

Great Lakes Chronicle

ILLINOIS * INDIANA * MICHIGAN
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FEBRUARY 2007

VOLUME 3 ISSUE 4

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

Trainings & Events

ADA Audio Conference Series: Tapping a New Resource: Veterans with Disabilities

Veterans, including those with service-connected disabilities, have the skills, training, and character to meet your toughest challenges. There is an extensive number of veterans- resources to assist you in finding veteran candidates for your job openings. In this second session of a two-part series, the Employer Assistance & Recruiting Network (EARN) will showcase some top resources and give you the opportunity to speak to key members of these organizations to find out how they can assist you in reaching out to veterans in your employment efforts. Visit the Audio Conference web site for information about registration.

February 20, 2007

1:00-2:30 PM CST

www.ada-audio.org

National Association of ADA Coordinators Conference

The National Association of ADA Coordinators (NAADAC) spring conference will take place April 23-26, 2007. NAADAC is a non-profit organization that was founded in 1992 by a group of public and private sector

In the Headlines

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The DBTAC Great Lakes ADA Center has begun providing technical assistance over its toll-free line between the hours of 8:00 AM and 4:30 PM CST on January 1, 2007. Individuals may also submit questions through the Center's on-line contact form. Electronically submitted questions will be responded to within 2 to 3 business days. If you have questions about the technical assistance services provided by the Center you may contact Peter Berg, Project Coordinator of Technical Assistance and Employer Outreach, by calling (312) 413-1407 (V/TTY). Read more about the Services of the DBTAC Great Lakes Center at <http://www.adagreatlakes.org/ProgramsAndServices/>.

The U.S. Department of Justice (DOJ) has added several new technical assistance documents to the ADA Business Connection Page on its web site. The purpose of these materials is to illustrate the benefits for businesses when complying with the ADA. The 3 new documents are:

- Accessible Customer Service Practices for Hotel and Lodging Guest with Disabilities
- Building a Diverse Customer Base
- Tax Incentives for Business

Read more about the DOJ's new technical assistance documents at <http://www.ada.gov/business.htm#Anchor-Accessible-35882>.

The U.S. Congress has extended the Work Opportunity Tax Credit (WOTC) through the end of 2007. The WOTC extension was for two years with the first year being retroactive to January 1, 2006. Employers may claim a maximum tax credit of \$2400 when they hire individuals with disabilities meeting certain criteria. The credit can be claimed during the first year of employment. Read More about the Tax Credits at <http://www.doleta.gov/business/Incentives/opptax/>.

The U.S. Department of Transportation (DOT) is proposing extending the ADA regulations to all passenger vessels, including foreign-flagged cruise ships. The regulation proposals address the policies, practices and procedures of passenger vessels regarding the transportation of passengers with disabilities. The proposal doesn't address architectural barrier issues as the U.S. Access Board is currently working on guidelines for access to passenger vessels for individuals with disabilities. The DOT is accepting public comments on the proposed regulatory changes through April 23, 2007. Read More about the Proposed Regulations at <http://dms.dot.gov/reports/fr.htm>.

The Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education has released a CD ROM version of the Tool Kit on Teaching and Assessing Students with Disabilities: Parents' Materials. It is designed to assist parents and states in their efforts to work together to raise the achievement of all students with disabilities. The Parent Tool Kit offers a

professionals. The conference will include four tracks, accessibility, employment, higher education, and transit. Information regarding registration and program description may be found on the NADAC web site.

April 23 - 26, 2007

Miami, FL

www.jan.wvu.edu/naadac/naadac/conferences.html

Road to Freedom Bus Tour

The Road to Freedom Bus Tour is a year-long cross country bus ride that began on November 15, 2006 in Washington, DC. The tour plans to educate audiences across the United States on the story of the Americans with Disabilities Act and the history of the disability rights movement. Visit the Road to Freedom web site for information on the dates and times for the stops along the tour.

