



WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 4.04

July-September 2006

Overview

This past summer was busy in terms of regulatory activity. The Equal Employment Opportunities Commission (EEOC) released a report showing that the number of workers with disabilities in the federal workforce has been experiencing a steady decline. As result of this publication, the EEOC and other agencies began a number of initiatives to address the issue. A new chair and two members were appointed to the board of the National Council of Disabilities (NCD). On the international front, the United Nations finally reached an agreement on a conference and treaty regarding the rights of persons with disabilities after almost five years of negotiations.

Legislative Activities

NCWD Analyzes Senate Approval of Amendment to the WIA

6.30.2006 – The U.S. Senate recently approved the **Workforce Investment Act (WIA) Amendments of 2005 [S. 1021]**, a bill that would give state and local governments flexibility in providing training for the “high-skill, high-wage, and high-demand occupations needed to ensure America’s competitiveness in the global economy.” The bill, which was co-sponsored by Senators Mike Enzi (R-WY) and Ted Kennedy (D-MA), includes the following provisions that are relevant to the disability community:

- To provide workforce investment activities in a manner that promotes the informed choice of participants and actively involves participants in relevant decisions
- To eliminate training disincentives for hard-to-serve populations and minority workers and effectively utilize community programs, services, and agencies
- To increase the employment, retention, and earnings of individuals with disabilities

As a result, the National Center on Workforce and Disability (NCWD) has developed a detailed analysis of the bill from a disability perspective. In this memo the NCWD highlights changes to the definition of the term “hard to serve populations” in the legislation to include people with disabilities. Section 112(b)

of WIA, as also amended by S. 1021, specifies that the State plan must describe how the State will serve the employment and training needs of individuals with disabilities including the provision of outreach, intake, the conduct of assessments, service delivery, the development of adjustments to performance measures established under Section 136, and the training of staff. The full text of [S.1021] can be viewed at

[<http://thomas.loc.gov/cgi-bin/query/z?c109:s.1021:>]. Detailed analysis by NCWD can be found at [http://www.onestops.info/website.php?page=wia_bill].

[Source: Library of Congress, Global News Wire, 6/30/2006 & NCWD]

Policy/Regulatory Activities

Commission Takes Steps to Stem Decline in Number of Federal Workers

6.28.2006 – The Equal Opportunity Commission’s (EEOC) Annual Report on the Federal Workforce for FY 2005 notes that people with targeted disabilities have dropped to less than one percent of the permanent federal workforce. Data shows that despite efforts, “the percentage of federal employees with targeted disabilities is exactly the same today as it was in FY 1984.” Further, the number of people with disabilities has been declining for over a decade. In a response, EEOC Chairperson Cari Dominguez called for “aggressive steps to curtail the decline.”

In a public meeting on June 28th the EEOC addressed issues related to employment of people with disabilities in the federal government. The meeting was aimed at assessing the Congressional initiative for the federal government to serve as a model employer for people with disabilities. Dominguez “tasked EEOC Commissioner Christine Griffin with developing a strategy to create greater opportunity in federal agencies for individuals with certain targeted disabilities.” Griffin has devised a new initiative entitled “LEAD: Leadership for the Employment of Americans with Disabilities,” which was announced at the meeting.

The meeting featured panels on the history and current state of disability employment in the federal government. The EEOC heard testimony from senior leaders in disability rights organizations, private employer representatives and other federal agencies. For more information on the meeting, full transcript, and written testimony visit

[<http://www.eeoc.gov/abouteeoc/meetings/6-28-06/>]. [Source: EEOC & AAPD]

DOL Program Provides Employment for Students with Disabilities

6.29.2006 – The U.S. Department of Labor’s (DOL) Workforce Recruitment Program (WRP) successfully placed more than three hundred college students and recent graduates with disabilities in summer employment positions. The program works by distributing a compact disc database of candidates seeking summer and full-time employment to public and private sector employers. With this database, employers can search a pool of pre-screened candidates who have skills in a broad range of areas including computer science, business, public relations, science, engineering and office administration. The program, which began eleven years ago, is a joint effort by the Department of Labor’s Office of Disability Employment Policy (ODEP) and the Department of Defense. [Source: Dept. of Labor]

