to areas of school campuses routinely visited by the public.

The total project cost is \$5.4 million, of which \$2.9 million was released by Lingle in 2006 and 2007. Construction is scheduled to begin in October 2008 and be completed in August 2009.

Glendale Man's Segway Stirs Disability Debate

Eric Payne gets around on a Segway Personal Transporter, the two-wheeled innovation that moves at a top speed of 12.5 mph but can be scaled back when indoors.

The self-balancing battery-powered devices are being used by people with disabilities as mobility aids to gain independence in society. When Payne glided into a cafe at Barnes & Noble bookstore, he was asked to park his Segway outside.

Similar cases around the country are working their way through the courts as officials grapple with whether the Segway should be treated as a wheelchair. The disabled community quickly realized the Segway's potential. Many people have limited mobility but can stand. They say the Segway allows them to look people in the eye, rather than being forced to view the world from a wheelchair.

Some cities including San Francisco banned the use of Segways on sidewalks. No Arizona City is known to restrict transporters, which state law allows on sidewalks. Meanwhile, two court cases are

challenging prohibitions by businesses. The American Civil Liberties Union is arguing a case against a New Mexico mall where a disabled man taking his daughters to a movie was told his Segway wasn't welcome.

Walt Disney World also is facing a court challenge over its policy prohibiting disabled visitors from using Segways at the Florida park.

In the Payne case, which has not escalated into a legal battle, Barnes & Noble spokeswoman Mary Ellen Keating maintains the store has no legal mandate to allow Segways. Barnes & Nobles has been willing to work with the idea of allowing Segways, at least in Maricopa County, if they are courteously operated.

The U.S. Department of Transportation recognizes Segways as a legitimate mobility device for those with disabilities.

Final word on how and where Segways are allowed is likely to be addressed in future regulations

issued from the Department of Justice.



Somerfleck Back in Guam Disability Case

Daniel Somerfleck, a former executive director of the Guam Legal Services Corp., is back as co-counsel in a federal case filed by four individuals with disabilities against the government of Guam.

Somerfleck, who is now in private law practice with Atty. Anthony Camacho, will help Atty. Patrick Civile in a decade-old litigation to improve the services of the Department of Mental Health and Substance Abuse, or DMHSA, and the Department of Integrated Services for Individuals with Disabilities, or DISID.

The four plaintiffs — J.C., S.F., J.M. and R.A — sued Gov. Felix P. Camacho and the directors of DISID and DMHSA. They are pushing for a federal takeover of the two agencies after the government failed to comply with deadlines aimed to improve services to some 200 persons with disabilities.

Somerfleck's representation of the plaintiffs was disrupted when he resigned from his post as executive director of the Guam Legal Services Corp.

Meanwhile, Judge Consuelo Marshall ordered the lawyer for Governmental agencies in Guam and the plaintiffs' counsel to submit an amended list of milestones on or before Dec. 14, 2007.

Judge Marshall is also expecting the first report of the two court monitors recently appointed by the court.

Atty. James Casey and Dr. James Kiffer's first report about the local government's compliance with the court's orders related to the permanent injunction was due by Jan. 2, 2008.

A status conference to assess the effectiveness of the court monitor appointments and Guam's progress in implementing the amended permanent injunction order is scheduled for March 14, 2008.

Loopholes in Service-Dog Law Easily Exploited By Pet Owners

Just because a dog is wearing a boldly colored vest that says “Service Dog” doesn’t mean it’s a service dog.

People pretend their pooches are service animals, so they can take their dogs just about anywhere they please, including restaurants, beaches, stores, movies and hotels that prohibit ordinary pets.

Current regulations define a service animal as any animal “that is individually trained to perform a specific task for a person with a disability”.

For privacy of the individual, current regulations prohibit a business owner from asking what kind of disabilities the person has. It’s also against the law to ask for proof that the animal is a trained service dog. The only thing a merchant can ask is whether the animal is a service animal and what tasks it can do.

Because of such privacy protections, it’s impossible to estimate how many dogs aren’t actually on the up and up. People who train

service dogs and people who use them legitimately say it’s a growing problem.

Service dogs today perform a host of tasks for an ever-growing range of people with disabilities. People in wheelchairs have dogs trained to pick up items they drop. People who suffer seizures have dogs capable of signaling for help. But people who pretend that their dogs are service dogs are breaking the law.



Though agencies exist that have accreditation programs for properly trained dogs, the ADA states that accreditation is not mandated. A person can self-train the dog and claim it performs as a service dog, even if the owner lacks the expertise to train it properly or the dog doesn’t have the temperament for the job. Merchants are entitled to ask a person with any dog – including legitimate service dogs

– to remove the animal if it is acting badly or otherwise not under its owner’s control.

Court rules for UPS in case over driver hearing tests

A federal appeals court ruled in favor of United Parcel Service Inc. in a case filed by hearing-impaired applicants for drivers’ jobs.

This decision, however, does not end the litigation. The appeals court remanded the case to the trial court.

The ongoing case centers on a UPS requirement that drivers pass a physical that includes a hearing standard mandated by the U.S. Department of Transportation for drivers of trucks weighing more than 10,000 pounds.

UPS goes further, though, by imposing the hearing standard for drivers of its smaller vehicles too. A class of hearing-impaired employees and applicants challenged that practice. They argued that UPS discriminates against qualified individuals with disabilities. UPS holds that its policy is defensible because it is consistent with business necessity.

The ADA states a defense is possible against discrimination charges related to qualification standards if it is shown that the screening is job-related, consistent with business necessity and “such performance cannot

be accomplished by reasonable accommodation,” the court records state.

A UPS spokeswoman said the delivery firm is pleased that the appeals panel rejected the “notion that persons with physical impairments can be held to a lower standard of safety.” She also noted that the court found that a disabled person ultimately bears the burden of demonstrating that he or she can safely operate certain vehicles.

Larry Paradis, executive director for Disability Rights Advocates, a Berkeley, California based organization that filed the lawsuit, said the recent ruling will not change the final outcome.

Mr. Paradis said the 9th Circuit ruling only changes the standard that UPS must meet, but does not necessarily lower it.

Eric Bates; Bert Enos; Barbaranti Oloyede; Eric Bumbala; Edward Williams, on behalf of themselves and all others vs. United Parcel Service Inc., 9th U.S. Circuit Court of Appeals. No. 04-17295.

Pacific ADA Center Staff

Executive Director
Erica C. Jones, MPH

Program Manager
Cynthia Cravens

Administrative Assistants
Linda Speed Steven Watson

Technical Assistance Specialists
Karin Morris Don Risdall, MA

Director of Research
Stephen Kaye, PhD

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

1-800-949-4232 (V/TTY)
(510) 285-5600 (V/TTY)
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