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## **WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 3.03**

October 2005

### **Overview**

Over the last few months, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor have both been busy promoting the employment of people with disabilities. October is National Disability Employment Awareness Month, and the Department of Labor has coordinated a number of activities including Disability Mentoring Day, and has issued several fact sheets on topics such as how to interview job applicants with disabilities. The EEOC has also issued fact sheets in association with National Disability Employment Awareness Month which pertain to the employment rights of people with cancer and individuals who are blind or visually impaired.

In judicial news, a U.S. Commerce Department employee was awarded \$3 million in compensatory damages after her employer failed to provide her with a reasonable accommodation. On the research front, Cornell University released a report demonstrating the scarcity of jobs for Americans with disabilities. The report, based on Census Bureau data, shows that the employment rate for Americans age 21 to 64 with sensory, physical, mental, or self-care disabilities fell to 38.3 %, down 2.5% from 2001.

Finally, the *Workplace Accommodations Policy Highlights* is pleased to introduce its new Editor, Brad Bagwell, a graduate student in the School of Public Policy at Georgia Tech.

### **Regulatory Activities**

#### **Department of Labor Issues Resource Guide on Accommodations for Federal Managers and Employees**

08.2005 – The Office of Disability Employment Policy of the U.S. Department of Labor released an accommodations resource guide (“Advancing Opportunities: Accommodations Resources for Federal Managers and Employees”) on its website. The guide will help federal agencies find the

information needed to comply with federal disability law. Government-wide resources that provide such information include the Job Accommodation Network (JAN). JAN provides free service for both public and private sector employers to help provide individualized accommodation solutions. Under the Rehabilitation Act of 1973, federal employers are prevented from discriminating against qualified individuals with disabilities. The guide also lists minimum standards for procedures in granting reasonable accommodations and is available at [\[http://www.dol.gov/odep/pubs/misc/advance.htm\]](http://www.dol.gov/odep/pubs/misc/advance.htm). [Source: Dept. of Labor]

### **Department of Labor Selects Human Service Agencies for Training/Technical Assistance for People with Disabilities**

09.29.2005 – The U.S. Department of Labor selected human service agencies in the District of Columbia, Georgia, Illinois, Maryland, and North Dakota to participate in training and technical assistance programs for people with disabilities. “Today’s agreements with these five states will help build effective partnerships between employers and employment service providers that will result in better jobs and career advancement opportunities for people with disabilities,” said Office of Disability Employment Policy Assistant Secretary Roy Grizzard. The technical and training programs help community rehabilitation providers apply customized employment strategies for people with disabilities who seek employment in their respective communities. More information is available at [\[http://www.dol.gov/opa/media/press/odep/odep20051804.htm\]](http://www.dol.gov/opa/media/press/odep/odep20051804.htm). [Source: Department of Labor]

### **Department of Labor Releases Fact Sheet Focusing On Interviewing Applicants With Disabilities**

10.14.2005 – The Department of Labor released a fact sheet to assist employers in ensuring the maximum benefit from an interview when the person being interviewed has a disability. The fact sheet includes information on preparing for and conducting the interview and resources to further assist the employer. View the fact sheet online at [\[http://www.dol.gov/odep/pubs/fact/focus.htm\]](http://www.dol.gov/odep/pubs/fact/focus.htm). [Source: Dept. of Labor]

### **Department of Labor Issues Notice Summarizing Employment Laws**

10.11.2005 – The Department of Labor has released a fact sheet that concisely summarizes employment laws that protect the rights of people with disabilities. It also shows employers where to access additional information and compliance resources. The fact sheet can be viewed at [<http://dol.gov/odep/pubs/fact/laws.htm>]. [Source: Department of Labor]

### **EEOC Addresses Employment Rights of People with Cancer**

07.26.2005 – The EEOC has issued a question-and-answer document on the application of the ADA to persons with cancer in the workplace. This document is the fourth in a series of EEOC publications regarding the ADA's application to specific disabilities. It addresses issues such as: when cancer is a disability under the ADA, when an employer may ask employees question about cancer, voluntary disclosures, and what types of accommodations employees with cancer may require. Commission Chair Cari Dominguez noted that about 40 percent of the one million Americans diagnosed each year with some form of cancer are of working-age. She also said, "Because of the significant advances in detection and treatment, cancer no longer is a 'death sentence' it was a century ago. Yet people recently diagnosed with cancer and those with a history of cancer still experience discrimination at work based on old stereotypes and unfounded fears. Simple accommodations . . . make it possible for many people with cancer to continue to be valuable contributors in the workplace." [Source: EEOC]

