



WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 3.02

May 2005

Overview

In Washington, a number of personnel changes have taken place over the last few months. Dan Blair is now the acting Director of the Office of Personnel Management (OPM) and Dr. Troy Justesen is the Acting Director of the Office of Special Education Programs (OSEP). Joanne Wilson left her position as Commissioner of the Rehabilitation Services Administration (RSA), an agency that provides funds for state vocational rehabilitation agencies. In April, the Office of Disability Employment Policy (ODEP) kicked off a nationwide awareness campaign for the Employer Assistance and Recruiting Network (EARN), a program designed to connect job applicants with disabilities with employers who are hiring.

OPM issued proposed regulations that will give federal agencies greater authority to quickly certify and appoint job applicants with disabilities based solely on documentation submitted by the applicant. Under the new rules, agencies will be able to make these certifications based on determinations made by other federal agencies (such as the Social Security Administration) and/or medical documentation submitted by the applicant.

In judicial news, the Supreme Court (*Spector v. Norwegian Cruise Line Ltd.*), heard arguments on whether or not the ADA applies to cruise ships that dock in U.S. ports, and whether cruise ship companies that market to Americans and serve U.S. ports can escape the law by registering the ownership of their ships in foreign countries. In New York, (*Brady v. Wal-Mart Stores Inc.*) a jury ruled against Wal-Mart, returning a \$7.5 million verdict in favor of Patrick S. Brady, a 21-year old man who has cerebral palsy. The jury found Brady was discriminated against when he was transferred from his position in the pharmacy to a position picking up garbage and collecting shopping carts from the parking lot.

Finally, in addition to its annual performance report, the National Council on Disability (NCD) released a report titled *Saving Lives: Including People with Disabilities in Emergency Planning*, which calls for immediate action by the federal government to overhaul emergency planning for people with disabilities. The report seeks to assist the federal government in establishing policies and practices that include people with disabilities in emergency preparedness, disaster relief, and homeland security programs.

**Legislative/Policy
Activities**

OPM Exec Testifies on Telework Policies During Emergencies

05.02.2005 – OPM (Office of Personnel Management) Associate Director Marta Brito Perez told members of the House Committee on Government Reform that disruptions to operations after the September 11 attacks highlighted the need for alternate work sites for federal employees. Further, making telework a routine business practice would ease the transition into emergency operations, as well as help agencies recruit and retain talented people. OPM noted that ongoing threats of terrorist attacks in the U.S. accentuate the need for federal agencies to adopt telework contingencies for employees who may become displaced from their offices during an emergency. This would help ensure that employees can provide uninterrupted service from their homes or other alternate sites. The hearing, convened by Congressman Tom Davis (VA), reviewed the progress of federal agencies over the past 12 months in developing continuity of operations plans (COOP), which would include a telework component. OPM conducts an annual survey to gauge agencies' progress in planning and implementing telework arrangements for employees whose jobs are conducive to working offsite at least one day each week. During the hearing, Perez emphasized that telework should be a routine part of each agency's business plan. "With over 1.8 million non-postal executive branch employees spread across the agencies, we simply must incorporate employee safety with business needs," said Perez. "OPM's goal is to make telework an integral part of agency operations, rather than a 'new' or 'special' program." [Source: OPM]

**Regulatory
Activities**

Dan Blair Acting Director of the Office of Personnel Management (OPM)

02.02.2005 – Dan G. Blair has taken the position of Acting Director of OPM upon the resignation of former Director Kay Coles James. Blair served as the Deputy Director of OPM under James and will serve until a permanent Director is nominated by President Bush and confirmed by the Senate. OPM is the agency that assists in the hiring and retention of employees with disabilities in the federal government. [Source: OPM]

EEOC Launches Spanish-Language Website

01.11.2005 – The Equal Employment Opportunity Commission (EEOC) launched a Spanish-language version of its website, [<http://www.eeoc.gov/es/>], part of the EEOC's attempts to reach key stakeholder communities to proactively prevent workplace discrimination and promote voluntary compliance with federal antidiscrimination legislation. People with disabilities who have limited ability in English as a primary language face a double barrier to employment and information access. [Source: EEOC]

