

Great Lakes Chronicle

ILLINOIS * INDIANA * MICHIGAN
MINNESOTA * OHIO * WISCONSIN

NOVEMBER 2006

VOLUME 3 ISSUE 2

Welcome to the DBTAC
Great Lakes ADA Center's
monthly Newsletter

Trainings & Events

The **TASH 2006 Conference** is being held November 8-11, 2006 in Baltimore, MD. The conference entitled, "**Living the Vision Together: Today, Tomorrow and Beyond**", is the largest and most progressive gathering of individuals that focuses on strategies for achieving full inclusion for people with significant disabilities.
www.tash.org/2006tash

ADA Audio Conference: "Ask the DOJ"

Take this opportunity to pose questions to DOJ regarding their enforcement efforts on Title II and Title III of the ADA as well as seek their guidance on tough ADA policy issues.

November 14, 2006
1:00-2:30pm Central Time
www.ada-audio.org

"**ADA Basic Building Blocks**", an introductory web course on the Americans with Disabilities Act of 1990 (ADA) that explores the legal requirements and spirit of the ADA.
www.adabasics.org

In the Headlines

The Equal Employment Opportunity Commission (EEOC) has launched a new section on its web site focusing on increasing the number of individuals with targeted disabilities working for the federal government. The initiative was begun in June following the release of a report indicating the number of individuals with disabilities working for the federal government had declined dramatically over the past decade. The site contains information about the program and information on the decline in the numbers of federal employees with disabilities. Read more about the EEOC Initiative at <http://www.eeoc.gov/press/10-4-06.html>.

The U.S. Department of Justice (DOJ) announced a stipulated settlement agreement, Final Judgment and Consent Order. The order involves the United States of America v. KAUFMAN REALTY CORPORATION. The case began when a complaint was filed with the DOJ alleging that KAUFMAN REALTY refused to lease space to a non-profit organization serving individuals with developmental disabilities. As part of the order KAUFMAN REALTY agrees not to discriminate on the basis of disability in the provision of its goods and services. Read more about the Consent Order at <http://www.usdoj.gov/crt/ada/kaufman.htm>.

The U.S. Department of Labor Secretary Elaine L. Chao hosted the New Freedom Initiatives Awards ceremony. The event helped recognize National Disabilities Employment Awareness Month. Awards were presented to four non-profit groups, four companies and one individual for their efforts in improving the employment of individuals with disabilities. Read more about the New Freedom Awards at <http://www.dol.gov/opa/media/press/odep/ODEP20061773.htm#content>.

The U.S. Department of Justice (DOJ) has announced the release of "Access for All: Five Years of Progress." The report highlights the DOJ efforts in enforcing the ADA and its initiatives to enhance voluntary compliance with the law. Included in the report are highlights of the DOJ Project Civic Access initiative. Read more about the Report at <http://www.usdoj.gov/crt/ada/5yearadarpt/fiveyearada1.htm#Anchor-49575>.

The U.S. Access Board has announced the release of side-by-side comparisons by the International Code Council (ICC) and the National Fire Protection Administration (NFPA). These comparisons involve the revised ADA/ABA guidelines published by the Access Board in 2004 with codes issued by the ICC and the NFPA. This comparison is a supplement to a comparison issued by the Board earlier this year. Read more about the Comparisons at <http://www.access-board.gov/news/code-comparisons.htm>.

The U.S. Department of Justice has announced a settlement agreement with the Historic Hilton Village Parlor Restaurant. The case was initiated by a complaint filed under Title III of the ADA with the DOJ. The complaint alleged that a patron had been refused service because he was accompanied by a service animal. Under the agreement the restaurant has agreed to modify its policies so it insures that patrons with disabilities using service animals have an equal opportunity to benefit from the goods and services being provided in the most integrated setting.

The Great Lakes Center offers technical assistance on a variety of issues under the ADA and Accessible Information Technology.

Federal Agency

The **U.S. Equal Employment Opportunity Commission (EEOC)** is responsible for enforcing Title I's prohibition against discrimination against people with disabilities in employment.
www.eeoc.gov

The **U.S. Department of Justice (DOJ)** is responsible for enforcement of Title II and Title III of the ADA and adopts the Accessibility Standards for enforcement under the ADA. Visit the site to access a copy of the currently enforced accessibility standards under the ADA.
www.ada.gov

The **Office of Civil Rights within the Federal Transit Administration of the U.S. Department of Transportation** ensures full implementation of civil rights and equal opportunity initiatives by all recipients of FTA assistance.
www.fta.dot.gov/17851_ENG_HTML.htm

Read more about the Settlement Agreement at <http://www.usdoj.gov/crt/ada/hishiltonva.htm>.

The Equal Employment Opportunity Commission (EEOC) has filed suit against Denny's restaurants alleging disability discrimination. The case revolves around allegations that Denny's failed to provide reasonable accommodations involving medical leave. The suit alleges that Denny's refused to provide a manager of one of its restaurants leave as an accommodation for a covered disability. Additionally, the suit contends that Denny's policy not allowing additional leave beyond a pre-set number is a violation of the employment provisions of the ADA. Read more about the EEOC suit at <http://www.eeoc.gov/press/9-28-06.html>.

