

# Great Lakes Chronicle

ILLINOIS \* INDIANA \* MICHIGAN  
MINNESOTA \* OHIO \* WISCONSIN

JUNE 2008

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## Training and Events

### **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](http://www.ada-audio.org/Webinar/Legal_webinar_Registration.htm)

### **ADA Audio Conference**

JUNE 17TH, 2008 1-2:30 PM CDT.

ACCOMMODATING EMPLOYEES WITH PSYCHIATRIC DISABILITIES IN THE WORKPLACE

Psychiatric conditions are the leading charge category for complaints filed with the EEOC. Data gathered by the National Institute of Mental Health indicates that more than one in five American adults experiences some diagnosable mental disorder in a given year. Employers are often concerned that accommodating individuals with psychiatric disabilities is more difficult and costly than accommodating those with physical disabilities. This session will address the realities of accommodating individuals with disabilities in the workplace and offer practical solutions for employers.

<http://www.ada-audio.org>

### **2008 Accessible Technology On-line Seminar Series**

August 11, 2008 1-2:00 PM CDT.

**ADA AND WEBSITE ACCESSIBILITY**

The Americans with Disabilities Act (ADA) does not explicitly discuss whether it applies to websites, and thus far, there have been few cases. Website accessibility cases courts have reached different conclusions as to whether websites are covered under the ADA. This session will discuss current standards and guidelines of website accessibility and recent legal developments and their potential implications.

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

### **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>

National Center on Accessibility  
Retrofitting for Accessibility  
September 8-11, 2008

The National Center on Accessibility training course "Retrofitting for Accessibility" is designed for maintenance professionals, construction specialists, facility managers, trails supervisors, architects, forest access coordinators, landscape architects, civil engineers, parks planners, visitor services specialists, program development specialists, preservation supervisors, concessionaires, safety officers, and accessibility coordinators. Curriculum emphasis will include application of accessibility standards, barrier removal, safety issues associated with accessibility, and ongoing facility maintenance to assure optimum access for visitors including those with disabilities. This course has an active field-based component that is designed to provide hands-on experiences identifying design problems in existing facilities and viable solutions for improving access.

Gatlinburg, Tennessee  
<http://www.ncaonline.org/index.php?q=node/695>

## News from the Federal Agencies

### U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development announced that a Portland, Oregon apartment owner and management company agreed to pay the parents of an autistic child \$40,000 to settle a housing discrimination complaint. The parents claimed Princeton Property Management, Inc. refused to accommodate the special needs of their three-year-old son. The parents alleged that Princeton Property Management, Inc., refused to grant the family's request to move to a vacant first-floor apartment to mitigate noise complaints about their son. The family also alleged the property managers refused to renew the family's lease, which it had done in previous years. Read More about the Settlement at <http://www.hud.gov/news/release.cfm?content=pr08068.cfm>

### U.S. Department of Justice

The U.S. Department of Justice is now accepting requests for pre-orders for its updated ADA technical assistance CD. The CD will contain all of the Department's regulations and technical assistance documents pertaining to the Americans with Disabilities Act (ADA). You may pre-order the CD at <http://www.ada.gov/cdrequestform.htm>

The U.S. Department of Justice has posted Issue 24 of the Disability Rights Online News to its web site. This publication is a bi-monthly update on the Civil Rights Division's activities in the area of disability rights. The new issue was posted on May 9, 2008. Read the newsletter at <http://www.ada.gov/newsltr0408.htm>

### U.S. Social Security Administration

The Social Security Administration issued final rules designed to improve the Ticket to Work program. The changes are designed to improve the effectiveness of the Ticket program in assisting beneficiaries with disabilities who want to work.

The new Ticket to Work program rules include:

- Include more beneficiaries under the Program--The population of individuals eligible for a Ticket is expanded to

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

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include beneficiaries who are expected to medically improve.

- Increase incentive payments for Employment Networks (ENs)--The new rules modify the EN payment systems to create greater financial incentives for service providers to participate, which will improve beneficiary access to services and expand the pool of quality providers available to serve beneficiaries.
- Increase the value of the Ticket--The rules for Ticket assignment are changed to enable beneficiaries with disabilities to take advantage of a more effective combination of services from both State Vocational Rehabilitation agencies and ENs.
- Synergize efforts--The new rules promote better alignment of the Ticket to Work Program, the Work Incentives Planning and Assistance Program, the Protection and Advocacy for Beneficiaries of Social Security Program, and other Social Security work incentive initiatives.

Read more about the Ticket to Work program rules at <http://www.ssa.gov/pressoffice/pr/tickettowork-pr-0508.htm>

## U.S. Department of Transportation

The U.S. Department of Transportation, Federal Transit Administration, Office of Civil Rights is conducting three-day trainings on FTA's civil rights requirements in regional office cities. The training will review Federal laws, regulations, executive orders, and guidance covering the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, and the U.S. Department of Transportation's Disadvantaged Business Enterprise Program.

