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WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 2.04

July/August 2004

Overview

In July, the Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004 [S. 2595] was introduced in the Senate where it currently awaits review by the Committee on Health, Education, Labor, and Pensions. Given that assistive technology (AT) can improve prospects for successful employment outcomes for people with disabilities, this bill is one to watch. President Bush signed an Executive Order on Emergency Preparedness for People with Disabilities, making government agencies responsible for considering the needs of employees and customers with disabilities when designing their emergency preparedness plans. The newly established Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities will facilitate the plans set forth in the order.

The U.S. Access Board released its design guidelines for facilities covered by the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). The guidelines provide specific instructions on accessible design for new construction projects and building alterations. Specifics are provided for building elements and spaces including entrances, ramps, parking, restrooms, and telephones. The consistent guidelines will make it easier for employers covered by the ADA to accommodate workers with disabilities.

Finally, surprising data was found in the Equal Employment Opportunity Commission's (EEOC's) Annual Report on the Federal Workforce, released in July. The data show that the number of persons with disabilities employed by the federal government dropped by 19.8 percent since Fiscal Year 1994. This fact was surprising given that the federal government has

a significant commitment to maintaining a very diverse workforce, including people with disabilities. Government officials theorize that the decline in the number of federal employees with disabilities is a result of a more welcoming private sector, a decrease in federal recruitment efforts, and the fact that fewer employees are disclosing their disabilities. The EEOC's report coincides with the release of data from the 2004 National Organization on Disability (NOD)/Harris Survey of Americans with Disabilities. Data from this survey show significant differences in the employment rates of people with (35%) and without (78%) disabilities. According to the survey, 35 percent of respondents with disabilities reported being employed full or part time in 2004, an increase from 32 percent in 2000. Continuing a trend, the survey found slow and modest progress in all of its indicators.

Legislative/ Policy Activities

Senate Introduces Assistive Technology (AT) Act Bill

06.24.2004: Senators Judd Gregg (Chairman of the Senate Committee on Health, Education, Labor and Pensions) and Tom Harkin introduced the Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004 [S. 2595] that will help individuals with disabilities to access AT services and devices by amending the current AT Act to reauthorize and revise its programs. The bill improves and extends federal programs by fostering public-private partnerships, improving access to technology and stabilizing state funding streams to make devices more affordable for people with disabilities. The current AT Act expires September 30, 2004. The Senate version of the bill is available at [<http://thomas.loc.gov/cgi-bin/query/z?c108:S.2595>].

A link to the House version of the bill [H.R. 4278] is available at [<http://congress.org/congressorg/bill.xc?billnum=H.R.4278&congress=108>].
[Thomas: Legislative Information on the Internet: <http://thomas.loc.gov>; RESNA Governmental Affairs Announcements]

Bush Signs Executive Order on Emergency Preparedness for People with Disabilities

07.22.2004: President Bush signed an Executive Order on Individuals with Disabilities in Emergency Preparedness, making government agencies responsible for crafting emergency preparedness plans that take into account employees and customers with disabilities. The order also calls for cooperation among all levels of government, which will be facilitated by the newly created Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. The Council will be under the leadership of the Department of Homeland Security (DHS). As a result of the President's Executive Order, DHS will take the following steps in the upcoming months:

- Conference on Emergency Preparedness for People with Disabilities, hosted by the Office of National Capital Region Coordination, in partnership with the state and local jurisdictions within the National Capital Region and the National Organization on Disability, will take place from September 22-24, 2004. Secretary of Homeland Security Tom Ridge will be a keynote speaker. More information on the conference is available at [<http://www.nod.org/content.cfm?id=1517>].
- The Federal Emergency Management Agency (FEMA) has prepared a number of technical assistance materials on emergency preparedness for people with disabilities, and is committed to publishing new guidance and assistance materials in the upcoming months. View "Disaster Preparedness for People with Disabilities" at [<http://www.fema.gov/library/disprep.htm>]. Other FEMA publications on Prevention and Preparedness are available at [<http://www.fema.gov/library/prepandprev.htm>].
- FEMA is also providing technical assistance to the U.S. Access Board, which will hold a conference in mid-October discussing new research on building evacuation for people with disabilities.

