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WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 4.02

March-May 2006

Overview

This spring, the **Emergency Preparedness and Response for Individuals with Disabilities Act [H.R. 4704]** was introduced, regarding federal emergency preparedness and its effect on people with disabilities in many situations, including the workplace. **The College Access and Opportunity Act of 2005 [H.R.609]**, was also introduced, and addresses the eligibility of college students with intellectual disabilities for work study jobs. In judicial news, a federal jury ruled in favor of the Equal Employment Opportunity Commission (EEOC) in its lawsuit (*EEOC v. Federal Express Corp.*) against Federal Express Corporation (FedEx) in which the EEOC charged the company with failing to accommodate a deaf employee.

Within the research realm, the Job Accommodations Network (JAN) is conducting a survey that will provide valuable information on the economic impact of workplace accommodations on employers. The National Council on Disability (NCD) is also conducting a survey regarding employment issues for people with disabilities regarding the barriers they face in seeking and retaining jobs. Finally, the Department of Labor's (DOL's) Office of Disability Employment Policy (ODEP) released a publication, designed as a tool for employers who may be unsure how to accommodate employees whose disabilities are less visible, such as those with psychiatric disabilities.

Legislative Activities

Emergency Preparedness & Response for Individuals with Disabilities Act Introduced

2.8.2006 – Congressmen Jim Langevin (D-RI) and Curt Weldon (R-PA) have introduced the **Emergency Preparedness and Response for Individuals With Disabilities Act of 2006 [H.R.4704]** into the House of Representatives. The legislation offers an approach to addressing the needs of people with disabilities before, during, and after a national disaster. The bill calls for the establishment of a Disability Coordinator within the Department of Homeland Security (DHS) who will be appointed by the DHS Secretary. This official will be responsible for providing guidance and coordination for people with disabilities in emergency

situations and relief efforts. The bill also amends the **Stafford Disaster Relief Act**, which authorizes specific federal aid in emergency times. Finally, the bill requires the Government Accountability Office (GAO) to conduct a national study of emergency shelters. While such shelters are covered under Titles II and III of the Americans with Disabilities Act (ADA), it is unclear how many of them are accessible to individuals with disabilities. This bill will also allow for federal-level workplace emergency evacuation plans that incorporate people with disabilities. View full text of **[H.R.4704]** at [<http://thomas.loc.gov/cgi-bin/query/z?c109:h.r.4704>:]. [Sources: Library of Congress and NCD]

Students with Intellectual Disabilities Closer To College Work Study Jobs

3.30.2006 – Congressman Pete Sessions (R-TX) introduced an amendment to **[H.R.609], the College Access and Opportunity Act of 2005**, that will allow students with intellectual disabilities to obtain valuable, paid work experience in college work study jobs while pursuing a postsecondary education. “Due to provisions in the Higher Education Act, students with intellectual disabilities and their families usually are not able to access federal student financial aid (loans, grants, or work study.” (AAPD). In introducing the amendment, Rep. Sessions stated, “My goal is to help make it possible for these students to achieve their higher education goals and attain gainful employment.” The amendment passed a voice vote in the House of Representatives. View the full text of **[H.R.609]** at [<http://thomas.loc.gov/cgi-bin/query/z?c109:h.r.609>:]. [Sources: Library of Congress and American Association of People with Disabilities]

California: State Senate Addresses Disabled Worker Benefits

3.23.2006 – Members of the disability community gave testimony before the California Senate Committee on Labor and Industrial Relations regarding the impact of 2004 regulations resulting from **California Senate Bill [SB] 899**. The 2004 regulations, part of an overhaul of the workers’ compensation insurance program, were intended to bring more objectivity and uniformity to the system used to rate the severity of work-related disabilities and determine compensation. However, a report issued last month by the California Commission on Health and Safety and Workers’ Compensation concluded that the regulations had reduced payments to workers with permanent disabilities by as much as 55%. Democratic lawmakers and disability advocates have asked the Schwarzenegger administration to return the payments to their former levels. The Division of Workers Compensation is required to review the regulations in July 2006. The acting director, Carrie Nevans, will compile data on the effect of **[SB 899]** on wages, particularly the effect of a provision that raises or lowers benefits depending on whether partially disabled workers return to their old jobs. Read the full report at

[<http://www.dir.ca.gov/CHSWC/Reports/CHSWC-PD-Report-Feb23-2006.pdf>] (PDF only) and view the full text of **[SB 899]** at [http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_899&sess=PREV&house=B&author=poochigian]. [Source: California State Senate and *Los Angeles Times*, 3/23/2006]

Regulatory Activities

David L. Bibb Elected Chair of the Access Board

3.27.2006 – The US Access Board recently elected David L. Bibb as its new chairman. Bibb is currently Acting Administrator of the General Services Administration (GSA) and represents GSA on the Board. Bibb has had 35 years of service with the GSA in a variety of capacities. The US Access Board is an independent Federal agency that focuses on accessibility for people with disabilities and provides information on accessible design. [Source: US Access Board]

