



WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 3.01

January 2005

Overview

Happy New Year from the RERC on Workplace Accommodations! Along with the new year, several noteworthy items occurred in the federal government. In January, John H. Hager was sworn in as Assistant Secretary for the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS), which is home to the National Institute on Disability and Rehabilitation Research (NIDRR). Also deserving of mention, The Government Accountability Office (GAO) released a report [GAO-05-54] in response to questions raised about the effectiveness of the one-stop system, in which it makes the recommendation that the Department of Labor (DOL) develop and implement a long-term plan ensuring that the one-stop career centers provide people with disabilities comprehensive access. Finally, the National Institutes of Health (NIH) announced that the National Institute on Aging (NIA) has established four demography centers to increase knowledge about older Americans, researching topics such as labor force participation and the economic costs of disability.

In judicial news, the Third Circuit Court of Appeals, in *Williams v. Philadelphia Housing Authority Police Department* (380 F.3d 751), made it possible for a person "regarded as" having a disability to be entitled to consideration for reasonable accommodation through the interactive process. Also on the judicial front, the Equal Employment Opportunity Commission (EEOC) and Northwest Airlines have agreed to settle an ADA disability discrimination suit in which the EEOC alleged that Northwest excluded epileptic or insulin-dependent diabetic applicants for airport ramp equipment service employee and cleaner positions.

Last but not least, the National Council on Disability (NCD) released its annual report titled *National Disability Policy: A Progress Report*. Among the report's key findings were "the need for antidiscrimination provisions in legislation, the development of program outcome measures as they relate to individuals with disabilities, and increased attention to the implications of the aging of the workforce for people with disabilities."

**Legislative/Policy
Activities****President Bush Signs IDEA Reform Bill**

12.03.2004 – President Bush signed into law a bill revamping the Individuals with Disabilities Education Act (IDEA), which is designed to ensure that all children with disabilities receive a quality education. IDEA's reauthorization is the second major overhaul of American education policy to be completed during Bush's first term in office. The first overhaul came with the 2002 No Child Left Behind Act. Both Democrats and Republicans endorsed the IDEA reauthorization, and areas addressed in the bill included prevention and early intervention, redefinition of learning disabilities, racial inequities, paper and litigation, double standards and funding. Full summary of the new special education law and other related information can be found online at the House Education and the Workforce Committee majority website at [http://edworkforce.house.gov/issues/108th/education/idea/idea.htm]. [Source: House Education and the Workforce Committee]

**Regulatory
Activities****EEOC Partners with Kansas to Review State's Hiring Practices**

12.01.2004: Kansas Governor Kathleen Sebelius and EEOC Chair Cari M. Dominguez signed a joint resolution "aimed at enhancing state government employment opportunities for individuals with disabilities nationwide." By signing this agreement, Kansas agrees to allow the EEOC to review its hiring, recruitment and reasonable accommodation programs. The EEOC will identify best practices and will in turn encourage other states to adopt them. States also involved in such agreements are Utah, Missouri, New Mexico, New Hampshire, North Carolina, and Texas. [Source: EEOC]

EEOC Reports on State Employment of People with Disabilities

11.2004: The U.S. EEOC has released a preliminary report highlighting best practices of four states (Florida, Maryland, Vermont and Washington) that promote the employment of people in state government jobs. The governors of the four participating states allowed the EEOC to survey their practices that encourage the employment of people with disabilities. The EEOC examined recruiting efforts, provision of reasonable accommodation, retention, advancement, and the general employment of people with disabilities. The EEOC identified a number of state practices that are suitable for modeling by other states. For example, Washington state law provides for a supported employment program for people with disabilities who need on the job training and long term support to be successfully employed.

