



## **WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 1.5**

July/August 2003

### **Overview**

This issue of the Workplace Accommodations Policy Highlights examines recent court decisions involving accommodations of workers with disabilities. Of particular note is the case of *Bates v. United Parcel Service*, in which UPS agreed to pay \$5.8 million dollars in damages to approximately 1,000 deaf and hard of hearing applicants, current employees, and former employees who claimed that the company did not provide them with language interpreters and other communication aids necessary to perform their jobs.

The U.S. Department of Labor (DOL), continuing its service to job seekers with disabilities, announced the publication of its Workforce Investment Act (WIA) Compliance Assistance Checklist. The publication was sent to national One-Stop centers, workforce agencies, Job Corps contractors and directors, and WIA program grantees. Adoption of the checklist is strictly voluntary, but will help measure compliance with Section 188 and its regulations that apply to people with disabilities. Another announcement from the DOL concerned National Disability Mentoring Day, which is set for October 15, 2003.

Finally, several new technologies that are able to aid persons with disabilities in achieving their employment goals are showcased. The European Space Agency (ESA) is currently testing a Global Positioning System (GPS) to help blind and visually impaired individuals navigate unfamiliar areas, while researchers in Switzerland and Spain are developing a thought-communication device that may one day allow individuals with severe disabilities to steer a wheelchair using only their thoughts. One technology in development, a sign language translating glove, has received both support and criticism from the deaf community.

### **Legislative/ Regulatory Activities**

#### **National Disability Mentoring Day Set for October 15, 2003**

08.25.03: National Disability Mentoring Day is set for October 15, 2003 and is held in conjunction with National Disability Employment Awareness Month. The day was first celebrated in 1999 and promotes career development for students and job seekers with disabilities through one-on-one job shadowing, group visits to the offices/facilities of public and private employers, and hands-on career exploration. Department of Labor Secretary Elaine L. Chao encouraged young people, schools, businesses, and government agencies to actively participate in the national event. Roy Grizzard, Assistant Secretary of Labor for the Office of Disability

Employment Policy (ODEP), spoke of the benefits of National Disability Mentoring Day, stating that it would increase the awareness of employers and the general public that people with disabilities are an untapped resource for "sustaining our national economy and well-being." According to Grizzard, the day provides an opportunity to educate people with disabilities on the number of employment opportunities available to them. The American Association of People with Disabilities (AAPD), co-sponsors of National Disability Mentoring Day, was given special recognition for its work with ODEP and other national organizations to promote career exploration for students and job seekers with disabilities. This year, young people in all 50 states, Guam, American Samoa, Japan, Italy, Singapore, France, the United Kingdom, and Australia are expected to participate in National Disability Mentoring Day.

[\[www.dol.gov/odep/media/press/mentoring.htm\]](http://www.dol.gov/odep/media/press/mentoring.htm)

### **Workforce Investment Act (WIA) Compliance Assistance Checklist Available from Department of Labor (DOL)**

07.25.03: The U.S. DOL's Civil Rights Center and the Office of Disability Employment Policy (ODEP) have issued a "WIA Section 188 Disability Checklist" designed "to ensure meaningful participation of people with disabilities in programs and activities operated by recipients of financial assistance under the Workforce Investment Act of 1998 (WIA) [\[www.doleta.gov/regs/statutes/wialaw.txt\]](http://www.doleta.gov/regs/statutes/wialaw.txt), including those that are part of the One-Stop delivery system." Under Section 188 of the WIA, program operators receiving WIA Title I financial assistance are prohibited from discriminating against various categories of persons, including persons with disabilities, and must provide equal opportunity for those who apply and participate in WIA sponsored programs. Use of the Checklist is strictly voluntary and does not create or change legal requirements. The Checklist provides a way to measure compliance with Section 188 regulations that apply to people with disabilities, providing a valuable tool whose use can facilitate needs of job seekers with disabilities, a goal of the President's *New Freedom Initiative*. It was sent to national One-Stop centers, workforce agencies, Job Corps contractors and directors, and WIA program grantees.