DOL Provides Grants to Expand Disability Program Navigators Project

6.30.2006 – The DOL has decided to provide \$14.5 billion in grants to fund Disability Program Navigators (DPNs) for thirteen states and the District of Columbia. Disability Program Navigators is a program that offers one-on-one counseling for workers with disabilities to aid them with accessing employment opportunities available through the public workforce investment system. The initiative was first developed in 2003 with the aim of increasing employment and self-sufficiency of persons with disabilities. In addition to the new recipients, funding will be maintained for the 17 existing locations. [Source: DOL]

New Chairperson, Members, Appointed to the NCD

8.8.2006 –President Bush appointed John R. Vaughn to serve as a chairperson for the National Council on Disability (NCD), an independent federal agency which makes recommendations to the President and Congress regarding issues related to improving the quality of life experienced by Americans with disabilities. Vaughn, a resident of Fort Meyers, FL is a retired executive of the financial services industry. He has also served as commissioner of the Virginia Department of Rehabilitative Services and Dept. for the Blind and Vision Impaired. More recently, Vaughn was a member of the Florida Rehabilitation Advisory Council for Blind Services and the US DOL Working Committee on Work Place Issues. In a related action, The U.S. Senate confirmed three other new members to the National Council on Disability. They are Victoria Carlson, Chad Colley and Lisa Mattheiss. [Source: NCD]

Judicial Activities

District Court Finds that Disability Law Does Not Govern Employment

The US District Court, Northern District of Indiana found that a graduate research assistant's claims are not covered by the Americans with Disabilities Act (ADA) in the case of *Brettler v. Purdue University* (No. 4:05-CV-6-PRC). In this case a graduate research assistant at Purdue University claimed that the university's failure to accommodate his disability resulted in the loss of his assistantship. Brettler argued that the school was guilty of employment discrimination under Title II of the ADA. However, the court ruled that Title II covers "discrimination in a state entity's provision of 'services, programs or activities' and not to employment claims by a state employee." [Source: LexisNexis, 9/1/2006]

Employers Must Accommodate Employees 'Regarded' as Disabled

In the case of *Gelfo v. Lockheed Martin Corp.* (No. B178676), Charles Gelfo, who worked for Lockheed Martin as a metal fitter, experienced a workplace injury which caused him to be labeled as "permanent and stationary" by an orthopedic surgeon and later as "permanently disabled." He was laid off as part of a reduction in force but was later offered a new role, which was taken back after Lockheed determined that medical restrictions imposed as a result of the work injury rendered him unable to perform the essential functions of the new position, and no reasonable accommodation was possible. He sued the company for disability discrimination under the Fair Housing & Employment Act and wrongful termination in violation of public policy. The court concluded that an employer had to engage in an informal interactive process for reasonable accommodation and provide a necessary and reasonable accommodation to an applicant or an employee whom it regarded as physically disabled (which it did when it rescinded the offer due to medical evaluation) even if the employee did not regard himself as disabled. [Source: California Official Court Report Summary (*Lexis Nexis*)]

UPS Found Guilty of Not Acting in Good Faith in Process with Employee

The US Court of Appeals for the Eight Circuit recently upheld a jury decision in the case of *Battle v. United Parcel Service, Inc.* (Case Nos. 04-4123/04-4128), which stated that UPS had not acted in good faith when engaging in an interactive process with employee Raymond Battle. Battle had served as Package Division Manager for UPS in Little Rock, AR, since 1992. This role required him to supervise 600 employees and ensure they met monthly performance goals based on a daily operations report detailing the performance

statistics for each center. When a new district manager was hired, Battle claimed this individual required him to “research and memorize extensive, unpredictable, and useless information from the daily operations report.” While his impairment affects his ability to memorize and recall information, he argued that this did not affect the essential job functions.

