



WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 4.01

February 2006

Overview

During the past few months, the U.S. Department of Labor's Office of Disability Employment (ODEP) has made its focus interagency and inter-government cooperation regarding employment issues for individuals with disabilities. ODEP's Assistant Secretary Roy Grizzard hosted a meeting with the steering committee of DisabilityInfo.gov, an effort to manage disability information from various government agencies. Grizzard also participated in an exchange session with members of the European Union (EU) regarding employment concerns for people with disabilities.

In judicial news, the Supreme Court upheld a jury decision stating that discrimination during the rehiring process falls under the provisions of the Americans with Disabilities Act (ADA). The high court also made a precedent-setting ruling in the case of *Karraker v. Rent-A-Center* (No. 04-2881), stating that the use of personality testing in the job application process prior to extending an offer was forbidden by the ADA. Lastly, the Supreme Court has decided to review two cases (*Burlington Northern & Santa Fe Railway Co. v. White* [No. 05-259] and *Jennifer Arbaugh v. Y & H Corp* [No. 04-944]), which could have implications on how "retaliation" and "small business" are defined.

In February, the Equal Employment Opportunity Commission (EEOC) released its annual report on enforcement statistics and litigation and reported a decline in the total number of discrimination charges filed, with EEOC charges based on disability making up 19.7% of all filings with the agency. Finally, a study by the Center for Social Development and Education found that consumers prefer to support businesses that hire people with disabilities and a survey by the National Organization on Disability (NOD) found that emergency preparedness plans for the workplace are on a decline.

Regulatory Activities

Joint EU-US Information Exchange

2.7.2006 – Recently, the Assistant Secretary of Labor for Disability Employment Policy, Roy Grizzard, joined a two-day information exchange session at which the European Union (EU) and the United States government discussed successes and challenges related to the employment of people with disabilities. The assembly, titled “Exploring Employment and Retention Strategies for People with Disabilities,” was a follow-up to a conference on similar topics that was held in 2003 in Brussels. Both of these events were a result of the Working Group on Employment and Labor-Related Issues created under the New Transatlantic Agenda. Learn more about the New Transatlantic Agenda at [<http://www.eurunion.org/partner/agenda.htm>]. [Source: Department of Labor]

ODEP Assistant Secretary Hosts Meeting of DisabilityInfo.gov Steering Committee

01.25.2006 – The Assistant Secretary of the Department of Labor’s (DOL) Office of Disability Employment Policy (ODEP), Roy Grizzard, held a meeting of the steering committee for DisabilityInfo.gov at which he briefed representatives from more than 20 government agencies on the future plans for the website. As part of its renovations, five government agencies - the Department of Homeland Security, the Department of Veterans Affairs, the Department of Commerce, the Small Business Administration and the Federal Communications Commission – are now posting their disability-related information on the website. The website is a part of the President’s New Freedom Initiative, and it serves as a resource for citizens to gain information on disability information related to employment, transportation, health and other topics. [Source: Department of Labor]

Judicial Activities

9th Circuit Rules that rehiring falls under ADA provisions

12.28.2005 – In *Josephs v. Pacific Bell* (05-10836), the 9th U.S. Circuit Court of Appeals upheld a decision by a San Diego jury that a man was discriminated against by an employer who would not hire him because of his mental illness history. Joshua Josephs was fired by Pacific Bell when the company found out he lied about his criminal history. He later applied for reinstatement after getting his conviction expunged, however, the company did not rehire him. Josephs argued that this decision not to reinstate was due to discrimination against his disability and was not in line with prior company procedure involving rehiring criminals. The court’s decision stated that the company was not wrong for firing Josephs for lying about his misdemeanor, but found it was guilty under the ADA for not rehiring him due to mental illness. [Sources: *The National Law Journal*, Vol. 27, No. 67 and the Disability Law & Policy e-Newsletter, 1/27/2006]

ADA and Personality Testing by Employers: *Karraker v. Rent-A-Center*

The U.S. 7th Circuit Court of Appeals ruled in the case of *Karraker v. Rent-A-Center* (No. 04-2881) that the use of personality tests are prohibited by the provisions of the Americans with Disabilities Act (ADA). The court held that the use of the Minnesota Multiphasic Personality Inventory (MMPI) violates the rules of the ADA because it is a medical examination that could be used to screen out individuals with mental illnesses. This case sets a precedent such that many employers will need to reexamine their use of personality testing in the application process. The ADA specifies that employers cannot require a medical examination prior to offering a position, and even after an offer has been made, the exam must be "job-related and consistent with business necessity."