<http://roadtofreedom.wordpress.com/freedom-bus-tour-schedule/>

Job Accommodation Network (JAN) 2007 Conference

The 2007 JAN conference will be held at the Hyatt Regency Crystal City in Alexandria, VA. The annual JAN Conference will cover employment law, innovative employment practices, and disability issues. Visit the JAN web site for information about conference registration and program descriptions.

August 6-7, 2007

Alexandria, VA

www.jan.wvu.edu/enews/2006/Enews-V4-I4.htm#1

collection of resources including assessment, instructional practices, behavior and accommodations. Read more about the CD Rom at <http://www.osepideastthatwork.org/>.

The U.S. Department of Justice (DOJ) has announced 2 new settlement agreements under its Project Civic Access initiative. The initiative was launched to insure that residents with disabilities have full access to the wide range of programs, services and activities offered by state and local government entities. The latest agreements involve:

- Kanawha County, West Virginia
- Metro 911 of Kanawha County, West Virginia

Read more about the settlement agreements at <http://www.ada.gov/civicac.htm#Anchor-49575>.

The U.S. Access Board is conducting a survey regarding the use of its web site. When individuals visit the Access Board site a survey may pop up. The survey is designed to get information about how individuals use the site and to get feedback on how information and material is organized. Read more about the Survey at <http://www.access-board.gov/#contentarea>.

The General Services Administration (GSA) has released a checklist for federally leased facilities. The Architectural Barriers Act (ABA) Accessibility Standards contain provisions specific to leased facilities. The standards address access to accessible routes to primary function areas, restrooms, and other spaces and elements. The new standards will apply to facilities leased by GSA after February 6, 2007. Read more about the Checklist at <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8195&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-12937>

The U.S. Department of Labor has announced that it is seeking information and comment from the public on the Family and Medical Leave Act (FMLA) and its implementing regulations. The request for information (RFI) was published in the Federal Register on December 1. Information on submitting comments on the FMLA regulations may be found on the DOL web site. Read more about the Public Comments at <http://www.dol.gov/opa/media/press/esa/ESA20062032.htm>.

The U.S. Department of Justice has posted the latest issue of its Disability Rights Online News on its web site. The document is a bi-monthly update about the DOJ's Civil Rights Division's activities in the area of disability rights. Read more about the Newsletter at <http://www.ada.gov/newsltr1206.htm>.

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

ADA Basics 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

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

Federal Agencies

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

Great Lakes In Focus

The U.S. Department of Justice (DOJ) has announced the release of a new technical assistance document entitled, "[The ADA Best Practices Tool Kit for State and Local Governments](http://www.ada.gov/pcatoolkit/toolkitmain.htm)" (<http://www.ada.gov/pcatoolkit/toolkitmain.htm>). The purpose of the technical assistance document is to assist state and local officials in improving compliance with Title II of the Americans with Disabilities Act (ADA). The DOJ plans to release the new technical assistance document in several installments over the next 10 months.

The Tool Kit is designed to instruct state and local government officials on how to identify and fix problems that prevent people with disabilities from having equal access to state and local government programs, services, and activities. It will also provide information on how to conduct accessibility surveys of buildings and facilities to identify and remove architectural barriers.

The first installment of the document now available on the DOJ web site includes:

About This Tool Kit

HTML: <http://www.ada.gov/pcatoolkit/abouttoolkit.htm>

PDF: <http://www.ada.gov/pcatoolkit/abouttoolkit.pdf>

Chapter 1, ADA Basics: Statutes and Regulations

HTML: <http://www.ada.gov/pcatoolkit/chap1toolkit.htm>

PDF: <http://www.ada.gov/pcatoolkit/chap1toolkit.pdf>

Chapter 2, ADA Coordinator: Notice and Grievance Procedure

HTML: <http://www.ada.gov/pcatoolkit/chap2toolkit.htm>

PDF: <http://www.ada.gov/pcatoolkit/chap2toolkit.pdf>

Chapter 2, Addendum: Title II Checklist

HTML: <http://www.ada.gov/pcatoolkit/noticetoolkit.htm>

PDF: <http://www.ada.gov/pcatoolkit/noticetoolkit.pdf>

Please continue to visit the Chronicle to get information about future releases of the tool kit. To get print copies of the tool kit materials please contact the DBTAC Great Lakes ADA Center by calling **800-949-4232 (V/TTY)** or by visiting the [online contact form](http://www.adagreatlakes.org/WebForms/ContactUs/) at <http://www.adagreatlakes.org/WebForms/ContactUs/>.

