

Great Lakes Chronicle

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Training and Events

National ADA Symposium & EXPO

May 12-14, 2007

The National ADA Symposium and EXPO is a comprehensive three day conference on the Americans with Disabilities Act and related disability laws sponsored by the National Network of Disability and Business Technical Assistance Centers. The 2008 Symposium will feature an intensive ADA Coordinators track. Continue to visit the ADA Symposium site to get information on registration, session topics and speakers as it becomes available.

The America's Center

St. Louis, MO

<http://www.adasymposium.org>

Workshop on Playground Access

Presented By: the National Recreation and Park Association, the Indiana Park and Recreation Association and the U.S. Access Board

May 15, 2008 8:30-3:00 PM EDT.

This workshop is designed to inform and educate park and recreation professionals, designers, landscape architects, risk managers, operators and owners of private play areas about the accessibility guidelines for play areas. These guidelines are now required for certain federal play areas covered by the Architectural Barriers Act (ABA), and are awaiting adoption under the Americans with Disabilities Act (ADA) as the enforceable standard for newly constructed and altered play areas. The workshop addresses topics such as where ramp access and transfer access is required; the required number of accessible play components; accessible play surfacing and other elements designed to provide a "minimum" level of accessibility for children with disabilities.

Forest Park in Noblesville, Indiana

www.ncaonline.org

2008 Accessible Technology On-line Seminar Series

May 19, 2008 1-2:00 PM CDT.

Accessible Computer Applications

Many jobs now require interaction with various computer applications, such as record keeping and database systems. Inaccessibility of these applications can seriously hinder job performance for individuals with disabilities. This seminar will discuss accessibility issues with common workplace computer applications and how to make them accessible.

<http://www.ada-audio.org/Schedule/AccessibleTech.php>

ADA Audio Conference

May 20, 2008

Employer Best Practices: Recruitment and Hiring of People with Disabilities

This session will highlight the best practices learned by the Walgreen Company and Cincinnati Children's Hospital in regards to the recruitment and hiring of people with disabilities. Participants will learn what it took within these organizations to mobilize administration, management as well as all employees in support of this effort and the benefits that they have realized as a result. Strategies and common sense approaches will be discussed. Both Walgreen's and Cincinnati Children's Hospital have become models in the business community for embracing people with disabilities as part of their diverse workforce. www.ada-audio.org

2008 Legal Issues Webinar: Employment and the ADA

June 3, 2008

Qualified as related to Reasonable Accommodations such as Leave, Reassignment and Job Modifications

Are employees who need leave, reassignment or modified job duties still qualified employees with disabilities under the ADA? This session will review the ADA and its regulations, EEOC guidance, and recent case law decision that focus on how certain accommodation requests relate to employees' abilities to perform essential job functions.

http://www.ada-audio.org/Webinar/Legal_webinar_Registration.htm

The Kennedy Center's Leadership Exchange in Arts and Disability conference and training (LEAD)

August 21-24, 2008

This conference and training will touch on a variety of topical issues including:

- Legal issues with representatives of the U.S. Department of Justice Disability Rights office, and Peter Blanck, PhD.
- Marketing and building audiences with Nadine Vogel
- Exploring exciting ways to make inclusive educational programs effective
- Hands on surveying of the physical environment for those renovating, building new facilities or putting on an addition
- Ticketing policies and how to craft good ones.

Broward Center for the Performing Arts

Ft. Lauderdale, FL

<http://www.kennedy-center.org/accessibility/education/lead/conference.html>

News from the Federal Agencies

U.S. Access Board

The U.S. Access Board announced the submission of the Telecommunications and Electronic and Information Technology Advisory Committee's report on updating the 508 and 255 standards. The committee's report recommends revisions to the Access Board's standards for electronic and information technology covered by section 508 of the Rehabilitation Act. The report also addresses updates to guidelines for telecommunications products issued under section 255 of the Telecommunication Act. Read more about the Telecommunications and Electronic and Information Technology Advisory Committee's report at <http://www.access-board.gov/news/teitac-report.htm>

U.S. Department of Education

The U.S. Department of Education, National Institute on Disability and Rehabilitation Research (NIDRR), announced the release of a new online publication: Emergency Management Research and People With Disabilities: A Resource Guide. The guide provides a listing and description of research projects funded by the federal government and nonfederal entities, research recommendations that have come out of conferences on emergency management and disability, and a bibliography of relevant research publications. The goal is that the guide will facilitate the development and implementation of a nationwide research agenda on emergency management and people with disabilities. Read more about the NIDRR publication at <http://www.ed.gov/rschstat/research/pubs>