[\[www.dol.gov/odep/media/press/wia.htm\]](http://www.dol.gov/odep/media/press/wia.htm);  
[www.dol.gov/oasam/programs/crc/WIASection188DisabilityChecklist.htm\]](http://www.dol.gov/oasam/programs/crc/WIASection188DisabilityChecklist.htm)

## **Judicial Activities**

### **Attention Deficit/Hyperactivity Disorder (ADHD) in the Workplace**

07.29.03: The First U.S. Circuit Court of Appeals dismissed the case of Fred Calef, Jr., an employee of the Gillette Company, (*Calef v. Gillette*), [\[www.caselaw.lp.findlaw.com/scripts/getcase.pl?court=1st&navby=case&no=021444&exact=1\]](http://www.caselaw.lp.findlaw.com/scripts/getcase.pl?court=1st&navby=case&no=021444&exact=1), whose employment was terminated after a series of altercations with supervisors and co-workers. Calef argued that his behavior was a result of a disability, ADHD, and claimed that his termination constituted an act of disability discrimination on the part of Gillette. Although ADHD is a disorder commonly associated with young children and adolescents, studies have shown that as many as 5 to 10 percent of employed adults are affected by ADHD. Employees with ADHD may suffer from concentration problems, chronic forgetfulness, time

management problems, general disorganization, and low frustration tolerance. The First Circuit ruled that Caleb had failed to demonstrate that his impairment satisfied the criteria of "disability" given by the Americans with Disabilities Act (ADA). The court determined that Caleb's ADHD caused no substantial limitations on his ability to learn or speak, the major life functions he claimed were limited by the condition. The court also concluded that "the ADA does not require that an employee whose unacceptable behavior threatens the safety of others be retained, even if the behavior stems from a mental disability." The court's ruling implies that, under certain circumstances employers have legal justification to dismiss employees who behave irrationally and excuse their conduct with a disability claim. [*Massachusetts Employment Law Letter*, Vol 14 (4); *Successful Job Accommodation Strategies*, Vol 9 (4) p. 1,6]

### **Microsoft Settles Immersion Joystick Suit**

07.29.03: Microsoft has settled a patent-infringement suit and received the right to use Immersion's technology for providing tactile responses in devices such as Microsoft's Force Feedback joysticks. According to Immersion, Microsoft will pay \$26 million for licensing rights and for a stake in the company. Immersion can also borrow up to \$9 million more through a convertible debenture arrangement with Microsoft. Immersion specializes in haptic technology; technology that uses the sense of touch to expand interactions between humans and computers. For example, haptic technology has been used to build a mouse that thumps slightly so that people with poor vision can tell when their cursor has moved over a clickable button. The use of such technology permits businesses to better integrate people with poor vision into the workplace, and for people with poor vision to perform jobs that they would otherwise not be able to perform. Immersion sued both Microsoft and Sony for patent infringement in February 2002, over their use of Immersion's haptic technology. Although the Microsoft suit has been settled, Immersion reports the Sony suit is still in litigation.

[Source: *ZDNet*; [zdnet.com.com/2100-1103-5056455.html](http://zdnet.com.com/2100-1103-5056455.html)]

### **United Parcel Service (UPS) Reaches Partial Settlement with Deaf Workers**

08.07.03: UPS reached a partial settlement with approximately 1,000 deaf current employees and former employees over claims that the company failed to provide deaf and hard of hearing employees with language interpreters and other communication aids necessary to perform their jobs in *Bates v. United Parcel Service* [[www.dralegal.org/cases/bates/cc-order.pdf](http://www.dralegal.org/cases/bates/cc-order.pdf)]. One plaintiff, Babaranti Oloyede, testified that he was denied an interpreter for a meeting on anthrax. Plaintiffs in the case claimed that UPS generally restricted deaf workers to lower level positions and excluded them from entire job categories. The suit also claimed that UPS failed to provide an effective evacuation plan for deaf workers, and it challenged the UPS policy of excluding deaf people from driving positions. Federal government agencies, such as the United States Postal Service, permit deaf employees who have demonstrated safe driving skills to drive delivery vehicles under 10,000 pounds. The issue of allowing deaf UPS employees to work in driving positions will be resolved in court. "The issue is one of safety, not a disability or discrimination issue. UPS believes that any individual that cannot meet those minimum standards set by the Department of