### **EEOC Affirms Law That Protects Those Who Associate With People With Disabilities**

10.17.2005 – As part of National Disability Employment Month, the EEOC issued a question-and-answer-style document addressing a significant provision of the Americans with Disabilities Act of 1990 (ADA). The ADA protects individuals from workplace discrimination because of their association with people with disabilities. It prohibits an employer from discriminating against an applicant or employee who has a known association with a person with a disability. "Family members, friends and caregivers of people with disabilities should know that they are protected from employment discrimination based on those relationships," said EEOC Chair Cari M. Dominguez. This document is the first of several that the EEOC plans to issue

during the month of October. The document, entitled "Questions and Answers about the Association Provision of the Americans with Disabilities Act" can be viewed in its entirety at [[http://www.eeoc.gov/facts/association\\_ada.html](http://www.eeoc.gov/facts/association_ada.html)]. [Source: EEOC]

### **EEOC Answers FAQ on Employment Rights of People who are Blind or Visually Impaired**

10.25.2005 – The EEOC has issued a question-and-answer-style document addressing the application of the ADA to people in the workplace who are blind or visually impaired. Specifically, the document addresses:

"When a vision impairment is a "disability" within the meaning of the ADA;

What questions employers may ask job applicants or employees about their vision impairments and when employers may conduct medical examinations that test vision;

What accommodations people who are blind or visually disabled may need to apply for a job, to perform a job's essential functions, or to enjoy equal benefits and privileges of employment, such as the ability to take advantage of training and other opportunities for advancement; and

How employers should handle safety concerns they may have about applicants or employees with vision impairments."

The new publication, released with another document on the ADA in honor of Disability Employment Awareness Month, is available on EEOC's web site at <http://www.eeoc.gov/facts/blindness.html>. [Source: EEOC]

## **Judicial Activities**

### **Appeals Court Upholds EEOC Disability Suit Against Sears Roebuck for Second Time**

08.11.2005 – The U.S. Court of Appeals for the 7<sup>th</sup> Circuit reversed a lower court decision that had granted a judgment without a trial in favor of Sears Roebuck in a case that was brought against the company by the Equal Employment Opportunity Commission (EEOC) (*EEOC & Keane v. Sears Roebuck & Company*, Nos. 04-2222 and 04-2493). The case was originally filed in June of 1997 when Sears was charged with discrimination against a saleswoman by refusing to provide her with the accommodations she needed because of a disability that allowed her to only walk short distances. This

refusal of a reasonable accommodation resulted in the saleswoman quitting her job. In 1997, the U.S. District Court for the Northern District of Illinois held that no reasonable jury could find that the plaintiff was disabled and entered judgment in favor of Sears, without a trial. In 2000, the Court of Appeals reversed the District Court's decision. Now, the U.S. Court of Appeals for the Seventh Circuit in Chicago has reversed the lower court decision which granted a judgment without trial in favor of Sears Roebuck. This case will now have to return to the District Court to be heard. [Source: EEOC]

### **Federal Employee Awarded \$3 Million in Reasonable Accommodation Suit**

08.11.2005 – Lisa Bremer, a U.S. Commerce Department attorney with multiple sclerosis, was awarded \$3 million in compensatory damages after jurors found that her employer failed to provide her with a reasonable accommodation for her disability. Bremer took federal disability retirement in 2003 and decided to sue the Commerce Department after her supervisor ended an arrangement in which she was allowed to telecommute two days a week. Although the jury awarded her \$3 million, the cap on awards under the Rehabilitation Act of 1973 is \$300,000. The jury did not know this when they decided the amount of her award. Bremer is also waiting to find out if she will receive back pay. [Source: *The Washington Post*, 8/11/2005, A21]

### **Studies/Reports/ Publications**

### ***Behavioral Sciences and the Law* Releases Article Calls for Research on the Employment Rate for People with Disabilities**