[Source: The Council for Disability Rights]

Supreme Court to Address Scope of Key Anti-Discrimination Law

01.2006 – The Supreme Court is hearing a case in which it will provide a definition of "retaliation" under the Civil Rights Act of 1964 and which could impact the interpretation of the ADA. *Burlington Northern & Santa Fe Railway Co. v. White*, (No. 05-259) is a case that is expected to address the issue of employer liability under the anti-retaliation provision Title VII of the Civil Rights Act of 1964. "There is a split among the Circuits as to whether an action which is "materially adverse" to the employee who has filed a discrimination complaint constitutes retaliation or whether only an "ultimate employment decision," such as termination of the employment, constitutes retaliation."

[Source: *The New York Times*, 12/5/2005, Jones Day Commentaries, January 2006, and The Disability Law & Policy e-Newsletter, 1/27/2006]

Supreme Court Mulls Definition of 'Small Business'

1.20.2006 – The U.S. high court has agreed to hear *Jennifer Arbaugh v. Y & H Corp* (No. 04-944), a sexual harassment case in which a waitress sued her employer for gender discrimination under Title VII of the Civil Rights Act. The case may have serious implications as it considers who is or is not a small business employee according to federal law. Jennifer Arbaugh was awarded \$40,000 in damages by a jury, but this decision was overturned on the grounds that the statute did not hold because an employer is defined as having at least 15 employees. The café owner argued that its delivery drivers were independent contractors and therefore its total number of employees was less than 15. This case could affect decisions under the ADA, since it contains a similar provision regarding the size of a business. [Source: The Disability Law & Policy e-Newsletter, 1/27/2006]

**Studies/Reports/
Publications****EEOC: Slight Decline in Discrimination Charges in 2005**

02.09.2006 – The EEOC released its annual report on enforcement statistics and litigation and has reported that discrimination charges filed with the agency against private sector employers declined in 2005 by 5 percent. EEOC officials said that aggressive training and outreach on behalf of the agency could have contributed to the decrease. The FY 2005 data showed increases in merit resolutions, monetary benefits, and lawsuits. There were 14,893 EEOC charges based on disability, making up 19.7% of all filings with the agency. [Source: EEOC]

Illinois AT Program: AT in the Workplace

06.2005 - The Illinois AT Program recently updated one of its publications titled, "Workplace Technologies for People with Disabilities: A Guide for People with Disabilities, Businesses and Vocational Service Professionals." The guide provides a number of ideas about how employers can increase the number of employees with disabilities within their organization. It provides explanations of concepts such as "assistive technology" and "universal design," and resources for employers who are interested in making workplace accommodations. To read the report in its entirety, visit [<http://www.iltech.org/workplace%20technologies.txt>]. [Source: Illinois Assistive Technology Program]

National Council on Disability: ADA Employment Study

2.1.2006 – The Rutgers University Program for Disability Research is conducting an employment study and is welcoming participation in a forum discussion. The discussion will involve issues that people with disabilities face when seeking or trying to maintain employment. The results of the study will be compiled in a report to be presented to the National Council on Disability, who is also funding the project. Learn more about the study at [<http://www.ncdadaemploymentstudy.com/viewtopic.php?id=1>]. [Source: NCD]

New Study Shows Consumers Support Businesses that Hire Employees with Disabilities

1.31.2006 – The Center for Social Development and Education conducted a study to examine the attitudes of consumers towards companies that hire people with disabilities. The study found that consumers responded more positively to firms they considered to be socially responsible, including those that hired individuals with disabilities. The results showed that 92 percent of those surveyed felt more favorable toward companies that employ people with disabilities, while 87 percent said they would prefer to give them their business. The Center's Director expressed hope that the results of the survey would gain a response from businesses and encourage them to hire more individuals with disabilities as they see the benefits to their company image.

[Source: RRTC on Workplace Supports and Job Retention]

SHRM Article on Assistive Technology

2.1.2006 - The Society for Human Resource Management's (SHRM) *HR Magazine* featured an article titled "High Tech Enables Employees," examining the way assistive technology makes the workplace more accessible and workers with disabilities to be more productive. Today, there are a number of assistive technology tools available to aid employees with disabilities in the workplace. These tools help those affected by impairments in vision, speech, hearing or mobility. The article addressed how these tools will help decrease the unemployment rate among people with disabilities. The piece also discussed the misconception of many employers that assistive technology is expensive and that it is a financial challenge to obtain. In fact, a study by the Employment Assistance & Recruiting Network found that prices for some tools are approximately \$500 per person or less and companies may also defray costs by having an individual's insurance or a government program pay the cost. Read the entire article at [<http://www.shrm.org/hrmagazine/articles/0206/0206hrtech.asp>]

[Source: *HR Magazine*, Feb. 2006]