Transportation should not be driving a UPS truck," said Peggy Gardner, spokeswoman for UPS. UPS did, however, resolve other issues brought forth by the plaintiffs by agreeing to pay \$5.8 million in damages over three years. [*Disability Compliance Bulletin*, Vol 26(4) [www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2003/07/22/financial0305EDT0006.DTL&type=printable](http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2003/07/22/financial0305EDT0006.DTL&type=printable)]

### **Wisconsin Court Rules in Favor of Cheese Factory Worker**

07.12.03: The Wisconsin Supreme Court ruled that a state cheese factory discriminated against a worker who uses a wheelchair after a car accident in 1996 when it refused to rehire her or change her job duties. In *Catlin v. Crystal Lake Cheese Factory* [[www.wisbar.org/res/sup/2003/02-0815.htm](http://www.wisbar.org/res/sup/2003/02-0815.htm)], the Supreme Court stated that requiring the company to modify the job duties of Catlin and make physical accommodations to the workplace was not an unreasonable request. Catlin supervised a four-person packing crew in the factory's warehouse. In 1996 an off-the-job car accident left Catlin a quadriplegic, however, she eventually regained the use of her arms. When she contacted Crystal Lake about returning to work, the company hired an expert to assess her former position and determine whether she could perform the essential functions of the job. Crystal Lake's expert determined she could not. Catlin then hired her own expert who concluded that if Crystal Lake changed the job responsibilities to those that did not require lifting, Catlin could perform the new job. Crystal Lake refused to create the new position. The company's argument was that they were only required to assist an employee if reasonable accommodations would enable the worker to resume all of his or her job duties. The company did not feel that it was legally required to create new duties to accommodate Catlin. Justice N. Patrick Crooks, writing for the majority in the 4-3 split, said the firm could have modified Catlin's duties and provided ramps, wheelchair access, bathroom alterations and other fixtures. The minority view held that the majority decision misinterpreted the Wisconsin Fair Employment Act. According to these justices, the law requires that companies make reasonable accommodations to help an employee with a disability perform a pre-existing job, not a new one. [[www.jsonline.com/bym/news/jul03/154385.asp](http://www.jsonline.com/bym/news/jul03/154385.asp)]

### **Studies/Reports Disability Advocates Promote Web Accessibility /Publications**

07.10.03: On July 10, 2003, the National Council on Disability (NCD) issued a report, entitled *When the Americans with Disabilities Act (ADA) Goes Online: Application of the ADA to the Internet and the World Wide Web*, which makes the recommendation that the ADA be amended to cover commercial and other private sector Web sites. The ADA ensures persons with disabilities access to public facilities and workplaces, but does not guarantee access to the Internet. Congress enacted the ADA in 1990, over a decade before the Internet became as popular and pervasive as it is today. Therefore, many Web pages do not include the necessary elements of design that allow their content to be accessed by individuals who interface with the Internet using assistive technology. The report examines the legal background of the ADA and its implications for the

Internet access issue. One specific focus of the report is its examination of Title III of the ADA, which addresses discrimination on the basis of disability in “places of public accommodations” and “commercial facilities.” [[www.usdoj.gov/crt/ada/reg3a.html](http://www.usdoj.gov/crt/ada/reg3a.html)]. The word “place” in Title III, and its application to Web sites, is closely examined. The NCD acknowledges that many people continue to doubt that a Web site can be a “place” of public accommodation or a commercial “facility as required for coverage of the law.” However, the NCD also notes that many Web sites are engaged in commerce by providing goods and services, and that “the Internet plays a large and increasing role in commerce and recreation, education, [and] employment.” The NCD concludes that “the law does contemplate the coverage of the Internet by Title III of the ADA.” The NCD believes that issues like Web accessibility must be addressed if the federal government is to achieve the New Freedom Initiative’s goals of inclusion and access. [[www.ncd.gov/newsroom/publications/adainternet.html](http://www.ncd.gov/newsroom/publications/adainternet.html)]; [www.businessweek.com/technology/content/jul2003/tc20030725\\_6346\\_tc078.htm](http://www.businessweek.com/technology/content/jul2003/tc20030725_6346_tc078.htm)]

