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WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 2.02

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Overview

Over the past few months, several government agencies have released annual reports, highlighting progress over the past year, along with statistical data and information on future endeavors. The White House released *The President's New Freedom Initiative for People with Disabilities: A 2004 Progress Report*, highlighting the federal government's progress to date in achieving the goals of the initiative. The Equal Employment Opportunity Commission (EEOC) released its Fiscal Year 2003 enforcement and litigations statistics, reporting disability-based charges as the fifth most alleged type of discrimination.

In February, President Bush issued an executive order creating a new interagency council (the Interagency Transportation Coordinating Council on Access and Mobility) to coordinate and expand access to transportation services (one focus being to enhance access to transportation for persons with disabilities). The General Accounting Office (GAO) issued two reports making recommendations to improve the Occupational Safety and Health Administration's (OSHA) Voluntary Compliance Strategies (GAO-04-378) and the Social Security Administration's Accelerated Electronic Disability System initiative for electronic disability claims processing (GAO-04-466).

The judicial cases reviewed in this edition of WAPH address the issues of fringe benefits and reasonable accommodations under the Americans with Disabilities Act (ADA) along with the employer's role in determining reasonable accommodation under the ADA. Finally in this edition, an overview is presented of the two presentations made by Workplace RERC staff at the California State University at Northridge's (CSUN) 19th Annual, International Conference, "Technology and Persons with Disabilities."

President Bush Issues Executive Order on Transportation Coordination

02.24.04: President Bush issued an executive order creating the Interagency Transportation Coordinating Council on Access and Mobility to coordinate and expand access to transportation services; promote interagency cooperation and establish ways to minimize the duplication of Federal programs and services. The Council will also develop cost-effective, appropriate transportation services with existing resources; encourage enhanced customer access to the transportation resources available; formulate and implement administrative policy to enhance transportation services at all levels; and monitor progress on achieving these goals.

According to Federal Transit Administrator Jenna Dorn, such coordination among agencies would serve to improve service to the public and also to increase funding by eliminating duplication among transportation programs. The Council will include the secretaries of the Departments of Transportation, Health and Human Services, Education, Labor, Veterans Affairs, Agriculture, Housing and Urban Development, and the Interior. Also included will be the office of the U.S. Attorney General, and the commissioner of Social Security and other federal officials.

Transportation plays a critical role in providing access to employment, medical and health care, education, and other community services and amenities. The Executive Order notes that available and affordable transportation is essential for full societal participation by persons with disabilities, persons with mobility limitations due to advanced age, and persons with low incomes. The Council is to report to the President within one year with its recommendations, which will include ways to simplify and create affordable access to transportation services for these populations. [The White House;

<http://www.whitehouse.gov/news/releases/2004/02/20040224-9.html> *Amer.*

Assoc. of State Highway and Transportation Officials Journal;

<http://www.transportation.org/publications/HTMLJournal.nsf/ViewItems/Volume+104,+Number+08+-+February+27,+2004?OpenDocument>]

U.S. Access Board Releases 2004 Research Priorities

01.2004: In its Fiscal Year (FY) 2003 Annual Report, the U.S. Access Board reported its research priorities for FY 2004. Each year, the board funds research on various aspects of accessibility related to architecture, communications, or transportation. These projects gather information that is useful to the Board in developing guidelines and providing technical assistance. Two of the research priorities have particular relevance to workplace accessibility. First, indoor air quality has become a concern in causing a range of debilitating physical reactions, some even life-threatening. Indoor air quality has been reported as a barrier that denies certain individuals access to buildings. In response to these concerns, the Board is sponsoring research to examine ways of improving indoor air quality. The project will be carried out by the National Institute of Building Science. Another research priority of note is that of mobility aids and human measures. This project will further work underway by the Rehabilitation Engineering Research Center (RERC) on Universal Design at the State University of New York, Buffalo. The RERC is working to establish a database on mobility aids and user sizes and functional task performance that will support the development of three-dimensional digital models of wheelchair and scooter users. The Board is particularly interested in data on space requirements, maneuvering parameters, reach ranges, and other key elements and dimensions. This data would be useful to individuals with disabilities and their employers when attempting to accommodate the use of mobility aids within their workspace. Text of FY 2003 Annual Report:

[\[http://www.access-board.gov/publications/annualreport/report-03.htm\]](http://www.access-board.gov/publications/annualreport/report-03.htm)

U.S. Department of Justice (DOJ) Signs Agreements With Nine Communities to Ensure Civic Access for People With Disabilities

02.27.2004: The DOJ announced that it has signed agreements with nine counties and municipalities nationwide, designed to enhance the accessibility to their civic spaces for persons with disabilities. These agreements are part of the DOJ's program titled "Project Civic Access." The program is a wide-ranging compliance assistance effort to ensure that cities and counties throughout the country comply with the Americans with Disabilities Act (ADA). The Disability Rights Section (DRS) of the DOJ is in charge of implementing Project Civic

Access. DRS conducted compliance reviews at each site, which consisted of a physical survey of facilities owned or leased by the government, polling places and 9-1-1 systems. During the investigations, the staff of the DRS found that most communities are aware of their ADA obligations and are in compliance with these requirements. Typical issues addressed during the Department's investigations include but are not limited to:

- accessible parking
- accessible routes into and through the facilities
- accessible rest rooms, drinking fountains, and telephones
- accessible service counters and concession stands, or the provision of services at alternate, accessible locations.