Federal Changes in the Hiring of People with Disabilities

01.12.2005 – OPM issued proposed regulations that will give federal agencies greater authority to quickly certify and appoint job applicants with disabilities based solely on documentation submitted by the applicant. Prior to the proposed rule changes, applicants with disabilities had to complete a two-stage certification process through the Department of Veterans Affairs (VA) or a state vocational rehabilitation agency. Under the new rules, agencies will be able to make these certifications based on determinations made by other federal agencies (such as the Social Security Administration) and/or medical documentation submitted by the applicant. Agencies are also able to assign individuals to a temporary appointment to determine whether or not the individual is likely to succeed in the position. The bottom line is that the proposed rule changes will speed up the hiring process for people with disabilities who apply for jobs within the federal government. See OPM's "Federal Employment of People with Disabilities" website [<http://www.opm.gov/disability/>]. See also specifics at: [http://www.opm.gov/disability/hrpro_3-06.asp]. [Source: OPM]

New Freedom Initiative Award Nominations: May 27th Deadline

05.2005 – Department of Labor (DOL) Secretary Elaine L. Chao has issued a reminder of the **May 27** deadline for nominations for the 2005 *New Freedom Initiative* award. The award recognizes non-profits, small businesses, corporations and individuals that have demonstrated exemplary and innovative efforts in advancing the employment and workplace environment of people with disabilities. Additional information on the award and specific nomination criteria are available in the February 10, 2005 Federal Register or at [<http://www.dol.gov/odep>] under the *New Freedom Initiative* tab. The information is also available by calling the Office of Disability Employment Policy (ODEP), Education and Outreach Section, at (202) 693-7880. [Source: ODEP]

ODEP Kicks off Recruitment Service Outreach campaign

04.07.2005 – ODEP (Office of Disability Employment Policy) has announced the kickoff of a new nationwide awareness campaign for the Employer Assistance and Recruiting Network (EARN) [<http://www.earnworks.com>]. EARN matches job openings with skilled employees with disabilities. Employers can utilize the service by emailing EARN a job posting or questions about recruiting and hiring people with disabilities. EARN was designed to meet employer staffing needs, lower recruiting costs and impact an employer's bottom line. The DOL is promoting workers with disabilities as one potential solution to the nation's looming labor shortage. [Source: DOL/ODEP]

OSEP Acting Director Named

05.09.2005 - Effective May 9, 2005, Dr. Troy Justesen began service as the Acting Director of the Office of Special Education Programs (OSEP), and will also continue to serve as Acting Deputy Assistant Secretary. As acting OSEP director, Justesen will be working with the Secretary's Action Plan to Increase State Capacity in Instruction, Assessment, and Accountability for Students with Disabilities while completing the regulatory process for the 2004 IDEA regulations. Before coming to OSERS, Justesen served as the Associate Director for Domestic Policy at the White House, assisting the Offices of Domestic Policy and Public Liaison with the implementation of the New Freedom Initiative (NFI) and on matters related to Native Americans, Pacific Islanders and Alaska Natives. [Source: American Association of People with Disabilities (AAPD)]

RSA Chief Leaves Position Over Funding Concerns

04.25.2005 – Joanne Wilson left her job as Commissioner of the Rehabilitation Services Administration (RSA), the agency of the Department of Education's (DOE) Office of Special Education and Rehabilitative Services (OSERS) that oversees grant programs that help people with disabilities obtain employment and live more independently. The major grant program of the RSA provides funds to state vocational rehabilitation agencies to provide employment-related services for individuals with disabilities (with priority given to individuals with significant disabilities). According to Wilson, the Bush administration is quietly attempting to "dismantle" the employment-related programs of the RSA (The Washington Post, 4/25/2005). Further, the DOE is pushing to allow governors to combine RSA programs with a number of other employment programs that serve both individuals with and without disabilities. This move, Wilson projects, will result in fewer funds and services dedicated to the employment of people with disabilities. OSERS Assistant Secretary John Hager said that the staffing cuts were expected and that they came at the expense of RSA's regional offices (which Hager said the agency had decided were unnecessary due to advances in technology). According to Frederick Schroeder, who headed RSA under the Clinton administration, consolidated job programs would cause people with disabilities to get lost in the shuffle. He said that programs designed to rehabilitate people with disabilities (particularly severe disabilities) are much different than those designed to help dislocated workers return to the workforce. Hager called these warnings "speculative." [Sources: RSA and The Washington Post, 4/25/2005, A17]