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Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission announced that Wal-Mart would pay \$300,000 to settle a suit filed by the Commission. The EEOC lawsuit alleged that Wal-Mart refused to hire an applicant with cerebral palsy that uses crutches or a wheelchair for mobility because of the individual's disability. Steven Bradley had applied for employment at the Richmond, Mo., store in 2001 and alleged that during his interview he was told that he was best suited for a greater position. Eventually Wal-Mart never offered him any position at the store. Read more about the Wal-Mart settlement at <http://www.eeoc.gov/press/4-17-08.html>

U.S. Department of Justice

The U.S. Department of Justice announced that a settlement agreement had been reached with Marco Polo Restaurant and Tavern under Title III of the ADA. The Department had launched an investigation following the submission of a complaint that alleged the restaurant lacked an accessible entrance and that existing architectural and communication barriers had not been removed in accordance with Title III of the ADA. The settlement agreement requires the restaurant to undertake readily achievable barrier removal, insure any alterations undertaken comply with the ADA standards for accessible design, and that the operators of the restaurant maintain in operating order the accessible features of the facility. Read more about the Marco Polo settlement agreement at <http://www.ada.gov/marco-polo.htm>

The U.S. Department of Justice announced a settlement agreement with Golden Cab Corp. under Title III of the ADA. The settlement resolves a complaint filed alleging the company discriminated against individuals with disabilities using service animals. The agreement requires that Golden Cab modify its policies so individuals with disabilities using service animals have access to the company's transportation services and the company will provide training regarding the requirements of Title III of the ADA to its staff. Read more about the Golden Cab Corp. settlement agreement at http://www.ada.gov/golden_cab.htm

The U.S. Department of Justice announced a settlement agreement with the State of Colorado Peace Officers Standards and Training Board under Title II of the ADA. The agreement resolves a complaint filed with the Department alleging that the Board had discriminated against an individual that requested modifications to the test used to certify police officers in the state. The agreement requires the Board to make reasonable modifications in its testing procedures so that individuals with disabilities have an equal opportunity to access the testing process and that the Board will provide necessary auxiliary aids and services for individuals with disabilities. Read more about the State of Colorado Peace Officers Standards and Training Board settlement agreement at <http://www.ada.gov/coloradopost.htm>

Great Lakes in Focus

Effective Communication and the ADA

The Americans with Disabilities Act (ADA) requires that businesses, for profit and non-profit, insure that individuals with disabilities have the same level of access to information that individuals without disabilities have. This obligation extends only to individuals with disabilities who have physical or mental impairments, such as vision, hearing or speech impairments, that substantially limit the ability to communicate. Measures taken to accommodate individuals with other types of disabilities are covered by other requirements under title III of the ADA, such as "reasonable modifications" and "alternatives to barrier removal."

Title III of the ADA covers a wide range of businesses and organizations. It covers theaters, restaurants, law offices, professional offices of a health care provide, recreational sport leagues, banks, private educational institutions just to name a few. The ADA covers both for profit and non-profit organizations and businesses.

This may require the use of auxiliary aids and services. For individuals that are deaf or hard of hearing that could include qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's,) and videotext displays.

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For individuals that are blind or visually impaired this could include qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials accessible available. Examples for individuals with speech impairments include TDD's, computer terminals, speech synthesizers, writing notes, and communication boards.

The ADA does not require that a qualified interpreter be provided or print materials be put in Braille each time they are requested. Consideration of the duration and complexity of the information being provided should be evaluated to determine if effective communication can be achieved through another means or if a qualified interpreter or Braille materials are necessary.

For example, an individual that is deaf may be able to go into a city hall and get general information about the application process for getting a building permit by writing notes. If however, that same individual wanted to appeal the denial of his application for a building permit it is likely that a qualified interpreter would be needed because that process would probably be more complex and of a longer duration than when he picked up the application.

Similarly, a deaf individual may be able to walk into a doctor's office and make an appointment for a medical examination by writing notes. However, in order to insure effective communication with the individual during the examination it is likely that a qualified interpreter would be necessary.

Businesses should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the business, provided that the method chosen results in effective communication.

A business does not have to provide any auxiliary aid or service that would result in an undue financial or administrative burden or in a fundamental alteration of the nature of the goods, services or programs being provided. There are tax credits available to small businesses for the costs of providing auxiliary aids and services. Any tax benefits available should be considered when determining if a financial undue burden would result from providing the auxiliary aid or service that has been requested. If an auxiliary aid or service would result in an undue burden or fundamental alteration then another means of providing effective communication should be provided.

Below is Section 36.303 of the Title III regulations covering the requirements for providing auxiliary aids and services.

Department of Justice ADA Title III Regulation 28 CFR Part 36

<http://www.ada.gov/reg3a.html#Anchor-97857>

Sec.36.303 Auxiliary aids and services.