Including the agreements mentioned above, the Department of Justice has entered into a total of 69 such agreements through Project Civic Access. Counties and municipalities that have entered into such agreements will take specific steps to improve access to all aspects of civic life including courthouses, libraries, parks, sidewalks and other facilities, as well as addressing accessibility issues in employment, voting, law enforcement, and emergency preparedness and response. The DOJ enforces Title II of the ADA, which prohibits discrimination against qualified individuals with disabilities in the programs, services, and activities of state and local governments. By encouraging counties and municipalities to address issues such as accessible parking and routes into and through facilities, programs like Project Civic Access also encourage the employment of persons with disabilities at the local government level by ensuring the accessibility of their facilities. [Department of Justice: http://www.usdoj.gov/opa/pr/2004/February/04_crt_121.htm; DOJ Project Civic Access: <http://www.usdoj.gov/crt/ada/civicfac.htm>]

White House Releases New Freedom Initiative Progress Report

03.11.2004: The White House has released a report on the progress of President Bush's New Freedom Initiative, the President's plan to remove the barriers to full integration into American life faced by citizens with disabilities. The report highlights the federal government's progress to date in addressing these barriers through its various programs and proposals. One goal of the New Freedom Initiative is to integrate more Americans with disabilities into the workforce. Steps taken by the Department of Labor under the New Freedom Initiative to increase the employment of persons with disabilities include:

- Launching www.DisabilityInfo.gov, a multi-agency website on disability featuring information on assistive technology, Medicaid and Medicare and emergency preparedness. The site, managed by the Office of Disability Employment Policy (ODEP), received over 1.5 million users and 30 million hits.
- Awarding 42 Employment and Training Administration Work Incentive Grants totaling \$17 million in FY 2003 to improve the One-Stop system for people with disabilities.
- Developing a New Freedom Small Business Initiative between the DOL and the Small Business Administration to assist people with disabilities in becoming small business owners and to educate small business owners about the benefits of hiring people with disabilities.
- Awarding \$500,000 to eight recipients to provide home modifications as a means of expanding the community integration of individuals with disabilities through a program by the Department's Center for Faith-based and Community Initiatives and ODEP.
- Placing 329 college students with disabilities in summer work programs in nineteen Federal agencies through ODEP's Workforce Recruitment Program.

The President's New Freedom Initiative for People with Disabilities: The 2004 Progress Report is available in its entirety at

<http://www.whitehouse.gov/infocus/newfreedom/toc-2004.html>.

[The White House:

<http://www.whitehouse.gov/infocus/newfreedom/summary-2004.html>;

Department of Labor, Office of Disability Policy:

<http://www.dol.gov/opa/media/press/odep/ODEP2004402.htm>]

**Regulatory
Activities**

**U.S. Equal Employment Opportunity Commission (EEOC) Issues Fiscal
Year 2003 Enforcement Data**

03.08.2004: The EEOC has released enforcement and litigation statistics for FY 2003 (October 2002 - September 2003). These statistics include charges, filings, lawsuits, resolutions, and monetary benefits. The data show that 81,293 private sector employment discrimination charges were filed with EEOC field offices nationwide last fiscal year and 87,755 were resolved for \$236 million in monetary benefits and other relief. The EEOC filed 361 new lawsuits and resolved 378 suits resulting in \$149 million in monetary benefits as well as significant injunctive and remedial relief. Of the variety of charges filed with the EEOC, race-based charges were the most frequently alleged type of discrimination (28,526 total private sector charges; 35.1% of total charges). Disability-based charges were ranked fifth on the list, a total of 15,377 private sector charges and making up 18.9% of total charges. The EEOC enforces under the following pieces of legislation: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act, and sections of the Civil Rights Act of 1991. FY 2003 EEOC enforcement and litigation statistics are available at [<http://eoc.gov/stats/enforcement.html>]

The 81,293 private sector charge filings in FY 2003 break down as follows:

	# filings	% of total charges
RACE	28,526	35.1%
SEX/GENDER	24,362	30.0%
RETALIATION	22,690	27.9%
AGE	19,124	23.5%
DISABILITY	15,377	18.9%
NATIONAL ORIGIN	8,450	10.4%
RELIGION	2,532	3.1%
EQUAL PAY	1,167	1.4%

NOTE: Individuals may allege multiple types of discrimination in one charge filing, thus the percentage of total charges will add up to more than 100%.

