

WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 1.1

March 2003

Overview

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.

This is the first Workplace Accommodations Policy Highlights, a monthly publication to report policy, regulatory framework and market factors that can be useful in reducing barriers to integrating people with disabilities into the national workforce. A special emphasis of this first issue is to review the legal foundations of workplace accommodation and community integration policies. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities (29 C.F.R. pt. 1630 app. § 1630.2(o) (1997)).

Legislative/ Regulatory Basis

The Americans with Disabilities Act.

The Americans with Disabilities Act (ADA) of 1990 is the principal federal regulation for people with disabilities. The purpose of the ADA is to insure that people with disabilities are treated according to standards of equality and fairness in the workplace, and to promote their integration into the workplace. According to Titles I through III of the ADA, employers with 15 or more employees, state and local governments, businesses and not-for-profit service providers must make reasonable changes to adapt their infrastructures to accommodate people with disabilities. In addition, these same organizations must make reasonable accommodations in their policies, programs and procedures to guarantee access and non-discriminatory practices for individuals with disabilities, unless it results in undue hardship. Title IV of the ADA includes regulations to guarantee phone access as an instrument to promote community integration.

<http://www.ada.gov/>

The following are some key federal regulations derived from the ADA mandate:

Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act.

On October 17, 2002, the U.S. Equal Employment Opportunity Commission (EEOC) issued the Enforcement Guidance on Reasonable Accommodations and Undue Hardship under the Americans with Disabilities Act (Number 915.002). This document provides guidance about the rights and responsibilities of employers and people with disabilities covered by the ADA. An important contribution of this document is the definition of reasonable accommodation, a key concept in workplace accommodation policy and judicial activity.

"In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. A modification or adjustment is "reasonable" if it "seems reasonable on its face, i.e., ordinarily or in the run of cases;" this means it is "reasonable" if it appears to be "feasible" or "plausible." An accommodation also must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. Reasonable accommodation removes workplace barriers for individuals with disabilities".
<http://www.eeoc.gov/docs/accommodation.html>

ADA Accessibility Guidelines for Buildings and Facilities (ADAAG).

The guidelines establish scoping and technical requirements for the design, construction, and alteration of buildings and facilities according to Titles II and III of the ADA. The purpose of these requirements is to guarantee that people with disabilities can access buildings and facilities. The guidelines were issued by the Access Board, an independent Federal agency devoted to accessibility for people with disabilities, on January 1998.
<http://www.access-board.gov/indexes/accessindex.htm>

Accessibility Guidelines for Transportation Vehicles.

These guidelines establish minimum accessibility standards for transportation vehicles required to be accessible by the ADA.
<http://www.access-board.gov/indexes/accessindex.htm>

The Rehabilitation Act. 29 U.S.C. 792.

This Act has two important sections for workplace accommodation policies. Section 502 of the Act creates the Architectural and Transportation Barriers Compliance Board, today called The Access Board. The Access Board is a federal agency responsible for enforcing this Act, and ensuring development of design standards. The Board is also responsible for enforcing the ADA and the Architectural Barriers Act (ABA). Section 508 of the Act, for example, requires that federal agencies ensure that employees with disabilities have access to, and use of information and data in a manner commensurate with employees who are not disabled, unless such access and use would impose an unreasonable burden on the agency.
<http://www.access-board.gov/enforcement/Rehab-Act-text/intro.htm>

Rehabilitation Act Amendment of 1998.

With this amendment, Congress mandated that federal agencies guarantee members of the disabled community access to electronic and information technology. It sets minimum standards to assure accessibility to the information for the general public and federal employees.
<http://www.section508.gov>

Electronic and Information Technology Accessibility Standards.

On December 21, 2000, the Access Board issued the final accessibility standards for electronic and information technology covered by section 508 of the Rehabilitation Act Amendment of 1998. These standards establish criteria to evaluate the accessibility of electronic and information technology by people with disabilities.
<http://www.access-board.gov/indexes/accessindex.htm>

Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.

This policy guidance develops the terms of Executive Order 13164, which requires federal agencies to establish effective written procedures for processing requests for reasonable accommodation.

http://www.eeoc.gov/docs/accommodation_procedures.html

The Architectural Barriers Act (ABA). 42 U.S.C. 4151-4157.

On August 12, 1968, Congress passed the ABA to make federal facilities fully accessible to people with disabilities. It has been amended 11 times, the last time on June 17, 2001. This last amendment among other provisions, limits contracting capabilities to state agencies and political subdivisions of the state; and also creates new provisions for Certificates of Registration.

<http://www.access-board.gov/about/ABA.htm>

Uniform Federal Accessibility Standards (UFAS).