Battle submitted a doctor’s note regarding his condition and requested to return to work with appropriate accommodation to perform the function of memorizing “minute, unpredictable information” from the daily report. The accommodation request involved the development of an agenda prior to meetings with the manager regarding the report. Instead of implementing the accommodation, UPS kept making additional requests of proof such as another doctor’s report and a medical certification of Battle’s ability to adequately perform his job without accommodation and that he explain his request. Battle eventually sued, claiming UPS had failed to reasonably accommodate his disability. UPS argued it had acted appropriately and that no reasonable accommodation was available. The court ruled in favor of Battle and found that UPS had not acted in good faith and failed to adequately consider the reasonableness of his request in light of the medical documentation. [Source: Law.com, 5/10/2006 & U.S. Circuit Court Briefs]

International Activities

Agreement Reached on UN Convention on the Rights of PWDs

8.27.2006 – The United Nations (UN) was able to reach an agreement on a new convention that is aimed at protecting the rights of persons with disabilities. Negotiations on the treaty for the conference have been going on since 2002 and had recently experienced some difficulties, including lack of support from the United States and a large number of proposals from various delegations. Recently, a push was made to try to get the draft complete by the end of the current session which closed on August 25th. The treaty, which was approved by consensus with only five countries voting against it, will be sent to the General Assembly for adoption during the upcoming 61st session and then it will be open for signing and ratification by member nations. This convention for people with disabilities is meant to be in line to previous ones protecting the rights of children, women and migrants. It will not provide any rights to persons with disabilities worldwide but it specifically prohibits discrimination in all areas of life, including civil rights, access to justice, education, healthcare and transportation. [Source: NCD]

**Studies/Reports/
Publications****2002 Census Data Shows Half of Disabled Population are Employed**

A recent article based on the US Census Bureau Survey "Americans with Disabilities 2002" stated that more than half of Americans with disabilities have a job. However, despite being employed, these individuals experience lower wages, have less education, and are less likely to have the health insurance they need. The US Census Bureau states that about 51 million people (one in five Americans) had a mental or physical disability in 2002. For this survey people were considered to be disabled if "they had difficulty performing tasks such as seeing, hearing, bathing or doing light housework or if they had conditions such as Alzheimer's or autism." The results of the survey indicated that 56% of disabled persons, ages 21 to 64, held a job in 2002. Other findings were that the median income for people with milder disabilities as \$22,000 as opposed to \$25,000 for those with no disabilities. The full report and findings of the Census Bureau survey can be viewed at:

[<http://www.census.gov/hhes/www/disability/sipp/disable02.html>].

[Source: *The Associated Press*, 5/12/2006 & US Census Bureau]

EEOC Addresses Employment Rights of People with Hearing Loss

The EEOC has recently published a new fact sheet addressing the rights of people with hearing loss in the workplace. The document explains how the Americans with Disabilities Act (ADA) applies to applicants and employees with hearing impairments. It states that under the ADA, a hearing problem is considered a disability if it substantially limits a major life activity now or in the past and if an employer regards the employee as if the impairment was limiting. The EEOC also addresses when an employer may ask about a hearing impairment, available types of reasonable accommodation and how employers can handle safety issues for those with hearing concerns. The full fact sheet can be viewed at [<http://www.eeoc.gov/facts/deafness.html>]. [Source:EEOC]

**Other Items of
Interest****Companies Use Tests to Determine Job Applicants' Skills**

6.8.2006 – Many companies are starting to use standardized tests in the hiring process to help them make a decision about which applicants have the necessary skills. Employers explain that testing is being used because previous employers do not always provide detailed references about employees for fear of lawsuits. Tests are also used as a means of assessing the proper candidate from the thousands of resumes employers receive via the Internet. Testing is not a new phenomenon, as it was frequently used decades ago, but it has since fallen off. It is reported that about 50 percent of employers ask candidates to answer

questions aimed at measuring their success. However, this recent rise in testing is causing concern among equal opportunity proponents about whether it is a form of bias. The EEOC is investigating complaints about psychological testing, and some recent court cases have found some to be a violation of the Americans with Disabilities Act. [Source: *The Washington Post*, 6/8/2006]