A final report detailing the EEOC's findings in these states, along with several others, will be available in October 2005. View the EEOC report, *Interim Report on Best Practices for the Employment of People with Disabilities in State Government* at [http://eoc.gov/initiatives/nfi/int_states_best_practices_report.html].
[Source: EEOC]

GAO Report: Recommendations for One-Stops Access Requirements

12.2004 – The GAO released a report [GAO-05-54] in which it makes the recommendation that the DOL develop and implement a long-term plan ensuring that the one-stop career centers provide people with disabilities comprehensive access, specifically “the equal opportunity to participate in and benefit from the programs, activities, and/or employment offered by the Workforce Investment Act (WIA) one-stop system.” One-stop career centers were established by the WIA to provide a full range of assistance to job seekers such as training referrals, career counseling, job listings, and similar employment-related services. The GAO completed this study in response to questions raised about the effectiveness of the one-stop system. WIA requires the establishment of workforce investment boards at the state level and in local areas. Eighteen local areas and one-stop centers were evaluated and it was found that officials at most sites were working to implement architectural access requirements, and less often had they addressed other areas of comprehensive access such as the acquisition of assistive technology devices. The report also found that the one-stops varied in their relationships with state vocational rehabilitation (VR) departments as well as community-based disability organizations. Relationships between one-stops and VR departments are important because the two can refer services to one another; thereby combining resources and maximizing the services they provide people with disabilities. The DOL has issued guidance and assistance on the regulatory requirements for comprehensive access, and has conducted on-site reviews of one-stop career centers in two states. However, the GAO calls for the development of a long-term plan for how DOL will “carry out its oversight and enforcement responsibilities beyond 2005.” A long-term plan, as recommended by GAO, could increase the effectiveness of the one-stop career centers (and VR departments) to better assist persons with disabilities in finding employment. A copy of GAO-05-54 is available at [<http://www.gao.gov/atext/d0554.txt>]. [Source: GAO]

John H. Hager Becomes Assistant Secretary for OSERS

1.2005: John H. Hager, a former lieutenant governor of Virginia was sworn in as assistant secretary for the U.S. Department of Education's OSERS. The NCD has praised Hager for articulating his sentiments on many disability issues, noting that he is one of the country's few legislators with disabilities. Hager is a military veteran, the former senior vice president of American Tobacco Co. and a polio survivor who, as a life-long athlete, has competed in numerous wheelchair races. OSERS provides support to parents and individuals, school districts and states in the following areas: special education, vocational rehabilitation and research. OSERS is home to NIDRR which funds the Rehabilitation Engineering Research Centers (RERCs) [Source: OSERS]

NIH Establishes New Centers on Demography of Aging

10.28.2004 – The NIA at NIH has established four demography centers to increase knowledge about older Americans. The centers will be located at Harvard University, Princeton University, the University of North Carolina, and Pennsylvania State University. According to NIH, the centers will research topics on "the age structure of populations; changes in the levels of disease and disability; the economic costs of disability; cost effectiveness of interventions; migration and geographic concentration of older people; decision making about retirement; pensions and savings; the relationship between health and economic status; and health disparities by gender and race." Of the four centers, the University of North Carolina will research the effects of population aging on labor force participation. Many older Americans have age-related characteristics that could be considered disabilities. By providing information on the disability status and labor force participation of these individuals, the new demography centers will provide more insight as to the types of accommodations needed for this population in the workplace. Visit UNC's Demography and Economics of Aging Research Center at [<http://www.cpc.unc.edu/dear/>]. [Source: NIH]

OPM's GOLEARN Website Receives Praise from Disability Community

12.7.2004: A report by Criterion 508 Solutions Inc. gave high marks to the U.S. Office of Personnel Management's (OPM's) GoLearn.gov website. GoLearn.gov offers a wide variety of training resources and tools to federal employees in an online environment. The website was reported as being easily accessible for people with disabilities, logically designed and organized for effective use by screen

readers. The website underwent a design overhaul in November 2004 to achieve easier site navigation and more functionality, to enhance federal government training opportunities for people with disabilities. To see changes made to the site, visit [<http://www.golearn.gov>]. [Sources: OPM]

Judicial Activities EEOC and Northwest Airlines Settle Discrimination Suit

12.30.2004 – The EEOC and Northwest Airlines have agreed to settle an ADA disability discrimination suit in which the EEOC alleged that Northwest excluded epileptic or insulin-dependent diabetic applicants for airport ramp equipment service employee and cleaner positions. Northwest decided to settle to avoid further litigation. In the agreement, Northwest will offer an individualized assessment of applicants with insulin-dependent diabetes or a seizure disorder to safely perform a job's essential functions. Northwest will also provide a monetary settlement of \$510,000 that will be distributed between the 28 individuals involved in the case. [Source: EEOC]