This document sets standards for facility accessibility by people with physical disabilities in federal and federally-funded facilities. These standards are to be applied during the design, construction, and alteration of buildings and facilities to the extent required by the Architectural Barriers Act of 1968, as amended.

<http://www.access-board.gov/indexes/accessindex.htm>

The Telecommunications Act of 1996.

This Act was passed on February 8, 1996. Because telecommunications equipment is a key component in guaranteeing the integration of people with disabilities into the workplace, Section 255 of the telecommunications Act is an important regulation. According to Section 255, the telecommunications industry shall design, develop and fabricate equipment that people with disabilities can use. If this goal is not readily achievable, industry shall guarantee equipment compatibility with existing devices used by members of the disabled community.

<http://ftp.fcc.gov/cgb/dro/dtftele.html>

Telecommunications Act Accessibility Guidelines (36 CFR Part 1193).

These guidelines were issued on February 3, 1998 by the Access Board in conjunction with the Federal Communications Commission (FCC) under section 255 of the Telecommunications Act to provide final guidelines for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment.

<http://www.access-board.gov/indexes/accessindex.htm>

FCC rules to implement Section 255.

On July 14, 1999, the FCC issued these rules and policies requiring telecommunications manufacturers and service providers to make their products and services accessible to people with disabilities, if readily achievable. These rules were designed to provide access for people with disabilities to a broad range of telecommunication products and services that are covered by the FCC.

http://trace.wisc.edu/docs/fccadv/07141999_fcc_255_mtg.htm

<http://ftp.fcc.gov/cgb/consumerfacts/section255.html>

Title VII of the Civil Rights Act of 1964.

This part of the Civil Rights Act of 1964 articulates the principle of no employment discrimination based on people's particular conditions. This title forbids employers with 15 or more employees to discriminate on the basis of race, color, sex, religion or national origin. The law applies to federal, state and local employers. Although Title VII does not refer specifically to people with disabilities, the principle of no employment discrimination may be applied to members of this community since they are not expressly excluded.

<http://www.eeoc.gov/laws/vii.html>

Air Carrier Access Act.

Although it is not related directly to work, access and accommodation, accessibility barriers for commercial flights can affect the ability and eligibility of people with disabilities to secure specific jobs. The purpose of this Act is to prevent discrimination against people with disabilities in air transportation. Its rules are focused on issues such as boarding assistance, aircraft design, and airport facilities.

<http://www.dot.gov/airconsumer>

Enforcement Activities**Equal Employment Opportunity Commission (EEOC) Activities.**

Federal laws concerning workplace discrimination are enforced by different federal agencies. The EEOC is responsible for coordinating the federal government's non-discrimination in employment effort. In order to ensure consistency in the federal government's effort to combat workplace discrimination, the EEOC is required to review regulations and other equal employment opportunity policy-related documents before they are issued. ("*EEOC Coordination of Federal Government Equal Employment Opportunity in the Workplace*". October 11, 2002). Among the responsibilities of the EEOC is the settlement authority based on Title VII of the Civil Rights Act of 1964, Section 501 or 505 of the Rehabilitation Act of 1973, Section 15 of the Age Discrimination in Employment Act of 1967, and the Equal Pay Act ("*EEOC Chapter 12: Settlement Authority*", May 17, 2000).

<http://www.eeoc.gov>

Therefore, the EEOC actions are important because of their effects on agencies' coordination, as well as because they show how employment discrimination disputes can be resolved with amicable settlements. The following are some examples of these settlements.

EEOC and Sears, Roebuck and Co. settle disability discrimination suit.

On January 9, 2003, the EEOC and Sears, Roebuck and Co. reached a satisfactory agreement whereby Sears, Roebuck and Co. agreed to provide a reasonable accommodation to Carl P. Davenport, who is blind. As a result of the agreement, Sears, Roebuck and Co. will put more emphasis on training programs for supervisors and managers about the ADA requirements and monitoring activities of reasonable accommodation requests. Sears, Roebuck and Co. will also continue recruiting qualified people with disabilities.

<http://www.eeoc.gov/press/1-9-03.html>

Target Corp. To pay \$95,000, implement training for failure to accommodate disabled worker.

On January 15, 2003, the U.S. EEOC announced the settlement of a disability discrimination and workplace accommodation lawsuit. According to the decision, Target Corp. failed in its obligation to provide a reasonable accommodation for a qualified employee, Susan Stombaugh, who suffers from multiple sclerosis, and released information regarding her disability to another prospective employer. The reasonable accommodation she was asking for was a transfer to a vacant position after her disability interfered with her ability to perform her current job. She will continue working for Target Corp., and will receive a compensatory - monetary payment of \$95,000. Also, Target Corp. agreed to provide management training programs that meet ADA requirements, maintain records as required by federal law, and continue its anti-harassment policy.