Judicial Activities **Supreme Court Update: ADA and Cruise Ships**

03.01.2005 – In *Spector v. Norwegian Cruise Line Ltd.*, No. 03-1388, The Supreme Court heard arguments on whether or not the ADA applies to cruise ships that dock in U.S. ports, and asks whether cruise ship companies that market to Americans and serve U.S. ports can escape the law by registering the ownership of their ships in foreign countries. The case is a complex one, in that the key question deals with the U.S. laws in international matters. According to Title III of the ADA, people with disabilities are entitled to the “full and equal enjoyment” of any “place of public accommodation.” However, some passengers with disabilities, along with backing from the Department of Justice, charged that they were asked to pay an unjustified premium for their accommodations on the Norwegian Sea and the Norwegian Star cruise ships. The plaintiffs also alleged that the ships’ public restrooms and recreational facilities were not accessible. The appeals court rejected the plaintiffs’ view and said that only Congress had the authority to state whether or not the law applies to cruise ships (which it has yet to do). In 2000, the U.S. Court of Appeals for the 11th Circuit came to the opposite conclusion when it allowed a wheelchair-using passenger to bring suit against a Bahamas-based cruise line. The justices were not in agreement during discussion, and it is unclear what the outcome of the case may be. The question faced by the court is a new one, however; the issue of whether or not U.S. laws apply to foreign ships has been debated for decades. [The New York Times, 3/1/2005, AARP: http://www.aarp.org/research/legal-advocacy/lit_imported_art_795.html]

Wal-Mart Ruled Against in Disability Discrimination Lawsuit

02.24.2005 – In *Brady v. Wal-Mart Stores Inc.* (Civil Action No. 3:97-cv-361WS) a New York jury ruled against Wal-Mart returning a \$7.5 million verdict in favor of Patrick S. Brady, a 21-year old man who has cerebral palsy. The jury found that Brady was discriminated against when he was transferred from his position in the pharmacy to a position picking up garbage and collecting shopping carts from the parking lot. The jury also found that Brady was asked inappropriate pre-employment questions regarding his disability. In December 2004, Wal-Mart entered into an agreement with the EEOC that governed its conduct under the ADA. This action was an effort to resolve a number of disability discrimination cases the company faced. [Source: PR Newswire]

**Studies/Reports/
Publications**

Council for Disability Rights Article on Small Business Issues

05.01.2005 - The May newsletter of The Council for Disability Rights contains an article titled “Why the Disabilities Act Exasperates Entrepreneurs,” which notes that while small businesses generally support the ADA’s aims, they find compliance difficult, and in fact are not certain of the law’s requirements. Further, it is “... up

to entrepreneurs to stay abreast of how the broadly written statute is interpreted in courts around the country." But there are things that small business owners can do. "If there is one clear rule about the ADA, it is this: Doing something trumps doing nothing. If a small business gets sued, any steps it took to accommodate the disabled can weigh heavily with jurors. Potential litigants are also less likely to sue a business that makes an effort, however simple and inexpensive." [Source: The Disability Law & Policy e-Newsletter, Law, Health Policy & Disability Center]. [Newsletter at: <http://www.disabilityrights.org/505.htm#why>].

Equal Employment Opportunity Commission (EEOC) Issues 2004 Report on Federal Workforce

04.22.2005 – The EEOC has released its *Annual Report on the Federal Work Force for Fiscal Year 2004*. [<http://www.fhcs2004.opm.gov/>]. The report provides detailed agency-by-agency profiles of discrimination complaint processing and other equal opportunity measures. The report contains suggestions and best practices to help agencies improve their EEO performance, including the processing of discrimination complaints. The report analyzes data examining the three major stages of the EEO complaint process: pre-compliant counseling, complaint investigation, and issuance of a final agency decision. According to EEOC Chair Cari Dominguez, agencies are "constrained by a system that is costly, cumbersome and inefficient." She noted that the volume of complaints is still too high and the time it takes to investigate these complaints is too long. One key disability-related finding of the report is that the number of employees with targeted disabilities has been steadily declining in the past ten years from 31,359 in FY 1995 to 25,917 in FY 2004. In FY 2004, individuals with targeted disabilities were less than one percent (0.99%) of the total work force. [Source: EEOC]

Federal Agencies Jointly Issue Publications on Making EEO Mediation Accessible to People with Disabilities