Emergency Evacuation Plans Required by Title III

12.28.2004 - For the first time, an American court has ruled that places of public accommodation are required to consider the needs of people with disabilities when developing their emergency evacuation plans. According to a press release by the Washington Lawyers' Committee, "This groundbreaking decision – issued on December 28, 2004 by Judge John W. Debelius III of the Circuit Court for Montgomery County, Maryland – means that shopping malls, stores, restaurants, movie theaters, museums, and other private entities subject to the ADA throughout the country, whether landlords or tenants, must now seek to accommodate people with disabilities in the development and modification of emergency evacuation procedures." The court's decision came from the case of Katie Savage, a resident of Washington, DC, who was trapped during an emergency evacuation of a local shopping mall that did not have accessible emergency exits for people with disabilities. Read the full press release from the Washington Lawyers' Committee for Civil Rights and Urban Affairs at [<http://www.washlaw.org/news/releases/010405.htm>]. [Sources: Washington Lawyers' Committee for Civil Rights and Urban Affairs and the Southeast Disability and Business Technical Assistance Center]

Intel Employee Allowed to Challenge Benefits Plan Coverage

01.20.2005 – The U.S. District Court, District of Massachusetts decided that Jeanne M. Iwata, an occupational nurse for Intel Corp., could pursue her claim under the ADA that her company's benefits for employees with mental and physical disabilities were motivated by stereotype. Intel's policy states that in order for an employee with a mental condition to receive long-term disability benefits, the individual must be hospitalized. No such limitation is placed on individuals with physical disabilities. Iwata was diagnosed with major depression and post-traumatic stress disorder (PTSD) and was unable to continue working after managers at her facility ignored threats of violence from another worker. Chief Judge Young found that Iwata properly stated her claim under the ADA, the Rehabilitation Act and state law. [Sources: *Disability Compliance Bulletin*, Vol. 29, No. 5, The National Organization on Disability and *The Chicago Daily Law Bulletin*, 1/16/2005, p. 6]

Reasonable Accommodation for Employees Regarded as Disabled

08.2004 – The Third Circuit Court of Appeals reversed and remanded a District court's ruling in *Williams v. Philadelphia Housing Authority Police Department* (380 F.3d 751), making it possible for a person "regarded as" having a disability to be entitled to consideration for reasonable accommodation through an interactive negotiation process. Edward Williams, a police officer for the Philadelphia Housing Authority (PHA), was diagnosed with major depression after making threats to other PHA employees. Williams took a leave of absence, during which, PHA's psychologist advised the company that Williams should be transferred to another position and should not be allowed to carry a gun for a minimum of 3 months. Williams requested to be moved to the radio room until his 3 month evaluation was complete. PHA did not transfer Williams to another position and instead told him to take a medical leave of absence or his position would be terminated. Williams did not respond and was fired. He sued under Title I of the ADA and the trial court found that he did not have a disability under the ADA.

The Third Circuit disagreed, and found that Williams' inability to carry a firearm substantially limited him in the major life activity of working because he was restricted from performing a certain class of jobs. PHA argued that it did not grant Williams' request to work in the radio room because he could not be around other employees with guns. An issue existed as to whether or not PHA regarded Williams as disabled because it perceived him as having a limitation (the inability to be around other employees carrying guns) that was greater than his actual

limitation (the inability to carry a gun). Not being able to be around other employees with guns would diminish the possibility of him working in the law enforcement field. The Court found that PHA's accommodation of unpaid leave was not a good faith response for a transfer to the radio room position and rejected the company's argument that an employee "regarded as" having a disability was not entitled to an accommodation. The ADA defines disability to include "being regarded as having an impairment," therefore the Court concluded that the ADA does not distinguish between people with actual disabilities and those that are regarded as having a disability. [Source: *Mental and Physical Disability Law Reporter*, Vol. 28, p. 904]

Studies/Reports/ Publications

Blanck Editor of New Book *Disability Rights*

01.12.2005 – Workplace RERC Advisory Board member Dr. Peter Blanck is the editor of a new volume from Ashgate Press, *Disability Rights* in the series *The International Library of Essays on Rights*. From the publisher, "There is great diversity of definitions, causes and consequences of discrimination against persons with disabilities, yet there are fundamental themes uniting countries in their pursuit of human rights policies to improve the social and economic status of those with disabilities. In this volume are twenty-five important articles examining historical, contemporary and comparative issues crucial to the advancement of disability rights. The volume foreshadows the future of disability rights as a medium for ensuring that those living with disabilities participate as equal citizens of the world." More information is available on Ashgate's website at [www.ashgate.com/shopping/title.asp?key1=&key2=&orig=results&isbn=0%207546%202452%208] [Source: University of Iowa Law, Health Policy and Disability Center]

Hergenrather, K.C., G. Clark and S.C. Rhodes. "Employment-seeking Behavior of Persons with HIV/AIDS: a Theory Based Approach." *Journal of Rehabilitation*. Vol. 70, No. 4. p. 22-32.