<http://www.eeoc.gov/press/1-15-03-b.html>

Judicial Activities

US Airways, Inc. v. Barnett, 535 U.S., 122 S. Ct. 1516 (2002).

This case addressed the relationship between the seniority system and reasonable accommodation. US Airways denied Robert Barnett's request to let him keep his mailroom position by making an exception to the seniority-bidding process as a reasonable accommodation since he injured his back working as a cargo handler at U.S. Airways in 1990. US Airways argued that granting Barnett's request would undermine the normal seniority system for job placement in order to make a reasonable accommodation for a disabled worker. The Supreme Court decided that an assignment that would violate the rules of an employer's seniority system will normally not be a reasonable accommodation. The decision leaves the burden on Barnett to prove the existence of special circumstances that make an exception to the seniority system reasonable in his particular case.

<http://www.balch.com/resources/newsletters/Emplaw0502.pdf>

This case is also important because the Supreme Court imposed some changes on the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. The most notable changes were the concept, and the scope of the principle of reasonable accommodation: specially the significance of "reasonable". As a result, on October 17, 2002 the EEOC issued the new *ADA Technical Assistance Manual Addendum* and the new *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*. According to the Enforcement Guidance, "an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities". Also, the Court explained that "in ordinary English the word 'reasonable' does not mean 'effective.' It is the word 'accommodation,' not the word 'reasonable,' that conveys the need for effectiveness". Therefore, "a modification or adjustment must be "reasonable" and effective" (Section 3.4 of *ADA Technical Assistance Manual Addendum*).

http://www.eeoc.gov/docs/adamanual_add.html

http://www.eeoc.gov/docs/accommodation.html#N_9

PGA Tour, Inc. v. Martin, 532 U. S. 661, 121 S.Ct. 1879 (2001):

The U.S. Supreme Court ruled that the Professional Golfers Association (PGA) must let Casey Martin, a golfer with disabilities, use a cart during PGA tournaments according to the (ADA) requirements. Casey Martin has difficulty walking and asked for an exemption of the PGA's rules due to his medical condition as a reasonable accommodation. The PGA Tour argued that the requirement of walking is a substantive rule of competition, and that waiving it for any individual would alter the nature of the competition. The Ninth District Court ruled in favor of Mr. Martin, concluding that a reasonable modification could be made to accommodate Martin without altering the nature of the tournament and without giving him a competitive advantage. The case attracted special attention since the Seven and Ninth Circuit Courts have made different rulings on the fundamental alteration issue at the same time. With this decision, the Supreme Court affirmed the Ninth Circuit's judgment in the case of PGA Tour, Inc. v. Martin, and refused the PGA Tour' argument that it was exempt of the ADA Title III requirements for public accommodations.

http://www.ncd.gov/newsroom/publications/supremecourt_ada.html#K

<http://www.nytimes.com/2002/11/18/politics/18CND-SCOT.html>

Organizations of Interest

Association of Programs for Rural Independent Living (APRIL). APRIL was organized to promote independence and full rights and benefits for people with disabilities living in rural environments. APRIL works as a coordinator and information center for rural transportation issues of importance for people with disabilities. APRIL's web site provides a national directory of independent living centers, and highlights successful experiences.
<http://www.april-rural.org/>

Center for Assistive Technology & Environmental Access Information (CATEA). CATEA is a center within the College of Architecture at the Georgia Institute of Technology. Its mission is to promote maximum access to opportunity and environments by enhancing individuals' capabilities through the appropriate use of technology. The two foci of the center are: development, evaluation, and utilization of assistive technology, and design and development of accessible environments to all people, including those with disabilities.
<http://www.catea.org/>

Center for Information Technology Accommodation (CITA). CITA was created in the U.S. General Services Administration's Office of Government-wide Policy to develop programs oriented to facilitate the implementation of Section 508 of the Rehabilitation Act. Education for federal employees and infrastructure constructions are some of their main foci of attention.
www.section508.gov

Community Transportation Association of America (CTAA). CTAA is a private organization that provides technical assistance and research, and coordinates programs on issues related to community transportation and the elimination of barriers to segregation. It also provides specific information concerning community transportation for people with disabilities.
<http://www.ctaa.org/>

Information Technology Technical Assistance and Training Center (ITTATC). The center, funded by the National Institute on Disability and Rehabilitation Research (NIDRR), is charged with providing accessibility training and technical assistance related to Section 508 of the Rehabilitation Act and Section 255 of the Telecommunications Act.
<http://www.ittatc.org/>

Other Activities & Items of Interest

An initiative to follow up and an opportunity to participate: comments on the new "Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities".
This interim final rule establishes, for the Department of Homeland Security, the necessary procedures for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability, as it applies to programs or activities conducted by the Department of Homeland Security. It sets forth standards for what constitutes discrimination on the basis of a mental or physical disability, provides a definition for an individual with a disability and a qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination. According to these rules, an individual with a disability is "any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment."
Written comments are accepted until April 7th, 2003.
<http://www.regulations.gov/fredpdfs/03-05142.pdf>

The Federal Information Technology Accessibility Initiative (FITAI).