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](http://www.adagreatlakes.org/AIT/) 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](#)

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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
Chicago, IL 60602
Phone: 877-232-3601
www.ada-il.org

ADA Indiana
2853 East Tenth Street
Bloomington, IN 47408-2696
Phone: 812-855-6508
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

[Technology Bulletin](http://www.adagreatlakes.org/Publications/ATBulletin/) (<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](#) (<http://www.adagreatlakes.org/WebForms/ContactUs/>).

The Docket

[KAMPMIER V. EMERITUS CORP](#)

Circuit: Seventh Circuit
Date: January 2, 2007
DOCKET NO. 06-1788
Citation: ___ F. 3d___, 2007 WL 6072

HOLDING:

The Court of Appeals for the Seventh circuit (IN,WI,IL) held that the plaintiff/Appellant, Ms. K, failed to establish a claim of discrimination under the Americans with Disabilities Act. The Appellate court thus affirmed the trial court's grant of summary judgment to Defendant/Appellee. The Court based its ruling on two grounds: First, the Plaintiff's disabling condition, endometriosis, did not constitute a disability within the meaning of the ADA. It was based on the fact that there was no showing that the medical condition affected any "major life activity". Second, the Court held that, since Plaintiff was claiming difference in treatment, she was required to invoke the indirect burden-shifting method of proof to establish that she was treated less favorably from a non-disabled employee.

FACTS:

Plaintiff/Appellant Shannon K, a practical nurse, was terminated by E Corporation that operates assisted living communities, on the ground of job abandonment or excessive, undocumented absences. Ms. K requested leave for a two week period in order to have a hysterectomy to relieve the effect of her endometriosis. It is a medical condition in which tissue similar to that found in the lining of the uterus (the endometrial stroma and glands, which are only located inside the uterus) is found elsewhere in the body. Ms. K was granted the requested leave but was required to submit a doctor's verification. When no such notification was forthcoming, despite multiple calls to both Ms. K and her physician, she was terminated under Defendants attendance policy.

In her court complaint, Ms K alleged disability discrimination as well as sex discrimination and retaliation. In her ADA claim, she alleged that, as a person with a disability, she was treated differently from non-disabled individuals.

DISCUSSION

The court held that Ms. K's chronic medical condition was not covered under the ADA This was so even though she has had an average of one to two surgeries a year, including fifteen laparoscopic surgeries and cervical scrapings, had pregnancy complications with both of her children and had an ectopic pregnancy. The Court accepted Ms. K's claim that her condition flairs up a week or two before and after her menstrual periods, and for over a month after many of her surgical procedures. However, she did not inform Defendant of her medical condition. She never requested any accommodation nor did she ever take any leave on account of it.

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ADA Minnesota

1600 University Avenue
West, Suite 16
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 Great Lakes offers resource materials on a variety of issues under the ADA and Accessible Information Technology.

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](#).

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

Your Responsibilities as an Employer
www.eeoc.gov/facts/ada17.html

The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964
www.eeoc.gov/policy/docs/fmlaada.html

Because Ms. K had no direct evidence of discrimination, she was required to prove her case using the indirect, burden shifting method. Under that formulation, she has the burden of showing that (1) she was disabled within the meaning of the ADA, (2) she was meeting her employer's legitimate expectations, (3) she was subject to an adverse employment action, and (4) similarly situated non-disabled employees received more favorable treatment. The court held that Ms. K did not establish the first and fourth prongs.

In holding that Ms. K's medical condition was not an ADA,-covered disability, the court found that she had not established that she was limited in the "performance of one or more major life activities." She testified that she cleans her house, cooks without limitation, plays with her children, does her own shopping, and dresses and grooms herself. She had two natural pregnancies. There is also no limitation in her ability to work, illustrated by the fact that she had requested no accommodation and had routinely worked 16 hour shifts. She had taken no leave due to her condition. The court noted that, while her condition is painful, it does not rise to the level of a covered A.D.A disability.