The employment-seeking behavior of persons living with HIV/AIDS (PLWHA) was studied using the theory of planned behavior, which suggests that a person's behavior is a function of his or her intentions to perform a particular action. An Employment Interest Survey was distributed to 324 PLWHAs receiving treatment from the Whitman Walker Clinic in Washington, DC. Among the findings of the study were that PLWHAs perceive themselves as not seeking employment because they lack job-seeking skills needed to find employment and their lack of necessary job skills to compete in today's workplace. PLWHAs were able to report that they

needed job-seeking skills, however, they were not necessarily able to identify such skills or resources that provide job-seeking skills. Impediments to working that were identified in the survey were lack of job training and medical instability of prognosis. As cases of HIV/AIDS increase, as well as the disability status of HIV/AIDS, vocational rehabilitation professionals will likely have increasing numbers of PLWHAs on their caseloads. The authors suggest the creation of a PLWHA Job Placement Enhancement Model to be used in vocational rehabilitation, which would identify and change the employment beliefs of PLWHAs, thereby empowering these vocational rehabilitation clients. [Source: *Journal of Rehabilitation*]

NCD Releases Report on “Righting the ADA”

12.1.2004 – The NCD released a report based on its in-depth analysis of the Supreme Court’s interpretations of the ADA. The report, titled “Righting the ADA,” presents the NCD’s findings that while some of the Court’s decisions have worked to further the goals of the ADA (Tennessee v. Lane, Olmstead v. L.C.), others have drastically departed from its core principles and objectives (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*). The report provides an “analysis of the problematic rulings, describes the resulting impact on people with disabilities, and offers legislative proposals designed to restore the ADA to its original intent.” The report presents the legislative proposals in a draft form of “The ADA Restoration Act of 2004.” In addition to its report, the NCD has developed an in-depth analysis of these issues in its *Policy Brief Series: Righting the ADA Papers*. The papers can be found at [<http://www.ncd.gov/newsroom/publications/2003/policybrief.htm>]. “Righting the ADA” can be viewed at [http://www.ncd.gov/newsroom/publications/2004/righting_ada.htm#11]. [Source: National Council on Disability]

NCD Report: Progress of Disability Policy

12.09.2004 – The NCD released its annual report titled *National Disability Policy: A Progress Report*, which covers the period from December 2002 to December 2003. The report reviews policy activities and makes recommendations in thirteen different areas; one being employment and the workforce development system. Key findings of the report included “the need for antidiscrimination provisions in legislation, the development of program outcome measures as they relate to individuals with disabilities, and increased attention to the implications of the aging of the workforce for people with disabilities.” The recommendations from the report suggested that “evolving principles of accuracy” can be applied to enhance

the ability of the workforce development system to respond to the employment needs of people with disabilities. The report recommended that the Department of Labor (DOL) monitor and enforce the law and develop outcome measures that reflect the many variables involved in working with job seekers with disabilities. Another recommendation was that a blue-ribbon panel be established to study and provide advice to Congress on how to “strengthen the capacity of the economy to retain and benefit from the services and experience of older workers with adult-onset disabilities.” View full text of the NOD’s annual report at [http://www.ncd.gov/newsroom/publications/2004/ProgressReport2004.htm] [Source: National Council on Disability]

Scott, M.S. (2005). [Review of the book *Mental Health and Productivity in the Workplace: A Handbook for Organizations and Clinicians.*] *Psychiatric Services, 56, 110-111.*

In the January 2005 edition of *Psychiatric Services*, Marcia Scott, M.D. reviews the second edition of *Mental Health and Productivity in the Workplace: A Handbook for Organizations and Clinicians*. The book is a collection of articles that appeal to managers, psychiatrists who deal with work situations, occupational physicians and business leaders. Topics covered are the relationship between the workplace and mental health; work concerns; workers; and work organizations (which includes organizational change, violence, psychiatric illness, workers’ compensation and ethics). The ADA and FMLA (Family and Medical Leave Act) are also covered, with functional definitions provided for terms such as “reasonable accommodation” and “qualified individual.” Among topics Smith found absent in the book was a discussion of “how to technically shape employee benefits to fit modern illness and how to address the advantages that would flow from integrating all work-related employee benefits at the point of clinical care.” To read Smith’s entire review, visit [http://psychservices.psychiatryonline.org/cgi/content/full/56/1/110].