[DHS: <http://www.dhs.gov/dhspublic/display?theme=43&content=3859>;

NOD: <http://www.nod.org/content.cfm?id=1547>]

EEOC Releases Fact Sheet on Epilepsy and the ADA

07.28.2004: The EEOC released a new fact sheet addressing the workplace rights of people with epilepsy under the ADA, available at [<http://www.eeoc.gov/facts/epilepsy.html>]. The Centers for Disease Control reports that approximately 2.3 million people in the United States have some form of epilepsy. According to EEOC Commission Chair Cari M. Dominguez, people with epilepsy are denied job opportunities because employers harbor fears and misconceptions associated with their condition. Some employers believe that epilepsy will decrease an employee's productivity and may compromise safety in the workplace. The EEOC's fact sheet dismisses these and other myths associated with epilepsy by answering a series of frequently asked questions about how people with epilepsy are covered by the ADA. Also included in the publication are guidelines on reasonable accommodations for employees with epilepsy. The publication is the second in a series of EEOC fact sheets that address employment issues associated with particular disabilities. The first fact sheet, on the ADA and people with diabetes, was published in October 2003 and is available at [<http://www.eeoc.gov/facts/diabetes.html>]. Both fact sheets are used by the EEOC in an effort to advance President Bush's New Freedom Initiative, the Administration's strategy to fully integrate people with disabilities into all aspects of American life, including employment. [EEOC: <http://www.eeoc.gov/press/7-28-04.html>]

U.S. Access Board Issues ADA Accessibility Guidelines

07.23.2004: The U.S. Access Board (the independent Federal agency devoted to accessibility for people with disabilities) has published design guidelines for facilities covered by the ADA and the ABA (the ABA requires access to facilities designed, built, altered, or leased with Federal funds). The ADA Accessibility Guidelines Review Advisory Committee (ADAAG) conducted a decade-long comprehensive review and update of the Access Board's 1991 Accessibility Guidelines. The guidelines provide specific instructions on how new construction projects and building alterations can

be designed to be accessible for persons with disabilities. Specifications are also provided for building elements and spaces including entrances, ramps, parking, restrooms, and telephones. The guidelines also include design standards for certain technological innovations. For example, the new provisions for ATMs specify audible output so that people with vision impairments are provided equal access, and reach ranges have been lowered to better serve people who use wheelchairs and persons of short stature. The Board also made its guidelines more consistent with model building codes such as the International Building Code (IBC) and industry standards including those for accessible facilities issued through the American National Standards Institute (ANSI). Consistent standards will make accessible design easier for the Federal government and other employers who attempt to design or redesign their facilities to accommodate the needs of all employees, including those with disabilities. Complete text of the ADA and ABA Accessibility Guidelines for Buildings and Facilities is available at [<http://www.access-board.gov/ada-aba/Blue%20HTML/ADA-ABA%20Guidelines%20Blue.htm>]. A summary is available at [<http://www.access-board.gov/ada-aba/summary.htm>]. [Access Board: <http://www.access-board.gov/>]

Judicial Activities

U.S. Department of Justice (DOJ) Settles ADA Title I Suit

08.06.2004: The DOJ reached a settlement with the Mississippi Department of Public Safety (MDPS) in a suit (*U.S. V. Mississippi Department of Public Safety*, No. 3:00CV377BN) that said the agency violated Title I of the ADA by failing to accommodate a police recruit with insulin-dependent diabetes. The DOJ held that the agency discriminated against Cadet Ronnie Collins by denying his requests for additional food to reduce the effects of his diabetes and then by discharging him from the training academy for new law enforcement officers when he became hypoglycemic. Collins first turned to the Equal Employment Opportunity Commission (EEOC) (EEOC charge No. 131-94-0391) which investigated the case and decided that there was reasonable cause to believe the agency violated the ADA. The EEOC attempted to craft a negotiated conciliation agreement with MDPS, but those attempts failed. The EEOC then turned the case over to the DOJ, the DOJ filed suit, and MDPS opted

to settle to avoid protracted litigation. The provisions of the settlement include a \$35,000 payment to Collins (by MDPS) for any and all losses sustained as a result of its alleged actions; an agreement by MDPS to engage in an interactive process whenever an employee requests a reasonable accommodation; distribution of MDPS's reasonable accommodation policy in its Cadet manual; training to academy instructors and other personnel on the employment provisions of the ADA, and future training on diabetes, hypoglycemia and hyperglycemia. [DOJ, <http://www.usdoj.gov/crt/ada/mdps.htm>; *Disability Compliance Bulletin*, Volume 28, Number 6]

**Studies/Reports/
Publications**

Cultural Mistrust, African Americans, and Social Security Return to Work Incentives

Alston, R. (2004). "African-Americans with Disabilities and the Social Security Administration's Return-to-Work Incentives." *Journal of Disability Policy Studies*, 14 (No. 4) 216-221.