2005 – The *Journal of Behavioral Sciences and the Law* has released an article addressing the need for better research regarding the employment rate of people with disabilities. In the wake of the adoption of employment-related initiatives designed to improve the employment rate of people with disabilities, “policymakers need credible evidence in order to assess and reform these initiatives.” The paper states that the quality of existing disability-related research is lacking, and does not support the needs of policymakers, researcher, and other stakeholders. The central conclusion drawn from the paper is that “to improve the quality, utility, and relevance of policy-related research regarding the employment of persons with disabilities, researchers should not rely solely on the use of national data sets.” [Source: Silverstein, R., G. Julnes, and R. Nolan (2005). “What policymakers need and must demand from research regarding the employment rate of persons with disabilities.” *Behavioral Sciences and the Law*. Vol. 23 (3) p. 399-448.]

## **Data Shows Jobs Scarce for People with Disabilities**

**10.5.2005** – Cornell University has released the first in its annual series of Disability Status Reports, based on Census Bureau data, which shows that the employment rate for Americans age 21 to 64 with sensory, physical, mental, or self-care disabilities fell to 38.3 %, down 2.5% from 2001. Many experts suggest that outsourcing is likely to make it harder for people with disabilities to find jobs. Outsourcing abroad has also cut jobs such as call-centers that have typically been favorable toward hiring people with disabilities.

“Unfortunately [moving jobs overseas] means that blind and visually impaired people are not doing those jobs” in the U.S., stated Karen Wolffe, director of the professional development department at the American Foundation for the Blind. Many disability advocates also look to other factors such as inadequate job training and negative attitudes among some hiring managers. The Disability Status Reports are available at

[<http://www.ilr.cornell.edu/ped/disabilitystatistics/> ]. [Source: *The Wall Street Journal*, 10/5/2005]

## **Resolutions of ADA Title I Cases Involving People Who Are Visually Impaired: A Comparative Analysis**

08.2005 – The *Journal of Visual Impairment and Blindness* reported on a study conducted by the Equal Employment Opportunity Commission (EEOC), which compared ADA Title I case resolutions involving people who are visually impaired with resolutions involving all other people with disabilities between the years 1993 and 2002. The results show that employees who are visually impaired are more likely to than those with all other disabilities to receive settlement benefit from their employers, to withdraw their complaints with benefits, and to receive administrative closures. However, the comparison showed that employees who are visually impaired are less likely to be issued a right-to-sue letter and to receive other types of closures. In understanding the outcome that people with visual impairments usually face when filing an ADA Title I complaint, rehabilitation professionals can serve as more effective client advocates. [Source: Unger, D., P. Rumrill, and M. Hennessey (2005). “Resolutions of ADA Title I cases involving people who are visually impaired: a comparative analysis.” *Journal of Visual Impairment & Blindness*, August 2005]

## Other Activities and Items of Interest

### National Disability Employment Awareness Month

09.30.2005 – President George W. Bush has issued a proclamation declaring October to be National Disability Employment Awareness Month. In his proclamation he noted that, “Across America, individuals with disabilities are making important contributions in the workplace. This month, we celebrate their accomplishments and reaffirm our commitment to ensuring that the opportunities of America are available and accessible to every citizen.” View the entire proclamation at

[<http://www.whitehouse.gov/news/releases/2005/09/20050930-11.html>].

[Source: Department of Labor]

## Upcoming Events

### National ADA Symposium & Expo

The Network of ADA and IT Centers will be hosting the 9<sup>th</sup> annual “Symposium on the ADA” on April 10-12 at the America’s Center in St. Louis, MO.

Registration for the session will begin prior to February, 2006. For more information on the conference and how to register see

[<http://www.adaproject.org/Symposium.html>]



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The Center for Advanced Communications Policy (CACP) 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, Brad Bagwell, Graduate Research Assistant ([brad.bagwell@cacp.gatech.edu](mailto:brad.bagwell@cacp.gatech.edu)) or Lynzee Head, Editor In Chief and Research Scientist I, Workplace Accommodations Policy Initiatives (RERC) ([Lynzee.head@cacp.gatech.edu](mailto:Lynzee.head@cacp.gatech.edu)).