Fifth Anniversary of Secretary of Labor's New Freedom Initiative Award

3.2.2006 – The Department of Labor has begun accepting nominations for the Secretary of Labor's New Freedom Initiative (NFI) Award. This award was established in 2001 by current Labor Secretary Elaine L. Chao as a way of recognizing businesses, non-profit organizations and individuals who have displayed great effort in furthering the efforts of the President's NFI. The nomination period for the award will close on May 31, 2006; eligibility criteria and nomination guidelines can be viewed in the Federal Register or can be viewed at [<http://www.dol.gov/odep/newfreedom/nfi06.htm>] under the New Freedom Initiative tab. [Source: DOL]

Judicial Activities

EEOC Wins Disability Suit against FedEx

3.2.2006 – A federal jury ruled in favor of the EEOC in its lawsuit against FedEx in *EEOC v. Federal Express Corp* (Case No. 04 CV-3129). The EEOC held that FedEx violated the American with Disabilities Act (ADA) by failing to provide reasonable accommodations to Ronald Lockhart, a deaf employee who worked as a package handler. The suit charged that the corporation did not provide Lockhart with American Sign Language interpreters for meetings and trainings, despite his requests. The jury found FedEx liable for punitive damages in the amount of \$100,000 for its knowing failure to accommodate Lockhart, as well as compensatory damages of \$8,000 for the loss of the accommodation itself. This outcome sends a message that employers are responsible for providing reasonable accommodations in accordance with the guidelines of the ADA. View the EEOC press release at [<http://www.eeoc.gov/press/3-2-06.html>]. [Sources: EEOC and National Organization on Disability, 3/16/2006]

**Studies/Reports/
Publications****Accommodations, ADA, and Light Duty**

JAN has published a "question and answer" piece about the concept of "light duty" under the Americans with Disabilities Act (ADA). Light duty is defined as "work that is less demanding, either physically or mentally, than normal activities" and may be required as a reasonable accommodation for reassignment of an employee with a disability, depending on the design of the employer's specific light duty program.

According to JAN, the guidelines of the ADA protect workers' compensation injury and require employers to provide reasonable accommodation only if the employee meets the definition of disability under the law. According to the ADA, if an employer reserves certain jobs for light duty, rather than creating light duty jobs as needed, the employer must reassign the employee to a vacant, reserved light duty position. Employers have to consider job restructuring - such as reallocating job functions that an employee is unable to perform because of disability - a reasonable accommodation. More detailed information on job accommodations for return to work is available at [<http://www.jan.wvu.edu/media/rtwfact.doc>]. For more information about the definition of disability, visit *How to Determine Whether a Person has a Disability under the Americans with Disabilities Act (ADA)* at [<http://www.jan.wvu.edu/corner/vol02iss04.htm>]. [Source: JAN]

Call for Papers on Assistive Technology

Assistive Technology, a journal focusing on AT, has issued a call for papers for its special issue on disability policy and law that will be published in winter 2006. The editors encourage the submission of case studies, empirical research and policy and legal analysis that include a fresh exploration of the ADA and the barriers and opportunities it has created for people with disabilities with respect to technology. In addition, the authors encourage the submission of articles on technologies or policies and laws that are not currently covered under the ADA but perhaps should be included in the future. For example, some possible topics might include the Internet, emergency communications technologies, and the universal design of technologies.

Potential contributors are encouraged to familiarize themselves with previous issues of *Assistive Technology*

[<http://www.resna.org/ProfResources/Publications/ATJournal.php>], and to discuss their ideas with the Guest Editors, Paul M.A. Baker, (paul.baker@cacp.gatech.edu); Kevin Caves (kevin.caves@duke.edu); and Peter Blanck (pblanck@syr.edu). For consideration, abstracts or article proposals should be submitted by May 15, 2006, with notification of proposal acceptance by June 15, 2006, and final papers being due by September 1, 2006.

DOL Releases Information on Accommodations for Psychiatric Disabilities

03.2006 – The DOL's ODEP has released a publication titled *Maximizing Productivity: Accommodations for Employees with Psychiatric Disabilities*. The publication was designed as a tool for employers, who may be aware of the different types of accommodations for physical and communication disabilities, but who may be unsure how to accommodate employees whose disabilities are less visible, such as psychiatric disabilities. ODEP provides a list of accommodations that have been helpful to employees with psychiatric disabilities, including: a flexible workplace, flexible scheduling, sick and vacation leave related to mental health, and breaks according to individual needs. The publication also provides a list of modifications, equipment and technology, job duties and management and supervision suggestions for employers who are attempting to accommodate individuals with psychiatric disabilities. According to the National Institutes of Mental Health, one in five people will experience a psychiatric disability in their own lifetime; therefore, it is likely that most employers have at least one employee with a psychiatric disability. Read the entire publication at [<http://www.dol.gov/odep/pubs/fact/psychiatric.htm>]. [Source: DOL/ODEP]