(a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) Examples. The term "auxiliary aids and services" includes --

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

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(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) Telecommunication devices for the deaf (TDD's). (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

(e) Closed caption decoders. Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) Alternatives. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

Resources

ADA Tax Incentives Packet
<http://www.ada.gov/taxpack.htm>

ADA Business Brief: Communicating with Guests Who Are Deaf or Hard of Hearing in Hotels, Motels, and Other Places of Transient Lodging.
<http://www.ada.gov/hotelcombr.htm>

ADA Business Brief: Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings
<http://www.ada.gov/hospcombr.htm>

ADA Guide for Places of Lodging: Serving Guests Who Are Blind Or Who Have Low Vision
<http://www.ada.gov/lodblind.htm>

ADA Guide For Small Businesses
<http://www.ada.gov/smbustxt.htm>

ADA Title III Technical Assistance Manual
<http://www.ada.gov/taman3.html>

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The Docket

Monica Buboltz v. Residential Advantages, Inc.

<http://caselaw.lp.findlaw.com/data2/circs/8th/072065p.pdf>

In a lawsuit by a legally blind former employee alleging that her employer violated the ADA by not providing her with a reasonable accommodation and that her employer created a hostile work environment, an appeals court affirmed a lower court's summary judgment for the employer. The appeals court ruled that: employee failed to show that she suffered an adverse employment action; employee's constructive discharge claim failed, as she failed to produce any evidence that her employer acted deliberately to render her working conditions intolerable; and employee did not request an accommodation, and thus employer's duty to accommodate never arose.

Disability Rights WI v. Walworth Co

<http://caselaw.findlaw.com/data2/circs/7th/071755p.pdf>

An appeals court affirmed a lower court's dismissal of a lawsuit filed by Disability Rights Wisconsin alleging that Walworth county's operation of a separate educational facility for disabled children violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The appeals court ruled that the plaintiff had no standing to sue since it did not allege an injury in fact to itself or its members.

From the ADA Expert

Q. I have an employee who was given a verbal warning for not meeting the plant's production standards. The next step is a written warning with a possible progression that could lead to termination. Prior to a written warning the employee disclosed that he has a disability and that is why he hasn't been able to meet his production quotas. The employee stated that he was covered by the Americans with Disabilities Act (ADA) and that we shouldn't hold him to the same production standards as other employees. Is this correct? How do we handle the employee's disclosure of his disability?

A: The Americans with Disabilities Act (ADA) prohibits covered employers from discriminating on the basis of disability in all employment practices. Employers may hire, fire, or promote the most qualified individual that he/she chooses. The ADA prohibits a covered employer from making that employment decision on the basis of disability.

The first thing to consider here is whether this employee is covered by the ADA. The ADA prohibits discrimination against qualified applicants or employees with disabilities. A disability under the ADA is defined as:

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

A record of such impairment or:

Being regarded as having such impairment.

The ADA requires that employers engage in an interactive process with an employee who has requested a reasonable accommodation. An employee does not need to use the phrase "reasonable accommodation" in order to make a request. The employee could indicate to a supervisor that he/she is having trouble doing the job and it is because of an impairment or medical condition. When this request is made as part of the disciplinary process, an employer should put the disciplinary process on hold while exploring the issues related to the employee's identification of a disability and the need for reasonable accommodation.

During the interactive process an employer may request documentation of the impairment and potential reasonable accommodations when the disability or the need for the accommodation is not readily apparent. The employer has the right to request documentation to substantiate that a disability is present which meets the definition of disability under the ADA and whether the limitation is directly related to performance of the job tasks. The medical information that an employer receives must be kept confidential and separate from the employee's regular work file.

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If an employer determines that the employee is covered by the ADA and that the limitation is related to performing the job task(s), then the employer should begin the process of identifying potential accommodations. An employer is not required to lower production standards as a form of reasonable accommodation. An individual with a disability must be able to perform the essential functions of the job with or without a reasonable accommodation to be considered a qualified individual with a disability. The obligation of an employer is to provide an accommodation that would allow the individual with a disability to meet the production standards set for all employees.

An employer should consult with the employee during the process of identifying an effective accommodation. An employer is not required to provide the employee's preferred accommodation as long as the employer can demonstrate that the accommodation provided is effective. Once an effective accommodation has been identified, the employer should provide an opportunity for the accommodation to be implemented and re-examine whether or not the performance issue, which was the original subject of the disciplinary action, is resolved. If not, the employer may continue with the disciplinary action as the individual is not a "qualified" individual with a disability and is subject to the same disciplinary action as employees without disabilities.

Suggested Resources

The ADA: Your Responsibilities as an Employer

<http://www.eeoc.gov/facts/ada17.html>

Section 902 Definition of the Term Disability

<http://www.eeoc.gov/policy/docs/902cm.html>

ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE AMERICANS WITH DISABILITIES ACT

<http://www.eeoc.gov/policy/docs/accommodation.html>

Small Employers And Reasonable Accommodation

<http://www.eeoc.gov/facts/accommodation.html>

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