05.10.2005 - The U.S. Equal Employment Opportunity Commission (EEOC), the National Council on Disability (NCD), and the U.S. Department of Justice (DOJ) released two new publications addressing the accessibility of mediation of equal employment opportunity disputes for people with disabilities. The publications are available on all three agencies' Web sites at <http://www.eeoc.gov>, <http://www.ncd.gov>, and <http://www.ada.gov>. The documents, entitled "Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act" and "Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act", address the obligations of all private and public sector mediation providers, including employers that offer their employees mediation as a benefit of employment. The documents are written in a question-and-answer format and discuss topics such as: types of reasonable

accommodations that may be necessary to make mediation accessible to people with disabilities, best practices for ensuring that mediation is accessible, the confidentiality of medical information disclosed during mediation, and recommended types of ADA training for mediators. For more information see [<http://www.ncd.gov/newsroom/news/2005/r05-489.htm>] [Source NCD]

NCD Releases Annual Performance Report

03.16.2005 – The NCD submitted its Fiscal Year 2004 Annual Performance Report to President Bush and Congress, and it covers the performance of the NCD over the past year, comparing its performance to the goals it set out in its annual performance plan. The NCD reports progress in all areas of focus, which include “increasing access to assistive and universally designed technologies, expanding educational and employment opportunities, and promoting increased access into daily community life – the core of President Bush’s New Freedom Initiative.” NCD publications in 2004 included *Improving Federal Disability Data* and *National Council on Disability: 20 Years of Independence*, which recounted the agency’s history. The NCD also held hearings, forums and conferences around the country regarding emerging disability policy issues. Report at: [<http://www.ncd.gov/newsroom/publications/2005/2004annualreport.htm>]. [Source: NCD]

NCD Seeks Immediate Federal Changes in Emergency Planning

04.15.2005 – The National Council on Disability (NCD) has released a report titled *Saving Lives: Including People with Disabilities in Emergency Planning*, which calls for immediate action by the federal government to overhaul emergency planning for people with disabilities. The report seeks to assist the federal government in establishing policies and practices that include people with disabilities in emergency preparedness, disaster relief, and homeland security programs. Such an effort, according to the NCD, would incorporate “access to technology, physical plants, programs, and communications. It would also include procurement and emergency programs and services.” The NCD commended the Bush administration on its Executive Order on people with disabilities in emergency preparedness, and praised the Department of Homeland Security and the FCC for its efforts to include people with disabilities in emergency planning.

Key findings of the report include:

“Disaster management activities appear to have many access mistakes in common. People with disabilities frequently encounter barriers to physical plants, communications, and programs in shelters and recovery centers and in other facilities or devices used in connection with disaster operations such as first aid stations, mass feeding areas, portable payphone stations, portable toilets, and

temporary housing. Many of these barriers are not new. Information and lessons learned are not shared across agency lines, and thus experience does not enlighten the development of new practices. Many accessibility lessons learned during previous disasters are not incorporated in subsequent planning, preparedness, response, and recovery activities. People with disabilities are left out of preparedness and planning activities. These activities include analyzing and documenting the possibility of an emergency or disaster and the potential consequences or impacts on life, property, and the environment.”

Key Recommendations of the report include:

“DHS (Department of Homeland Security) should establish a Disability Access Advisory Group, in addition to the Interagency Coordinating Council on Emergency Preparedness, made up of qualified people with disabilities and others with disability-specific disaster experience who meet regularly with senior officials to discuss issues and challenges. The DHS Directorate of Emergency Preparedness and Response should integrate information on people with disabilities into general preparedness materials. It also should inform readers and information users on how to get access to more customized materials. The DHS Office of Civil Rights and Civil Liberties should regularly issue guidance for state and local emergency planning departments to reinforce their legal obligation to comply with ADA and Section 504 and 508 of the Rehabilitation Act in planning for, operating, and managing programs and services such as Citizen Corps, shelters, and other disaster services. The FCC should develop stronger enforcement mechanisms to ensure that video programming distributors, including broadcasters, cable operators, and satellite television services, comply with their obligation to make emergency information accessible to people with hearing and vision disabilities, that it acts immediately on violations, and that it is proactive on Section 255 hearing aid compatibility.” The NCD pointed out an example of the television industry’s shortcomings, which is that close captioning during emergency broadcasts is frequently blocked by news crawls. People with hearing difficulties are often unable to decipher these emergency messages and frequently experience anxiety and confusion during these situations. The NCD asked the FCC to better enforce the requirements that stations, cable operators and direct broadcast satellite (DBS) providers make emergency information accessible to individuals with disabilities. View a copy of the report *Saving Lives: Including People with Disabilities in Emergency Planning* at [\[http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm\]](http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm).
[Source: NCD]