Survey Finds Workplace Preparedness Down—Personal Preparedness on the Rise

12.29.2005 – A survey commissioned by the National Organization on Disability's (NOD) Emergency Preparedness Initiative (EPI) finds that emergency preparedness in the workplace is on the decline. In the survey, 57% of people with disabilities reported that they had a workplace plan, compared to 68% in 2003. Hilary Styron, Director of EPI, attributes the decrease to more focus on development of workplace plans shortly after 9/11. "The decrease we see now may be attributed to fewer training opportunities provided in the workplace, limited-focus planning or lack of communication among emergency planners or task forces within a facility." The survey also showed that personal preparedness of people with disabilities has gone up from 44% to 54% in the past two years.

[Source: NOD. E-newsletter, 1/19/2006]

U.S. Chamber of Commerce: Case Studies on Hiring People with Disabilities

The U.S. Chamber of Commerce has published four case studies examining how local chambers of commerce and public sector disability service providers have worked together to meet the employment needs of local businesses. On its website, the organization notes that "People with disabilities are a source of qualified workers that is frequently overlooked. This pool of workers represents one of the largest groups seeking employment in today's market -- some 9 million unemployed Americans with significant disabilities want to work." The case studies

examine the Brooklyn (NY) Chamber of Commerce, the Chattanooga (TN) Area Chamber of Commerce, the New Bedford (MA) Area Chamber of Commerce and the West Suburban (LaGrange, IL) Area Chamber of Commerce and Industry.

Read the case studies at

[<http://www.uschamber.com/cwp/strategies/disabilities/disabilitycasestudies.htm>].

[Source: U.S. Chamber of Commerce]

Other Items of Interest

Drugstore Chain Designs Warehouse for Employees with Disabilities

01.23.2006 – The national drugstore chain, Walgreens, is planning to open warehouses in Connecticut and South Carolina that are designed specifically for individuals with disabilities. Randy Lewis, a father of an autistic son, is the Senior Vice President of Logistics of Walgreens, and was one of the main architects of an initiative to make the workplace more accessible for people with cognitive and physical disabilities. Walgreens plans to build a warehouse and set aside a third of the jobs for people with disabilities. It will feature simplified computer touch screens, customized work stations and automation designed to make the jobs friendlier for people with disabilities. Concerns have been raised about being able to fill the available positions with people with disabilities. In addition, the company is facing transportation issues related to finding ways to get potential workers to their jobs. [Source: National Down Syndrome Society]

WCED Promotes Inclusion and Access for People with Disabilities

01.18.2006 – The Sixth Annual World Congress and Exposition on Disabilities was held in December 2005 in Philadelphia, PA. The expo focused on inclusion and access for people with disabilities in their communities and professions. For the attendees of this conference, employment was a key issue, as hundreds of prospective candidates visited the Disability Career Fair at the Expo and spoke with over a dozen employers. More information on the Expo is available at [<http://www.wcdexpo.com/2005/index.cfm>]. [Source: NOD].

RERC Updates

Seeking Input from Employers

2.1.2006 – The Rehabilitation Engineering Research Center (RERC) on Workplace Accommodations is developing a Business Advisory Network for employers and business professionals who employ individuals with disabilities and are involved in providing workplace accommodations. The network will serve as means of gaining business perspective on workplace products and services presently and in the future. To learn more or join the network, contact Dory Sabata at dory.sabata@coa.gatech.edu or 1-800-726-9119 (voice/tty) or visit [<http://www.workrerc.org/Participation/BAN/banconsent.php>].

Upcoming Events

CSUN 2006 Conference on Technology and Disability: Los Angeles, CA

California State University at Northridge will host its 21st Annual International Technology and Persons with Disabilities Conference March 20-26, 2006 in Los Angeles, CA. The comprehensive, international conference addresses technologies across all ages, disabilities, levels of education and training, employment, and independent living. It is the largest conference of its kind. Representatives of the Workplace RERC will be presenting and will have an exhibit at the conference. Registration information is available at [<http://www.csun.edu/cod/conf/index.htm>].

NCD Quarterly Meeting

The National Council on Disability (NCD) will conduct its next quarterly meeting on March 13–14, 2006, from 9:00 a.m. until 5:00 p.m. EDT, at Disney's Coronado Springs Resort, 1001 West Buena Vista Drive, Lake Buena Vista, Florida. This meeting is open to the public and is free of charge.



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The Center for Advanced Communications Policy (CACP), produces a bi-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, Avonne Bell, Graduate Research Assistant (avonne.bell@cacp.gatech.edu) or Lynzee Head, MS, Research Scientist (lynzee.head@cacp.gatech.edu).