**Other
Activities/Items
of Interest**

Study Shows Abdominal Fat May Increase Disability Risk

11.17.2004 – As an interesting aside, a new study presented at the 2004 meeting of the North American Association for the Study of Obesity (NAASO) presented findings that a high level of abdominal fat in middle age may increase the risk of disability in later years. Researchers at Wake Forest University Baptist Medical Center measured the waist-to-hip ratio and body mass index (BMI) of more than 9,000 African American and white men and women age 45 to 64 years old. Follow up nine years later showed that obese men and women with a BMI of at least 30

and the highest waist-to-hip ratios were 160 percent more likely to have trouble performing activities of daily living than their normal-weight peers with lower abdominal fat. Findings of the study remained the same after controlling for exercise levels, smoking status, education and other factors that could lead to disability. [Source: Wake Forest University Baptist Medical Center]

Pasadena, California Wins Accessible America Contest

12.22.2004 – The NOD has awarded the city of Pasadena, CA first place in its Accessible America Contest. Pasadena is to serve as a national model for other cities for its focus on disability issues and its design of accessible disability programs, services and facilities. Among Pasadena's accomplishments are the establishment of the Mayor's Committee for Employment of Persons with Disabilities and an Accessibility and Disability Commission, which is predominately comprised of people with disabilities. The Commission oversees city services to make sure people with disabilities have equal access to community events and services such as the city's annual Rose Bowl Parade and local historic sites and cultural centers. Accessible transportation is a priority for Pasadena, and the city created a local tram system designed for people with disabilities and a new accessible light rail system to shuttle residents to and from Los Angeles. The city will receive a \$25,000 cash award to recognize its accomplishments and encourage future progress. Other finalists in the 2004 contest were Friendship Heights, MD; Highland Park, NJ; Indianapolis, IN; Miami Beach, FL and West Hollywood, CA. The deadline for entering the 2005 contest is October 31, 2005. More information is available by contacting Abbey Glenn at 202-293-5960. [Source: NOD]

RERC Updates

Call for Papers - Workplace Accommodations State of Science

The Workplace RERC is announcing a call for papers for its 2005 State of the Science Conference. Submissions are due April 1, 2005 and topics can include evidence-based practice, universal design and assistive technology, safety in the workplace, telework, and aging workers. Submission form/contact information is available at [<http://www.workerec.org/sos>].



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January 2005

This is a publication of the Rehabilitation Engineering Research Center on Workplace Accommodations supported by the National Institute on Disability and Rehabilitation Research of the U.S. Department of Education, grant # H133E020720. The opinions contained in this publication are those of the grantee and do not necessarily reflect those of the U.S. Department of Education

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The Office of Technology Policy and Programs (OTP), GCATT, produces a monthly newsletter, *Workplace Accommodations Policy Highlights*, which reviews policy, regulatory framework and market factors that can be useful in reducing barriers to integrating people with disabilities into the workforce. The primary objectives of the Rehabilitation Engineering Research Center on Workplace Accommodation, a federal program funded by The National Institute on Disability and Rehabilitation Research (NIDRR), U.S Department of Education, are to identify, design, develop, and promote new assistive devices and universally-designed technologies that will enable all individuals, and particularly those with disabilities, to achieve the greatest degree of independence and integration in the workplace. To accomplish its mission, the RERC engages in a comprehensive program of research, development, training, and information dissemination.

For further information on items summarized in this report, or if you have items of interest that you would like included in future editions, please contact the editor, Lynzee Head, MSPP, Research Scientist (lynzee.head@gcatt.gatech.edu) or Paul M.A. Baker, PH.D., AICP, Project Director, Workplace Accommodations Policy Initiatives (RERC) (paul.baker@gcatt.gatech.edu).