This initiative creates an informal mechanism of coordination among multiple agencies to provide technical assistance and information on implementation of Section 508 of the Rehabilitation Act. The General Services Administration (GSA) acts as coordinator of the initiative.

<http://www.access-board.gov/news/508-final.htm>

Federal Coordination on Disability Issues.

The Interagency Committee on Disability Research (ICDR) authorized by the Rehabilitation Act of 1973, has the mission "to promote coordination and cooperation among Federal departments and agencies conducting rehabilitation research programs". The interagency committee provides a website to gather comments and recommendations on research needs for Americans with disabilities.

<http://www.icdr.us/>

Technology and the Disabled.

On March 12, 2003, *USA Today* posted an article entitled: "Technology eroding the wall between disabled, non-disabled". The article presents two examples of how the use of technology will help the disabled community. The first case is the history of Annemarie Cooke, a newspaper reporter who is blind. She found software that reads aloud what is on the screen of her computer. This software allowed her to accommodate her workplace at a not-for-profit organization for the blind and dyslexic. The second history is that of Philip Jacob who is deaf. He uses the video relay service offered by AT&T and Sprint. With this system, a deaf person sets up a web camera on his computer and uses sign language to address an operator, who in turn translates to the party on the other end.

www.usatoday.com/tech/news/techinnovations/2003-03-12-tech-help_x.htm

**Journals/
Research/
Resources**

New Rehabilitation Engineering Research Center (RERC) on Accessible Medical Instrumentation.

The center, who received a \$4.5 million grant from the U.S. Department of Education, will evaluate methods and technologies to increase the usability and accessibility of diagnostic, therapeutic, and procedural healthcare equipment for people with disabilities. Similar to the RERC on Workplace Accommodation, this new center has a policy component oriented to do research on instrumentation-related healthcare facility policy and procedures, and standards for design and procurement of medical instrumentation. In general, the goals of the RERC are to (1) increase knowledge of, access to, and utilization of healthcare instrumentation and services by individuals with disabilities; (2) increase awareness of and access to employment in the healthcare professions by individuals with disabilities; and (3) serve as a national center of excellence for this priority area.

<http://www.rerc-ami.org/>

Telework News:

On February 2, 2003, the U.S. EEOC released a fact sheet stating that the concept of Telework or telecommuting was, under some circumstances, a reasonable workplace accommodation under the provisions of the ADA. The fact sheet, using a step-by-step approach, explains the ways that employers may allow an individual to work at home as a reasonable accommodation.

<http://www.eeoc.gov/press/2-3-03.html>

Small Employers And Reasonable Accommodation.

This EEOC publication offers small employers, those who have less than 15 employees, a guide to their obligations to offer a reasonable accommodation for disabled employees under the ADA principles.

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

NCD Position Paper on TANF.

This NCD position paper examines the proportion of parents with disabilities and parents with children with disabilities enrolled in the Temporary Assistance for Needy Families (TANF) program. Reports suggest that many of these families have not received services and supports they require, and many proposals to improve TANF have been offered to Congress. This paper provides recommendations to include provisions in the TANF legislation to ensure that these people receive the appropriate and necessary services to enable their transition off the program successfully. Some of these recommendations include increasing TANF funding, ensuring proper screening, providing states more flexibility in defining countable work activities, providing states with additional resources to train case workers and staff about disability regulations, and to ensure that TANF services comply with the ADA and Section 504 of the Rehabilitation Act of 1973.

<http://www.ncd.gov/newsroom/publications/familysupports.html>

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The Office of Technology Policy and Programs (OTP) produces a monthly newsletter, Workplace Accommodations Policy Highlights, with the purpose of identifying policy, regulatory framework and market factors that can be useful in reducing barriers to integrating people with disabilities into the national workforce. These monthly highlights support the Center's other research efforts and provide people with disabilities and industry with a centralized source of information supportive of the principles of the ADA and other regulations whose intent is to promote fairness and equity for people with disabilities.

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, Daira Abolins (daira.abolins@gcatt.gatech.edu) or Andrew Ward, PH.D., MPH, Project Co-Director, Workplace Accommodations Policy Initiatives (RERC) (andrew.ward@gcatt.gatech.edu).