Although the court did not have to reach the issue, it also found that Ms. K did not show that a non-disabled employee had been treated differently.

COMMENTS

This case illustrates that it is the alleged disabled person's burden to factually demonstrate the limitation in the performance of one or more major life activities. While it is an individualized factual showing, some readily apparent conditions, such as a significant visual or hearing impairment, a lingual dysfunction such as a speech stammer, or those with mobility issues, the limitation is assumed or easily inferred. However, with many non-physically apparent conditions, such as diabetes or, as here, endometriosis, the person invoking the ADA must factually demonstrate the existence of a limitation in a major life activity. That was not done, at least to the Court's satisfaction.

This case is not a usual ADA matter where the issue concerns whether the employer has satisfactorily made a reasonable accommodation to the person with a covered disability. Rather, it relates to the issue of equal or disparate treatment that arises more commonly under Title VII. The more usual A.D.A situation relates to accommodation or an exception from the norm while other forms of discrimination, such as race and sex discrimination matters, generally concern inclusion or the equal treatment of excluded individuals. In that situation, it is important that the ADA claimant, demonstrate that she was less favorably treated than was a similarly-situated non-disabled person. This was not done by Ms. K.

This article was prepared by the DBTAC Coordination, Outreach and Research Center located at Virginia Commonwealth University. This article is provided as informal technical guidance and is not a legal determination of the rights and responsibilities of individuals and covered entities under the Americans with Disabilities Act and is not binding on any enforcement agency.

Technical Assistance Desk Question of the Month

Q. I have an employee that is pregnant and is currently unable to work because of

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some issues with the pregnancy and has exceeded the allowed number of absences. This employee has not worked long enough to qualify for the Family and Medical Leave Act (FMLA.) What are my obligations under the ADA regarding this employee as she has requested leave as an accommodation?

A. The ADA prohibits covered employers from discriminating on the basis of disability in all employment practices. As an employer you would handle this employee's request for a reasonable accommodation as you would handle any other request for an accommodation based on a medical condition. The request from the employee triggers the interactive process and dialogue should occur between you and the employee.

During the interactive process an employer has the right to request documentation of a disability when the need for the accommodation or the disability is not apparent. An employer only has the right to receive documentation relating to the specific medical condition/disability for which the individual has requested the accommodation. The employee is not obligated to provide nor is the employer entitled to receive a complete medical history.

Pregnancy in and of itself is not a disability under the ADA. The definition of disability under the ADA is:

A physical or mental impairment that substantially limits one or more major life activities or:

A record of such an impairment or:

Being regarded as having such an impairment.

Additionally, an employee must be qualified to perform the essential job functions to be covered by the law. If an individual is unable to perform the functions of the job with or without a reasonable accommodation then they are not a qualified individual with a disability under the ADA.

There may be underlying medical conditions in addition to the pregnancy that substantially limit a major life activity and therefore would be covered by the ADA. An employer is obligated under the law to accommodate the functional limitations of the covered disability. An employer must provide a reasonable accommodation when it is needed to provide equal access to the application process, to allow a qualified individual to perform the essential functions of the job or to provide equal access to a benefit of the employment.

The requirement to provide the accommodation is limited to the point where it poses an undue hardship for the employer. An undue hardship is something that entails significant difficulty or expense.

If you determine from the documentation from the employee that this employee is not substantially limited in a major life activity then there is no responsibility to provide an accommodation under the ADA. The Equal Employment Opportunity Commission (EEOC) enforces the Pregnancy Discrimination Act, which prohibits discrimination on the basis of disability. You may contact the EEOC by calling (800) 669-4000 or by visiting their web site at www.eeoc.gov to get additional information about this federal law.

If the employee has a covered disability then you would look at providing an

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effective accommodation that doesn't pose an undue hardship. In this situation it would likely be a modification of the absenteeism policy and additional time off.

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