Introduction of New Career Site for Job Seekers with Disabilities

6.16.2006 – Monster.com, a leading global online job search resource, and Hire Disability Solutions, LLC (HireDS) recently released a career resource section on HireDS's site (www.hireds.com). Through this initiative, Monster job search tools, career content, and resume posting capabilities are more easily accessible for job seekers with disabilities. [Source: *Business Wire*, 6/16/2006]

Thousands of Disabled Workers Shorted on Wages

7.18.2006 – Over the past 10 years, the DOL has had to order several charities to pay back wages to employees with disabilities. Federal law allows charities to pay employees with severe disabilities less than minimum wage, but records show that many employers have abused this provision by grossly underpaying workers with disabilities. A survey by the DOL found that six out of 10 employers failed to correctly pay disabled workers. DOL is responsible for overseeing a program known as the "special minimum wage" by reviewing biennial filings from participating employers who are supposed to report the wage paid for each job that qualifies. However, both a 2001 Inspector General's report and Government Accountability Office (GAO) finding stated that there were not enough workers to monitor the program and that the Labor Department's oversight was ineffective. Currently, there are no existing proposals before Congress for addressing this matter. [Source: *Newhouse News Service*, 7/18]

Web Sites Improve Service for Individuals with Seeing Impairments

7.20.2006 – Major Internet companies are making an effort to better meet the needs of the thousands of blind individuals who regularly use the Web. A number of companies have developed new services and features to provide easier use for the blind. Generally, blind users have software that will read a description of a site's features aloud, but navigating the Web is becoming increasingly more difficult as sites become more "feature-heavy," such as having hundreds of links and lots of graphics or using complex programming that is hard to translate. Unless it is accompanied by alternative text, code embedded beneath a graphic or photo cannot be understood by a screen reader.

Aside from the provisions of Section 508 of the Rehabilitation Act and state level regulations, there is no official legislation that requires all Web sites to be accessible to the blind or others with physical disabilities. In an effort to address this issue, Google has launched a search tool, Google Accessible Search, which will rank results of a search based on the simplicity of the page layout. AOL is also getting involved as it develops a newer version of AOL webmail that will be more compatible for screen-readers. Microsoft is creating new tools for website developers with its UI Automation that will make it easier for screen readers to translate robust Web applications. [Source: *The Wall Street Journal*, 7/20/2006]

Upcoming Events

The Future of Disability Statistics: What We Know and Need To Know

The Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC) will be hosting a State-of-the-Science Conference entitled The Future of Disability Statistics: What We Know and Need to Know. The event will be held October 5 & 6th in Arlington, VA. Its focus will be on current statistics on the characteristics and status of working-age people with disabilities derived from current survey and administrative data. The conference will also consider options for improving future data collection and data distribution efforts. Go to <http://www.StatsRRTC.org> to register and for other program details.

RERC Activities

The Rehabilitation Engineering Research Center on Workplace Accommodations (WorkRERC) is seeking participants for an online policy survey on issues that impact the development of workplaces that can accommodate all individuals. The WorkRERC Policy Delphi poll is designed to probe stakeholders' opinions in key areas that face people with disabilities as they seek gainful employment and face employers as they try to develop more accommodating workplaces. Participants will be polled via three to four, questionnaires over approximately four months in four areas: forecasts, issues, goals, and options. Results will be used to develop policy approaches to improve the integration of workplace accommodations into jobs. To participate, please contact Paul M.A. Baker, Ph.D., at [paul.baker@cacp.gatech.edu].



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Workplace Accommodations Policy Highlights, reviews policy, regulatory activities 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 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. 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 Paul M.A. Baker, Ph.D., Director of Research (paul.baker@cacp.gatech.edu).