**Other Activities  
& Items of  
Interest**

**Brazilian Programmers Launch New Voice Recognition Software**

12.25.02: Programmers at the Federal University of Rio de Janeiro have developed a free application to allow individuals with physical disabilities to access and search the Internet. The principle intent of the programmers was to benefit people with quadriplegia, who number about 200,000 in Brazil. The program, Motrix, allows individuals with disabilities to read, write and interact with their computers using a voice-recognition system. “Motrix allows the user to perform nearly all computerized tasks, including playing games, and Motrix may be integrated with home automation services.” The minimum system requirement is a 133-MHz processor, and the software runs only on the Windows operating system. Motrix launches automatically and gains control of the mouse and keyboard after the computer is turned on. Vocal commands control 5 main types of menu operations, and the International Phonetic Alphabet is used when users need to dictate letter by letter. This technology is also being tested with home devices for turning on lights, TVs, and air conditioners. Use of this technology furthers the ability of companies to integrate workers with quadriplegia into the mainstream of their businesses. [[www.wired.com/news/technology/0,1282,55539,00.html](http://www.wired.com/news/technology/0,1282,55539,00.html)]

**Deaf Have Mixed Feelings About Sign Language Translating Technology**

08.07.03: Researchers have worked for over two decades to improve gloves that can translate American Sign Language (ASL) into spoken and written speech, with a mixed response from many people in the deaf community. There are several reasons for this response, including the fact that the deaf community embraces deafness as culturally unique, and are skeptical of policies making use of technologies that aim to “fix” deafness. Many people who are deaf are also ambivalent about technology that can translate only a few hundred words, much less the nuances crucial to human communication. Jose Hernandez-Rebollar, a graduate student at George Washington University, developed the AcceleGlove, a sensor-

studded glove that translates simple sentences from ASL into spoken and written speech. The glove contains sensors that work with a micro-controller, also attached to the wearer's arm, which maps the movement of the arm and fingers. The information received by the glove is turned into data that a computer converts into words on a loudspeaker or into text on a screen. The glove can translate close to 200 words as well as few short phrases, like "What's the matter?" and "I'll help you." Translation of the entire deaf vocabulary, would require the user to wear two gloves, in addition to installation of a dictionary defining more gestures into the computer's database. Even though facial expressions are a large component of deaf communication, the technology to interpret them does not currently exist. Some question whether advocating use of this technology would present a setback for organizations like the National Association of the Deaf. These organizations have defended the view that deafness is not a disability, and have encouraged the hearing world to accept deaf individuals, rather encouraging the use of technologies like the AcceleGlove and cochlear implants to accommodate the hearing world. This difference in perspective about deafness raises many complex policy issues. At the very least, policy makers interested in integrating people who are deaf or hard of hearing into the workplace should solicit the views and advice of organizations such as the National Organization of the Deaf. [[www.wired.com/news/technology/0,1282,59912,00.html](http://www.wired.com/news/technology/0,1282,59912,00.html)]

### **Global Positioning System (GPS) Helps the Blind Navigate**

06.14.03: The European Space Agency (ESA) and other organizations such as the National Organization of Spanish Blind people (ONCE) are testing a personal GPS-based navigation system that helps blind people navigate in new or unfamiliar areas. The device, called Tormes, is handheld, weighs less than one kilogram (approximately 2 pounds), and can be carried over the shoulder. It comes with a Braille keyboard and voice synthesizer, and uses the GPS satellite system to give verbal directions. Tormes can be used to guide the user to his or her destination, or to tell the user his or her present location while traveling. The accuracy of GPS signals (GPS signals currently provides an accuracy of only 15 to 20 meters) and "the canyon effect" (losing contact with GPS satellites when surrounded by large buildings or other solid objects) are two problems encountered by current GPS navigation systems. Tormes provides accuracy to about 2 meters, and users are alerted to any signal problems. To avoid "the canyon effect," ESA engineers had the idea of getting the data through the Internet via a Global System for Mobile Communications (GSM) connection, a project called SISNeT (Signal In Space through Internet). Even with increased accuracy, Tormes will not replace guide dogs or walking canes. The system cannot alert people to obstacles like stairs or street curbs. Tormes is better suited to help users navigate to specific locations or places like bus stops, giving them increased freedom and mobility that has not been possible before.