In his article, *African-Americans with Disabilities and the Social Security Administration's Return-to-Work Incentives*, Reginald J. Alston provides an overview of the Social Security Disability Insurance (SSDI) policies and examines the role that cultural mistrust may play for African American recipients of SSDI in reducing the impact of the return-to-work incentives of the Social Security Administration (SSA). Social cognitive theory (the assertion that environmental conditions, intrapersonal variables, and behavior interact mutually to influence individual pursuits and action) is offered as a framework for understanding why African Americans with disabilities do not take advantage of various work incentives, particularly those included in the Ticket to Work and Work Incentives Improvement Act (TTW-WIIA). The author cites cultural mistrust as having tremendous potential for determining some of the underlying reasons for the lack of effectiveness of the SSA's return-to-work incentives with African Americans. According to Alston, when combined with social cognitive theory, cultural mistrust offers SSA policymakers an even broader context for examining the complexities of African American culture and policy implementation. He recommends that the SSA conduct research on the

connection between cultural mistrust and African Americans' attitudes toward work incentives. In Alston's view, policy design and implementation would benefit from studies that explore social cognitive influences on the return-to-work behavior of African American SSDI recipients. [*Journal of Disability Policy Studies*, Vol. 14, No. 4, p. 216-21.]

Disability Management Solutions for Aging Workers

McDonald, T. and H.G. Harder (2004). "Older Workers and Disability Management." *International Journal of Disability, Community and Rehabilitation*, 3 (No. 3). Accessed at [http://www.ijdcr.ca/VOL03_03_CAN/articles/harder3.shtml].

In his article *Older Workers and Disability Management*, Todd McDonald examines the demographic data of the Canadian workforce, drawing attention to the fact that this workforce is aging, and a scarcity of workers is pending. The aging workforce brings with it new challenges in terms of work performance, employee retention and disability costs. McDonald calls older Canadian workers "a vital segment" of the Canadian workforce and says that employers who do not attempt to retain them "do so at their own peril." The author points out the need for Canadian employers to be educated as to how they can structure their disability management programs to accommodate the needs of older workers. Many cognitive and physical changes occur as a person ages, and these changes may require certain accommodations to allow an older employee to work comfortably and safely. McDonald suggests ergonomic interventions to work stations or work patterns that will decrease the risk of injuries that, if incurred, could require an older employee to be absent for a longer amount of time than a younger employee. Adaptation of job duties to accommodate age-related conditions such as reduced muscle strength and motion is another consideration for employers who want to retain older workers. McDonald's other suggestions for retaining older workers include: comprehensive employee fitness programs, employee wellness programs, organized stretch and/or walk breaks, "fit for duty" tests based on tasks involved in a particular job, flexible employee health plans, transitional work programs for injured workers, a database of jobs and their essential functions, and flexible work schedules. McDonald says that these suggestions will help ensure that "valuable prospective or current

employees are not lost due to factors associated with aging.”

[*International Journal of Disability, Community and Rehabilitation*:

http://www.ijdc.ca/VOL03_03_CAN/articles/harder3.shtml].

New Survey and Report Release Data on Employment of People with Disabilities

07.29.2004: The NOD released summary data from its 2004 NOD/Harris Survey of Americans with Disabilities, available at

[<http://www.nod.org/content.cfm?id=1537>]. According to the survey, 35

percent of respondents with disabilities reported being employed full or

part time, an increase from 32 percent in 2000. Although the percentage

of employed persons with disabilities has increased according to survey

results, this percentage is still very low in comparison to the number of

survey respondents without disabilities who are employed (78%). Another

finding of interest is that the percent of employed people with disabilities

who reported encountering job discrimination dropped from 36 percent in

2000 to 22 percent in 2004. The NOD/Harris findings were released at the

same time as the EEOC's Annual Report on the Federal Workforce (Fiscal

Year 2003), available at [<http://www.eeoc.gov/federal/fsp2003/>]. The

EEOC annual report found that the number of persons with disabilities

employed by the federal government dropped by 19.8 percent since Fiscal

Year 1994. In fact, the report shows that individuals with targeted

disabilities were only 1% of the total workforce in 2003. Federal government

officials were surprised with the numbers in the EEOC's report. They theorize

that the decline in the number of federal employees with disabilities is a result