The U.S. Department of Justice (DOJ) has announced a settlement agreement with the South Florida Baptist Church. The DOJ launched an investigation after receiving a complaint alleging the hospital had not provided effective communication with deaf and hearing impaired individuals as well as individuals with speech impairments by failing to provide needed auxiliary aids and services. The agreement requires the modification in policies, practices and procedures as well as the provision of auxiliary aids and services in order to insure that individuals with disabilities have access to all goods and services provided by the hospital. Read more about the Settlement Agreement at <http://www.usdoj.gov/crt/ada/southflor.htm>.

The U.S. Access Board announced that the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) held its first meeting. The committee was formed by the Access Board to assist in its efforts to update standards under Section 508 of the Rehabilitation Act Amendments of 1998 and Section 255 of the Telecommunications Act of 1996. The standards address access to electronic and information technology for individuals with disabilities. Read more about the Committee Meeting at <http://www.access-board.gov/news/508committee-meeting.htm>.

The U.S. Department of Justice (DOJ) has announced the latest settlement agreement in its Project Civic Access initiative. The project was launched to insure that residents with disabilities had full access to the wide range of programs, services and activities offered by state and local government entities. The most recent settlement involves Shreveport, LA. The DOJ investigation was part of a compliance review of the cities obligations under Title II of the ADA. The review focused on the cities self evaluation plan, designation of an employee to handle ADA matters, establishment of a grievance procedure, proper notification to the public, delivery of programs and services in a non-discriminatory manner, facility accessibility issues, and on other areas. Read more about the Settlement at <http://www.ada.gov/shreveportlasa.htm>.

Great Lakes In Focus

The DBTAC Great Lakes ADA Center was awarded by the National Institute on Disability and Rehabilitation Research (NIDRR) the grant to serve as the Disability and Business Technical Assistance Center (DBTAC) for the Great Lakes region. This new 5 year grant began on October 1 and runs through September of 2011.

As the Center transitions into new priorities and a new name we want to insure that we are meeting the needs of the entities and individuals accessing our

For more information please call 800-949-4232 (V/TTY) or online at:

<http://www.adagreatlakes.org/WebForms/ContactUs/>

Great Lakes ADA and Accessible IT Center
University of Illinois at Chicago
Department of Disability and Human Development (MC 728)
1640 West Roosevelt Road, Room 405
Chicago, Illinois 60608-6904

The **Office of Civil Rights within the U.S. Department of Education** ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.
www.ed.gov

The **Federal Communications Commission (FCC)** has rules requiring telecommunications manufacturers and service providers to make their products and services accessible to people with disabilities, if readily achievable.
www.fcc.gov

Great Lakes Affiliates

ADA Illinois
20 N Michigan, Suite 300
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www.ada-il.org

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2853 East Tenth Street
Bloomington, IN 47408-2696
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www.iidc.indiana.edu/cpps/ada/

Michigan ADA Steering Committee
29200 Vassar Blvd.
Suite 200
Livonia, MI 48152-2116
Phone: 248-473-2990
www.adamich.org

resources by providing timely, relevant and practical information and resources. The Center's mission on providing accurate and informative technical assistance, trainings and material dissemination on the Americans with Disabilities Act (ADA) remains despite the change in name. The Center intends to add additional resources to the Chronicle and Great Lakes web site to assist individuals and entities in understanding their rights and responsibilities under the ADA. This will include:

- On-line Tool Kits for Employers and Businesses
- Enhanced FAQs with resources
- Additional Information on conferences, trainings and events

In order to insure that the Great Lakes Chronicle is meeting your needs you are encouraged to visit the on-line newsletter survey (<http://www.adagreatlakes.org/WebForms/NewsletterFeedback/>) to provide the Center feedback on the Chronicle. Let the Center know how the Chronicle meets your needs and any changes for improving the monthly newsletter.

If you have questions about the newsletter you may contact Peter Berg by calling 312-413-1407 (V/TTY) or by visiting the Center's on-line contact form (<http://www.adagreatlakes.org/WebForms/ContactUs/>).

Accessible Technology

Accessible Technology

The DBTAC Great Lakes Accessible Technology Initiative provides individuals, businesses, governmental entities, and organizations with technical assistance, training, referrals, materials, and resources on information technology and its accessibility. The Center's trainings are customized to fit the specific needs of the organizations requesting the presentations.

Visit the accessible technology section (<http://www.adagreatlakes.org/AIT/>) of the Great Lakes web site for more information on the services provided by the Center.

To get additional information about accessible technology visit the Accessible Technology Bulletin (<http://www.adagreatlakes.org/Publications/ATBulletin/>).

For technical assistance questions contact the Great Lakes Center by calling 800-949-4232 (V/TTY) or by visiting the on-line contact form at <http://www.adagreatlakes.org/WebForms/ContactUs/>.