[Equal Employment Opportunity Commission:
<http://eoc.gov/press/3-8-04.html>]

Judicial Activities

Fringe Benefits and Reasonable Accommodations Under the Americans with Disabilities Act (ADA)

12.2003: In *Bower v. Federal Express Corp.*, 287 F. Supp.2d 840 (W.D. Tenn. 2003), a Tennessee federal court ruled that under the ADA, Federal Express Corp. (FedEx) was required to provide travel on commercial airlines as a reasonable accommodation to employees with disabilities who were not allowed to use the company's regular air travel program. FedEx allows its employees to ride jumpseat – fly for free – on one of the available passenger seats of its cargo planes. Richard Bower, a senior global operations control specialist for FedEx who was born with spina bifida, uses crutches and wears leg braces, asked to ride jumpseat and was denied his request due to safety reasons. Bower filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC), claiming the company had refused his requests to make reasonable accommodations by providing an alternative to the jumpseat privilege for workers with disabilities. The EEOC subsequently filed suit under Title 1 of the ADA on behalf of Bowers and other FedEx employees in similar situations. The court found that the ADA requires FedEx to provide an alternative to its jumpseat program for employees who are not allowed to use the program. The program is considered a fringe benefit, which is a benefit of employment that is covered under the ADA. In fact, the ADA explicitly states that reasonable accommodations in the context of fringe benefits include “modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.” The reasonable accommodation proposed by the plaintiffs (a limited number of seats on commercial flights each year as a substitute for the jumpseat program) was determined reasonable by the court. [*Mental and Physical Disability Law Reporter*; Vol 28, No 1, January/February 2004]

New York Court Rules on Employer's Role in Determining Reasonable Accommodation

12.10.2003: A New York federal court ruled that once employees request reasonable accommodations, the employer is obligated to make some effort to determine what accommodations might be appropriate. In the case of *Medlin v. Rome Strip Steel Co.*, 2003 WL 22937329 (N.D.N.Y. Dec. 10, 2003), 28 MPDLR 91, the court ruled that the employer should have determined whether the equipment the employee used to perform his job could have been equipped

to accommodate his back impairment. The plaintiff, Alexander Medlin, worked as a hot roll slitter operator for Rome Strip Steel (RSS). His job required him to lift objects weighing up to 50 pounds and walk up and down stairs. Medlin injured his back in a non-work related accident and asked for an extension to his 12 weeks of leave. RSS refused his request and asked that he return to work. Medlin's physician told him he could return to RSS and perform light duty work, but the company refused to assign him to such work. Medlin sued RSS under Title I of the Americans with Disabilities Act (ADA). RSS argued that the plaintiff's back injury did not render him "disabled" under the ADA, and that even if he was, the company was not required to assign him to a light-duty position or create a new position. The court ruled that RSS had made interactive efforts to determine Medlin's suitability to return to work without any accommodation, but had not made any effort to determine the appropriate accommodations that could possibly allow him to return to his previous position. According to the court, "the question in this context is not whether RSS failed to provide plaintiff accommodation - it clearly did - but whether the accommodation that plaintiff alleges was available was reasonable, and whether it would have allowed plaintiff to perform the essential job functions of a slitter operator." Evidence was found that the slitter machine was equipped with devices that would have lessened the physical demands of Medlin's job. The court stated that "employers are simply more knowledgeable about adapting or modifying an employee's position, especially since the means to secure such adaptation or modification are most often entirely within their control." According to the court, it is not the employee's sole responsibility to engage in investigation to uncover information that the employer may know already, or have the ability to know with little effort. [*Mental and Physical Disability Law Reporter*; Vol 28, No 1, January/February 2004; *Medlin v. Rome Strip Steel Co.*, 2003 WL 22937329 (N.D.N.Y. Dec. 10, 2003), 28 MPDLR 91]

**Studies/Reports
/Publications**

Promising Results of Occupational Safety and Health Administration's (OSHA) Voluntary Compliance Strategies Need Further Evaluation: GAO Report