of a more welcoming private sector, a decrease in federal recruitment efforts,

and the fact that fewer employees are disclosing their disabilities. Mary Jean

Secoolish, of the EEOC's Office of Federal Operations, suggests that the

federal government do more to publicize job openings and the special

provisions that allow applicants with disabilities to bypass some of the more

cumbersome steps associated with the federal hiring process, which can seem

intimidating for applicants with disabilities.

[NOD: <http://www.nod.org/content.cfm?id=1537>; EEOC:

<http://www.eeoc.gov/federal/fsp2003/>; *The Washington Post*, 07/06/2004,

Section A; A17]

Ticket to Work and Work Incentives Advisory Panel Issues Annual Report

05.2004: The Ticket to Work and Work Incentives Advisory Panel issued its fourth annual interim report, "The Ticket to Work and Work Incentives Advisory Panel Annual Report to the President and Congress," which included the panel's findings, issues, conclusions, and recommendations on the implementation of the programs and projects of the Ticket to Work and Work Incentives Improvement Act of 1999. These programs and projects are primarily implemented by the Social Security Administration (SSA). To date, 7 million of Social Security recipients received tickets and all beneficiaries will have received their ticket by 2004. 39,500 beneficiaries seeking employment deposited them with an employment network (EN) or a State vocational rehabilitation agency (SVRA), and more than 60,000 others went to work using new State Medicaid Buy-In Programs and other work incentives now available under the Act. The panel's findings indicated that the SSA has failed to market the Ticket programs to beneficiaries, many of whom are confused about what a ticket is and why they might want to use it. The Panel also believes that the SSA has not engaged enough Employment Networks (ENs) for the Ticket program and has failed to adequately support the ones that have enrolled. The ENs are only serving a fraction of the beneficiaries thought to be interested in participating and although 1,100 providers have enrolled, only one-third have accepted tickets and are serving beneficiaries. In its report, the panel documented several more implementation issues and emerging issues. Among the emerging issues were health care (strict requirements on state Medicaid eligibility) and lack of affordable housing and transportation as disincentives to employment for SSA beneficiaries. Full text of the report is available at [\[http://www.ssa.gov/work/panel/panel_documents/reports.html\]](http://www.ssa.gov/work/panel/panel_documents/reports.html).

[Ticket to Work and Work Incentives Advisory Panel:

[http://www.ssa.gov/work/panel/index.html\]](http://www.ssa.gov/work/panel/index.html)

**Other
Activities/Items
of Interest**

**Employment for People with Disabilities an Issue at “Ask
President Bush” Event**

08.11.2004: During the “Ask President Bush” event held at Eclipse Aviation in Albuquerque, New Mexico, President Bush commented on his plan to ensure the employment of people with disabilities. The President’s viewpoint is that making assistive technology readily available and more affordable for people with disabilities is they key to ensuring equal employment opportunities for these Americans. President Bush addressed a number of topics during the event and transcripts are available at [<http://www.whitehouse.gov/news/releases/2004/08/20040811-6.html>]. [The White House; <http://www.whitehouse.gov>]

**Upcoming
Events**

**Association for Public Policy Analysis and Management (APPAM)
Annual Conference in Atlanta**

APPAM’s 2004 research conference will take place in Atlanta, GA, October 28-30. The theme of the conference is: “Creating and Using Evidence in Public Policy Analysis and Management.” For more information, visit the conference website at [<http://www.appam.org/conferences/fall/atlanta2004/>].

Job Accommodation Network (JAN) Hosts September Symposium

JAN presents “Charting the Course: Accommodating and Employing People with Disabilities” at Orlando, Florida. JAN’s 2004 symposium targets human resource managers, supervisors, and other professionals who are responsible for the hiring and management of employees. This year, three concurrent training tracks will be offered, addressing accommodation issues, innovative employment practices, and ADA/legal issues. Symposium details and registration are available at [<http://symposium.jan.wvu.edu/>].



Workplace Accommodations Policy Highlights 2.04

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