Read more about the FTA trainings at [http://www.fta.dot.gov/civilrights/ada/civil\\_rights\\_7756.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_7756.html)

The U.S. Department of Transportation has issued a new rule under the Air Carriers Access Act. The new rule extends the protections of the Air Carriers Access Act for travelers with disabilities to foreign air carriers. Read more about the new Air Carriers Access Act rule at <http://www.dot.gov/affairs/dot6708.htm>

## Great Lakes in Focus

### Creating Accessible Temporary Events

Titles II and III of the Americans with Disabilities Act (ADA) requires that all programs, services and activities of state and local governments and goods and services of places of public accommodations are accessible to and useable by individuals with disabilities. This would include but is not limited to temporary events such as street festivals, craft fairs, parades, music events, state and county fairs, regattas, air shows and, sports tournaments. The fact that an event is temporary doesn't exempt governmental entities or public accommodations from their obligations to insure that individuals with disabilities have an equal opportunity to participate.

Temporary events may pose unique barriers for individuals with disabilities. Uneven terrain, temporary structures and gravel and grass paths are just a few of the unique situations that face temporary event organizers. However, taking accessibility issues into consideration when planning events should help eliminate obstacles that would prevent individuals with disabilities from full participation.

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Organizers should consider:

- Accessible Parking
- Accessible Paths of Travel from parking locations
- Accessible Paths of travel to all areas open to the public
- Accessible temporary structures such as viewing stands
- Wheelchair locations at performing areas
- Accessible toilet facilities
- Accessible picnic areas
- Directional Signage

This is not an exhaustive list of things to consider when planning a temporary event. Technical assistance and materials exist to assist entities planning temporary events.

Obligations extend beyond ensuring that the physical environment of a temporary event is accessible. Event organizers must provide auxiliary aids and services to ensure that communication is as effective for individuals with disabilities as it is for individuals without disabilities. This may include providing sign language interpreters for an individual attending a musical performance or producing written materials in alternative formats such as the schedule of events and event locations.

In addition, entities must make reasonable modifications in policies, practices and procedures when needed to provide an equal opportunity for an individual with a disability. This might include modifying "No Pet" policies for an individual with a disability using a service animal.

Below is an example of how one organization worked to improve access to temporary events in their community. This article may provide some best practices that may be incorporated in temporary event planning.

Diana Sullivan is the Disability Rights and Access Specialist with Independence First located in Milwaukee, WI. Independence First is an organization providing resources, referrals and advocacy assistance to individuals with disabilities, state and local governments, business and other individuals interested in disability issues.

### **Scarier than Halloween Itself**

A couple of Halloween seasons ago, I got a call from two students at a local high school who was really upset. For the past couple of years, they had enjoyed the yearly trip to Haunt Fest at the State Fair Park through our community Recreation Program. Last year, however; the girls found out that things had changed at Haunt Fest.

Tickets were purchased ahead of time so that the participants in the recreation program could arrive at the Fair Park building and go through the exhibit without having to wait in line for ticket buying. When Sara and Takeela got close to entering, a Haunt rep stopped them stating that "the event was not wheelchair accessible this year", and that they couldn't enter. The girls were not happy. They had participated in this spooky event with their peers for the past two

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years and it was accessible both times before.

Haunt Fest turned into a horrible experience for them. They spent a fair amount of time complaining to the rep, and then asked to have their money refunded. The rep told them that because their web site listed that the event was not wheelchair accessible; they didn't have to refund their money. This news was worse than the horror-able time they were expecting. The girls sold their tickets to some people in line and went home.

I got the call on Monday. After hearing how shabbily the girls were treated, I decided to call the owner of this Haunt Fest to find out why they were not accessible after years of being so. Our conversation really scared me, possibly even more than bloody body parts and spiders.

The owner told me that he had thought long and hard about whether or not to provide wheelchair access; and after much consideration, he chose to eliminate the access because he had a complaint about two girls using wheelchairs the year before – they were traveling the exhibit too slowly. His statement kind of frightened me so I asked him what color hair he had. He told me his hair was red, and “why?” I wanted to help him understand what it might feel like to be discriminated against, so I created a little possible scenario.

“So, imagine yourself at 16 years old. You and your friends are anticipating getting yourself scared to death (teenagers seem to like that kind of thing) and are talking up your trip to Haunt Fest on the weekend all week long. You are your buddies are having a hard time containing yourselves waiting in line to get in because you can hear the screeches and screams echoing from the inside the event. Finally, you get to the front of the line and the ticket taker takes you aside and tells you that people with red hair aren't allowed to enter. Your friends wave good bye to you as they rush into the horror chamber. Now, how does that make you feel?”