JAN Survey Results Indicate that Attitude, not Cost, is Barrier to Workers with Disabilities

03.09.2006 - Preliminary data from an ongoing survey by JAN shows that employers who try to accommodate workers with disabilities can usually do so at minimal cost and can receive large benefits. According to the study, approximately half of the employers reported that workplace accommodations can be implemented rather inexpensively (a one time cost of around \$600), through sources like JAN, which helps employers hire, retain, and promote people with disabilities. According to JAN, these results could possibly point to discrimination based on attitude as a factor in the low employment numbers of individuals with disabilities.

The JAN survey, which will continue through September 2007, indicated that many employers of people with disabilities found little cost and great benefits to providing accommodations such as "the retention of qualified employees, improved morale, elimination of the cost of training new employees, improved interaction with customers and coworkers, and increased productivity for the retained workers." The survey respondents were comprised of companies that had sought out JAN to help them accommodate their employees with disabilities. View the full text of the preliminary data (in PDF) at [<http://www.jan.wvu.edu/media/LowCostHighImpact.pdf>]. [Source: JAN and *The New Standard*, 3/9/2006]

National Council on Disability (NCD) Study on Employment Seeks

Stakeholder Input

The National Council on Disability is currently conducting a study that will gather information from a wide range of sources and stakeholders regarding the issues that persons with disabilities encounter in seeking and maintaining employment. Rutgers' University Program for Disability Research is facilitating this discussion for NCD via an online bulletin board at [<http://www.ncdadaemploymentstudy.com>].
[Source: NCD]

Other Items of Interest

Policy Proposals for Improving SSDI, SSI, and Medicaid Work Incentives

3.24.2006 – Recently, Allen Jensen (Director, Work Incentives Program - Center for Health Services Research) and Robert Silverstein (Director, Center for the Study and Advancement of Disability Policy) proposed policies for improving work incentives in the federal Social Security Disability Income (SSDI) program. The proposals recognize the heterogeneity of the population of people with disabilities and the many variables that impact the ability of people with severe disabilities to sustain a substantial level of earnings over a significant period of time. The proposals also encourage work for both the SSDI and Supplemental Security Income (SSI) populations by making the programs' work incentives similar, and thus easier to understand and utilize. These proposals are the product of a research project funded by the Social Security Administration (SSA) through a sub-award from the Disability Research Institute (DRI) at the University of Illinois at Urbana-Champaign. View the project details and full text (PDF) of both proposals at [<http://www.dri.uiuc.edu/research/p05-12h/default.htm>].

[Sources: DRI and NCD]

Working at Home Must Meet Reasonable Accommodation Test

3.16.2006 A recent article published by the *Disability Compliance Bulletin* details the factors that are assessed in deciding whether work at home is a reasonable accommodation. For many individuals with disabilities, the option of being able to perform the same job functions from their home has been an option for employment. However, for some employers, allowing workers to work at home as an accommodation may create an undue burden. Generally, the courts have said that an employer has the discretion to choose an effective accommodation after an employee makes a reasonable accommodation request. The article defines the following four discretionary areas that may occur in work at home assignments:

- 1) Requests to work at home must be reasonable;
- 2) Employees must qualify for alternative work programs. The meaning of this discretionary area is that the criteria for a position must qualify for the alternative work program in order for a request for work at home to be satisfied.
- 3) Employers can change working

requirements if a change occurs which no longer allows for work at home; 4) Employees may be qualified for other positions. This means that employers are allowed to move qualified employees to other positions instead of allowing work at home. [Source: *Disability Compliance Bulletin*, 3/16/2006]

Upcoming Events NCD Hosts Disability Policy Seminar

The National Council on Disability (NCD) will host a disability policy seminar on July 26, 2006 in Washington, D.C. to commemorate the 16th anniversary of the Americans with Disabilities Act (ADA). The focus of the seminar will be discussing the findings in the NCD's report entitled National Disability Policy: A Progress Report, which will be released during the seminar.

The Job Accommodation Network (JAN) Conference

JAN will be hosting a conference in Boston on September 18th & 19th entitled Empowering Employers to Build an Inclusive Workforce. The focus will be to help employers recruit, hire and retain employees with disabilities. For more information, please visit [<http://conference.jan.wvu.edu/Symposium.htm>].



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The Center for Advanced Communications Policy (CACP), produces a bi-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, Avonne Bell, Graduate Research Assistant (avonne.bell@cacp.gatech.edu) or Lynzee Head, MS, Research Scientist (lynzee.head@cacp.gatech.edu).