ODEP Publishes Tip Sheet on Attitudinal Barriers

05.5.2005 – ODEP has produced a tip sheet on the different types of attitudinal barriers faced by people with disabilities and how to break down these barriers. [<http://www.dol.gov/odep/pubs/ek99/barriers.htm>]. The publication describes the different forms of attitudinal barriers faced by people with disabilities, such as inferiority, pity, stereotypes and fear. The best remedy for attitudinal barriers, according to ODEP, is to get people with and without disabilities to interact as coworkers, associates and social acquaintances. For those who need guidance on how to interact with people with disabilities, the publication offers guidance in that area as well. [Source: ODEP]

ODEP launches online e-newsletter, *Workforce Catalyst*

02.4.2005 – ODEP launched an online e-newsletter, *Workforce Catalyst*. The publication is online at [<http://www.dol.gov/odep/pubs/newsletter/200502.htm>].

Other Activities/Items of Interest

Handheld Electronics Can Lead to Hand Ailments

04.23.2005 – Orthopedists have reported that they are seeing an increasing number of patients with moderate to severe pain in the area between the thumb and the wrist, stemming from the overuse of handheld electronic devices such as Blackberries and iPods. Workplace injuries in white collar jobs have grown with the increase in the use of wireless communications technologies. In fact, ergonomic disorders are the fastest-growing category of work-related illnesses, according to the Bureau of Labor Statistics. The American Society of Hand Therapists released a consumer alert in January, warning that heavy use of handheld electronics can result in disabilities such as Carpal Tunnel Syndrome and tendonitis. The group encouraged heavy users of these devices to take preventive measures to avoid such hand ailments. Currently, there are 2.51 million American Blackberry subscribers; double the 1.07 million one year ago. More information on hand and arm injury prevention is available at [<http://www.asht.org>]. [Sources: The American Society of Hand Therapists and *The Washington Post*, 4/23/2005]

New President Takes Office at NOD

04.22.2005 – National Organization on Disability (NOD) President and founder, Alan Reich, has announced his retirement. NOD Board Chairman Michael Deland will take over the position, while Reich will assume the title of President Emeritus and will remain on the organization's Board of Directors. Reich decided to leave his position after a recent bout with pneumonia. After rehabilitation following a spinal cord in 1962, he began a distinguished career in the government, business and nonprofit sectors. Reich served as US Deputy Assistant Secretary of State for Educational and Cultural Affairs and Deputy Assistant Secretary of

Commerce. Reich was the first person to address the United Nations from a wheelchair and after heading the U.S. Committee for the United Nation's International Year of the Disabled Person in 1981, founded the NOD. Reich and Deland led the successful seven-year campaign to add the FDR wheelchair statue at the Roosevelt Memorial in Washington, DC. Deland is also a wheelchair user who was previously Chairman of the White House Council on Environmental Quality under President George H.W. Bush. [Source: NOD]

RERC Updates

Workplace RERC State of the Science Conference

The Workplace RERC is announcing its September 15-16, 2005 State of the Science Conference. This conference will establish a national dialogue on the current state and future directions of workplace accommodations, and will include plenary sessions, paper presentations in breakout sessions, and extensive opportunity for networking and discussion. A goal of the conference will be to develop an agenda for future directions in research, service delivery, and product development based on user needs for workplace accommodations. More information is available at [<http://www.workplacerc.org/sos/>].

Upcoming Events

Fourth Annual Bridges to Employment Conference: Exploring Career Opportunities for Latinos with Disabilities

The "Fourth Annual Bridges to Employment Conference: Exploring Career Opportunities for Latinos with Disabilities", will be held June 1-3, 2005, Raleigh, NC. The conference is sponsored by Proyecto Visión, a national technical assistance center funded by the Department of Education's Rehabilitation Services Administration based at the World Institute on Disability (WID) in partnership with local North Carolina advocacy organizations. For more information see [<http://www.proyectovision.net/english/bridges/>].

JAN's Annual Conference: September 26-27, 2005

The Job Accommodation Network (JAN) 2005 Annual Conference will be held in San Francisco on September 26-27, 2005. The Conference, "Empowering Employers to Build an Inclusive Workforce," offers an opportunity to enhance organizational ability to accommodate and employ people with disabilities. JAN staff and national experts will lead training sessions on accommodation strategies, ADA/legal issues, and innovative employment practices. See the 2005 JAN Conference Web site for more details about attendance, registration fees, and featured speakers. [<http://conference.jan.wvu.edu>]



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Lynzee Head, Editor: lynzee.head@gcatt.gatech.edu

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, MS, 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).