[[www.esa.int/export/esaCP/SEMVOOS1VED\\_Improving\\_0.html](http://www.esa.int/export/esaCP/SEMVOOS1VED_Improving_0.html)];  
[[www.wired.com/news/medtech/0,1286,59174,00.html](http://www.wired.com/news/medtech/0,1286,59174,00.html)]

## **Mind-Controlled Wheelchair on the Horizon**

07.24.03: Researchers in Switzerland and Spain have developed a system that may one day allow individuals with disabilities that severely limit motion to steer a wheelchair with only their thoughts. Unlike previous thought-communication devices, the system does not use surgical implants. Rather, a skullcap with strategically placed electrodes monitors the electrical activity of its wearer's brain. At the moment, the system controls a simple wheeled robot. The user wears the electrode skullcap, which monitors electrical activity on the surface of the head. A web of wires sends information to a computer, software analyzes the brain's activity, and using a wireless link, passes on any commands it finds to the robot. Early trials using a steerable robot show that with two days training it is as easy to control the robot with the human mind as it is to control it manually. Currently, the user can choose between three different commands: "turn left", "turn right", and "move forward." The software is based on the fact that the desire to move in a particular direction will generate a unique pattern of brain activity. The software can tell what the user is thinking by recognizing the pattern of brain activity associated with a particular command. The team of researchers that began this work is now trying to increase the number of mental states that the system recognizes and hopes to make it applicable to wheelchair mobility in the near future. [[www.newscientist.com/news/print.jsp?id=ns99993967](http://www.newscientist.com/news/print.jsp?id=ns99993967)].

## **New Website from the Center for the Study and Advancement of Disability Policy (CSADP)**

The new CSADP website, containing training materials, policy papers and policy briefs prepared by Robert "Bobby" Silverstein, went online on September 1, 2003. Mr. Silverstein is the director of the CSADP in Washington, D.C., and for over 13 years he served on Capitol Hill in various capacities, including staff director and chief counsel of the Senate Subcommittee on Disability Policy. The mission of the CSADP is to provide "public education, leadership development and training, technical assistance and information dissemination, and conducts action-research and analysis of public policy issues affecting individuals with disabilities and their families." Specific topics addressed by the website include the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Ticket to Work and Work Incentives Improvement Act, and a variety of other topics relating to disability policy. Interested individuals may visit the CSADP's website at [[www.disabilitypolicycenter.org](http://www.disabilitypolicycenter.org)].

## **Proper Lighting Essential for Office Ergonomics**

The lighting in an office environment affects people with and without disabilities. However, for many individuals with visual, neurological, mental and emotional disabilities, selecting the correct form, type, color and source of lighting effects for the workplace can be an important component of a successful workplace experience. There are three different types of light that illuminate an interior: natural light (or daylight), ambient

light (artificial light diffused through a room), and task light (artificial light directed in one spot). An office with or without natural light needs both ambient and task lighting. *The Assistive Technology Journal* recently evaluated four assistive technologies that provide anti-glare lighting for work environments. The Eclipse Computer Light, mounted on top of a computer screen, illuminates the monitor without glare, thus reducing the potential for the user to develop headaches. The 3M Polarising Task Light brightens a work surface while reducing harmful glare, eliminating harsh light spots and reducing eye fatigue and strain. Finally, the OTT-Lite Ergo Desk and Task Lamps can create a daylight effect in the workplace. The OTT-Lite produces full spectrum color light that matches natural daylight and combats glare and distortion. Because all employees have different lighting needs, preferences and sensitivities, individual consultation on the proper placement of light sources is recommended.

[[www.atnet.org/news/jul03/071501.htm](http://www.atnet.org/news/jul03/071501.htm)]

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July/August 2003



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

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The Office of Technology Policy and Programs (OTP) produces a monthly newsletter, *Workplace Accommodations Policy Highlights*, for the purpose of identifying policy, regulatory framework and market factors that can be useful in reducing barriers to integrating people with disabilities into the 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.

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](mailto:lynzee.head@gcatt.gatech.edu)) or Andrew Ward, PH.D., MPH, Project Co-Director, Workplace Accommodations Policy Initiatives (RERC) ([andrew.ward@gcatt.gatech.edu](mailto:andrew.ward@gcatt.gatech.edu)).