03.2004: According to the GAO, "the Occupational Safety and Health Administration (OSHA) can inspect only a fraction of 7 million U.S. worksites each year in its efforts to ensure safe and healthy working conditions, the agency has increasingly supplemented enforcement with "voluntary compliance

strategies" to reach more employers and employ its resources most effectively. GAO assessed the types of strategies used, the extent of their use, and their effectiveness. GAO also obtained suggestions from specialists for additional voluntary compliance strategies. To strengthen OSHA's use of its voluntary compliance strategies, GAO recommends that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to (1) identify cost-effective methods of assessing the effectiveness of OSHA's voluntary compliance programs and (2) develop a strategic framework that articulates the priorities and resource allocations for the agency's voluntary compliance programs before further expanding the use of these strategies." [GAO-04-378: <http://www.gao.gov/atext/d04378.txt>]

SSA Needs to Address Risks Associated with Its Accelerated Systems Development Strategy: GAO Report

03.2004: "The Social Security Administration's (SSA) AeDib initiative is designed to provide SSA with a more efficient, paperless system that will enable its disability components to electronically view and share claims data and process claims electronically. GAO reviewed AeDib to assess (1) SSA's progress and strategy, (2) the adequacy of measures taken to avoid software development problems similar to those encountered in SSA's previous efforts, (3) the adequacy of cost-benefit analyses, and (4) SSA's consultation with stakeholders. The GAO recommends that before proceeding with national rollout of AeDib, the Commissioner of Social Security, among other steps, ensure that critical problems have been resolved and full testing completed, expedite completion of risk mitigation strategies, and validate cost-benefit estimates. In commenting on a draft of this report, SSA stated that it would conduct studies to help validate AeDib cost assumptions but disagreed with GAO's other recommendations. In GAO's view, it is essential that SSA fully address all recommendations."

[GAO-04-466: <http://www.gao.gov/atext/d04466.txt>]

RERC Updates

Workplace RERC Participation at California State University at Northridge's (CSUN) 19th Annual, International Conference

03.15.2004: Two presentations were made by Workplace RERC researchers at CSUN's 19th Annual, International Conference, "Technology and Persons with Disabilities." For more information about CSUN's conference (including links to the conference proceedings) go to <http://www.csun.edu/cod/conf/index.htm>.

- [Work RERC: Providing New Directions In Workplace Accommodation;](#)

Presenters: Karen Milchus & Jon Sanford

This presentation provided an overview of the RERC on Workplace Accommodations, highlighting progress made over the past year and identifying areas where further research and development is needed. This year, two studies of user needs were conducted. The first was a survey of over 500 people with disabilities to identify their employment status and needs regarding workplace accommodations. The second study involved archival research from past case files to determine how effective job accommodations have been made in the past. The RERC is also analyzing policies and practices that may influence the nature and availability of workplace accommodations for persons with disabilities. Periodic policy updates and position papers are available. Work RERC development projects focused this year on Universal Design for the workplace. For example, the RERC is developing accommodations for the most common tasks required by office-work occupations, including tasks involving access to computers and telecommunications.

- [Toward Development of the Accommodating Workplace: Key Technological and Policy Issues;](#) Presenter: Paul M.A. Baker

The crafting or even understanding of the conditions necessary for the development of effective workplace accommodations requires the review and assessment of applicable laws, regulations, and policies. The following issues were identified as a first step towards generation of a comprehensive policy framework for initiative development. These issues provide a contextual background for ongoing analyses of policies and practices related to workplace accommodations and for integrating people with disabilities into the U.S. workforce

- Civil Rights
- Data Collection on Employment and Workplace Accommodation and Integration
- Education
- Emergency Preparedness and Homeland Security
- Environmental Control
- Equity in the Costs of Implementing Workplace Accommodations and Integration
- Outcome Performance Measures
- Technology
- Transportation and Telecommuting
- Workplace Accessibility and Universal Design

Rehabilitation Engineering Society of North America (RESNA) Hosts 27th Annual, International Conference

RESNA will host its 27th International Conference on Technology & Disability: Research, Design, Practice & Policy at the Rosen Center Hotel in Orlando, Florida, June 18-22, 2004. Conference information is available at <http://www.resna.org/Conference/2004Conference/Conference2004.php>.

Wireless RERC Hosts State of Technology Conference

The Wireless RERC is hosting the [State of Technology Conference](#) on Mobile Wireless Technologies for Persons with Disabilities, May 11th and 12th, 2004. This free international conference brings together the leading researchers, practitioners, academicians, consumers, industry representatives, and advocates in the important area where wireless technology and rehabilitation research intersect. Registration and conference information is available at <http://www.wirelessrerc.gatech.edu/SOT/index.htm>.

Upcoming Events

Workplace Accommodations Policy Highlights 2.02

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The Office of Technology Policy and Programs (OTP), GCATT, produces a monthly newsletter, *Workplace Accommodations Policy Highlights*, that 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 (lynzee.head@gcatt.gatech.edu) or Andrew Ward, PH.D., MPH, Project Co-Director, Workplace Accommodations Policy Initiatives (RERC) (andrew.ward@gcatt.gatech.edu).

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