The owner guy started shouting at me, “that's not the same – red hair and being wheelchair bound are not the same – you can't not let someone in because of having red hair”. Well, sometimes people get it. This guy didn't. He didn't realize that not being allowed into a public event years after a law has been established was discrimination – just like if he were singled out as having red hair. We talked a while longer. He went on to tell me that none of the 10 or so Haunted Houses mentioned in the Journal Sentinel article were not wheelchair accessible. My pointed hat twitched slightly.

After I explained to him about the ADA and including all people at public events, he told me he was going to speak with his attorney. I told him that I thought that was a good idea.

I called the girls back and asked them what they would like to do about the situation. We discussed filing complaints and trying to make things better in years to come. They wanted to have the opportunity to visit any event that was open to the public; so made a phone call to the manager of operations at the State Fair. I explained to him about the spooky experience at Haunt Fest, and invited him to meet with these two students and others at the high schools, who by this time were very interested in exploring their rights regarding access.

The girls told their story of disappointment, frustration and anger just trying to have the same kind of fun many kids have at these events. They were also concerned that if the State Fair allowed this type of event in their Expo building, how many other events discriminated against people with disabilities? The manager's eyes opened really wide (maybe it was the black cat that walked past him), and realized that the Fair hadn't considered this potential. He actually assumed that the Haunt Fest was accessible as it had been previously. The students wanted him to assure them that all events that rent space at the Fair will be compliant with the ADA. He agreed.

The students felt that they wanted to try to do more to let the other nine Haunted House venues in our area know about making their places accessible to all people. They wrote a letter to each venue asking them to consider staging their Haunt in an accessible building and making it user-and ghoul friendly for everyone. They also included a copy of [Accessible Temporary Events: a planning guide](#) put out by the Center for Universal Design.

As it turns out four of the haunt venues were staged on county or state premises. I personally contacted each one of them and gave them the experience of having bats in their stomachs. Did this education help much? I would like to think so.

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Fast forward to Halloween 2007. Haunt Fest was up and running at the State Fair – accessible. The two “I scream” parlors on Waukesha County property were not originally. I called them and they told me they were not wheelchair accessible. I call the county executive’s office and explained to them that because this venue that advertises that they “get more people to soil themselves by 8:00 pm than other haunted houses get all night” was in violation of the ADA, and because it is on county grounds, they too were violating. I received a call 3 hours later stating that a number of county parks people went to the venue and rearranged the exhibit so that all people could mess themselves. Eppy from our sister CIL representing Walworth County graciously paid a visit to the county grounds there to help the folks understand their responsibility when hosting temporary events. It probably helped that she wore a clown suit and brought along her chain saw on that visit.

We still have a ways to go. A non-profit organization in town was going to benefit from the proceeds of a haunted house event. I called the haunt people up to see if their house was accessible. I was told they were not. But, they told me that maybe next year they could send some of the scary people out of the house to the yard and scare people who use wheelchairs if that was ok. Thanks, but I’d rather stay home and watch reruns of the Adam’s Family.

## Resources

Accessible Temporary Events Planning Guide

This document may be ordered by contacting the DBTAC: Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or by visiting the Center’s online contact form.

<http://www.adagreatlakes.org/WebForms/ContactUs/Default.asp?attention=chronicle>

## The Docket

**Ruiz-Rivera v. Pfizer Pharm., LLC.**

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=1st&navby=docket&no=071595>

The First Circuit Court of Appeals upheld a lower court’s summary judgment ruling in favor of the defendant. The Circuit Court found that the district court had not erred when ruling that the defendant had not regarded the plaintiff as having a disability in violation of Title I of the Americans with Disabilities Act. In fact the Appeals Court noted that the defendant had denied the plaintiff’s request for reasonable accommodations stating that the plaintiff was not disabled in terms of the definition under the ADA.

## From the ADA Expert

Q. I reside in a small community and I have a 15 year old son that uses a wheelchair. It recently came to my attention that our town is building a new city hall and that the original design had the accessible parking spaces located ACROSS from the building. This would require individuals to cross a busy street in order to access the building. If the accessible parking spaces are across the street would the city be in compliance with the ADA?

A. While having the accessible parking spaces across a busy street may not be the best design it may be in compliance with the ADA standards for accessible design. The ADA standards require that the accessible parking spaces be located closest to the accessible entrance along an accessible route.

If all of the parking is provided across the street from the building and the accessible spaces were the closest to the entrance then this would be in compliance. If only the accessible parking is provided across the street and all of the other parking is next to the building then that would not be in compliance with the ADA standards.

For additional information contact the DBTAC - Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or email us via our online contact us form. <http://www.adagreatlakes.org/WebForms/ContactUs/>

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## Suggested Resources

ADA Standards for Accessible Design <http://www.ada.gov/stdspdf.htm>

Nondiscrimination on the Basis of Disability in State and Local Government <http://www.ada.gov/reg2.html>

Guide to ADAAG Provisions <http://www.access-board.gov/adaag/about/guide.htm>

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