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Saint Paul, MN 55104
Phone: 888-630-9793
www.adaminnesota.org

ADA Ohio

700 Morse Road, Suite 101
Columbus, OH 43214
Phone: 800-232-6446
www.ada-ohio.org

ADA Wisconsin

1302 Mendota Street, Suite
200
Madison, WI 53714-1024
Phone: 608-244-5310
www.adawipartnership.org

The ADA & IT Technical Assistance Centers (DBTACs)

Your comprehensive resource for information on the Americans with Disabilities Act and accessible information technology. Call toll free at 800-949-4232 (V/TTY) for the MOST complete and experienced services available to American businesses, government entities and the public. To find your local Center or for more information, visit their website.
www.adata.org

The Great Lakes offers resource materials on a variety of issues under the ADA and Accessible Information Technology.

The Docket

DANIEL J. DIDIER v SCHWAN FOOD CO

The 8th Circuit Court of Appeals affirmed a lower Court's summary judgment ruling on behalf of the defendant. The Court agreed that the plaintiff failed to establish that he had a disability meeting the definition of disability under the Americans with Disabilities Act (ADA). The Court wrote that DIDIER had failed to demonstrate that a workplace injury he had suffered had left him disabled under the ADA. The decision references the U.S. Supreme Court's ruling in the 2004 Toyota vs. Williams's case. The Supreme Court ruled in that case that the fact an individual can't perform certain aspects of his/her job doesn't mean that the individual is disabled under the ADA definition. Read more about the Case at <http://caselaw.findlaw.com/data2/circs/8th/053911P.pdf>

From the Technical Assistance Desk Question of the Month

Q. I have an employee who is blind working for me that recently went through guide dog training. Her position requires that she travel locally so she is in and out of the office throughout the work week. I recently had another employee approach me and indicate that he was having allergy problems ever since the guide dog was introduced into the workplace. How do I resolve a situation if someone's accommodation impacts another employee? Who am I obligated to accommodate?

The ADA prohibits covered employers from discriminating on the basis of disability in all employment practices. Additionally, covered employers have an obligation to provide a reasonable accommodation to a qualified individual with a disability when it is needed to provide equal access to the application process, allow an individual to perform her/his job or to provide equal access to any benefit associated with the job.

When an employee indicates that he/she is having difficulty performing the job because of a medical condition or a disability an employer has a responsibility to engage in the interactive process with that employee. An employee doesn't have to use the phrase "reasonable accommodation" to trigger the interactive process. The process should involve the employer and employee discussing the situation and attempting to identify an accommodation.

An employer has the right to request documentation during the interactive process when an individual's disability or the need for the accommodation is not apparent. An employer has the right to receive only information regarding the disability/medical condition for which the individual has requested the accommodation. There is no right to a complete medical history and the medical information should be kept confidential and shared on a need to know basis.

In this instance the first issue is determining whether the employee with the allergies is a qualified individual with a disability. In order to be covered by the

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Chicago, Illinois 60608-6904

Resources from the Technical Assistance Desk

Individuals may contact the Great Lakes Center to get materials on the Americans with Disabilities Act and other disability laws by calling 800-949-4232 (V/TTY) or via our [on-line contact form](#).

ENFORCEMENT GUIDANCE:
REASONABLE
ACCOMMODATION AND
UNDUE HARDSHIP UNDER
THE AMERICANS WITH
DISABILITIES ACT
www.eeoc.gov/policy/docs/accommodation.html#undue

Section 902 Definition of the
Term Disability
www.eeoc.gov/policy/docs/902cm.html

Accommodating the Allergic
Employee in the Workplace
www.ilr.cornell.edu/ped/hr_tips/article_1.cfm?b_id=36

ADA the individual must be qualified to perform the essential functions of his job with or without a reasonable accommodation. The individual must also have:

- A physical or mental impairment that substantially limits one or more major life activities **or**
- Have a record of such an impairment **or**
- Be regarded as having such an impairment

In order for the employee to be considered substantially limited he must be impacted outside of the office as well as being effected in the office by allergies. If his allergies only act up in the office it is not likely that he would be considered substantially limited.

If in fact the individual is determined to have a covered disability then you would have a responsibility to accommodate both employees absent undue hardship. Undue hardship is an accommodation that would pose significant difficulty or expense to provide. A claim of undue hardship must be made on an individual basis and must look at the actual impact of providing the accommodation.

Employers are not required to provide the accommodation that the employee has requested. An employer may provide an alternative accommodation as long as the accommodation is effective. Employers should give first consideration to the employees requested accommodation but the employer has the final decision as to the accommodation that will be provided.

In this instance if the employee has a covered disability it may require that the employee be provided with a air purifier, have his office relocated, having the buildings ventilation system checked or other steps that would effectively allow the individual to perform his job. An employer needs to balance the needs of both employees.

For additional information on this question or any questions on the ADA you may contact the DBTAC Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or by visiting the on-line contact form (<http://www.adagreatlakes.org/WebForms/ContactUs/>).

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