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## **WORKPLACE ACCOMMODATIONS POLICY HIGHLIGHTS 4.05**

October/November 2006

### **Overview**

Over the past two months the legislative arena focused on recognition of people with disabilities. The president declared White Cane Safety Day as well as National Disability Employment Awareness Month. Federal regulatory agencies directed their efforts at the employment of people with disabilities; the Department of Labor's Office of Disability Employment Policy provided a number of grants for research on self-employment among people with disabilities. The Equal Employment Opportunities Commission (EEOC) launched a website on its new Leadership for the Employment of Americans with Disabilities (LEAD) initiative. The Equal Employment Opportunity Commission (EEOC) also launched a number of judicial efforts by filing lawsuits for disability discrimination complaints.

### **Legislative Activities**

#### **Bipartisan Legislation Introduced to Restore ADA Protections**

9.29.2006 - House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-WI) and House Minority Whip Steny H. Hoyer (D-MD) introduced legislation that would protect provisions of the Americans with Disabilities Act of 1990 (ADA). **The Americans with Disabilities Restoration Act [HR 6258]** would restore the definition of disability covered by the ADA to one more closely aligned with congressional intent, and is designed to address interpretations that have been made by the Supreme Court. One goal of the bill is to substitute the phrase "on the basis of disability" for the commonly used "against an individual with disability." The intent of the change in language is to emphasize the issue of functional limitation rather than characteristics of an individual per se. The sponsors and supporters believe that this rephrasing will allow individuals utilizing the ADA to focus on the discrimination that they have experienced rather than having to prove that they fall within the intended scope of the ADA. The press release [PDF only] is available at [<http://judiciary.house.gov/media/pdfs/ADAbillintro92906.pdf>]. **[HR 6258]** can be read in detail at [<http://thomas.loc.gov/cgi-bin/query/z?c109:h.r.6258>].

[Source: AAPD and House of Representatives]

### **President Declares National Disability Employment Awareness Month**

10.30.2006 – President George W. Bush signed a proclamation officially declaring October 2006 as National Disability Employment Awareness Month. The Congress, by joint resolution approved as amended (36 U.S.C. 121), has designated October of each year as "National Disability Employment Awareness Month." The proclamation pays tribute to the accomplishments people with disabilities are achieving in the workplace and recognizes the contributions of Americans with disabilities as well as encourages all citizens to ensure equal opportunity in the workforce. View the full press release at [<http://www.whitehouse.gov/news/releases/2006/10/20061003-7.html>]. [Source: The White House ]

### **White Cane Safety Day 2006 Proclamation**

10.13.2006 – The President signed a proclamation declaring October 15, 2006 as White Cane Safety Day. The purpose of this is to bring attention to the abilities, independence and spirit of blind and visually impaired Americans. This was also appropriate because it ties in with the recent announcement of October as National Disability Employment Awareness Week. [Source: NCD]

## **Regulatory Activities**

### **EEOC Launches Website Section on "LEAD" Initiative**

10.4.2006 – The EEOC has developed a new section on their website for its Leadership for the Employment of Americans with Disabilities (LEAD) Initiative, which is an effort to address the recent decline in the number of employees with severe disabilities in the federal workforce (See WAPH 4.04 piece entitled "Commission Takes Steps to Stem Decline in Number of Federal Workers"). The section will provide information on LEAD and on the data showing that federal employment of individuals with disabilities is declining. The five main goals of the LEAD initiative are to

- increase awareness of hiring officials about the declining numbers of people with disabilities in federal employment
- reverse the trend of decreasing participation in federal employment
- educate federal hiring officials about how to use special hiring authorities to bring people with disabilities on board, particularly those with severe disabilities
- educate applicants with severe disabilities about how to apply using the available special hiring authorities

- provide information and resources on reasonable accommodation.

Information on the initiative is available at

[<http://www.eeoc.gov/initiatives/lead/>]. The "EEOC Report on the Federal Work Force FY 2005" is available at [<http://www.eeoc.gov/federal/fsp2005/>].

[Source: EEOC and NCD]

### **Labor Department Awards Grants to Advance Self-Employment**

9.21.2006 – The US Secretary of Labor, Elaine L. Chao recently announced several grants worth almost five million dollars to support pilot projects and research to develop systems models designed to increase self-employment opportunities for individuals with disabilities. These grants are part of an effort to further the objectives of President Bush's New Freedom Initiative. Chao stated that "Self-employment and entrepreneurial pursuits could provide many individuals with disabilities good opportunities to optimize their talents and earn a good living for themselves and their families."

The grants include cooperative agreements to Virginia Commonwealth University partnering with Griffin-Hammis Associates LLC, to establish a National Self-Employment Technical Assistance and Research initiative. This initiative will provide develop a comprehensive strategy for increasing the capacity of existing systems to provide self-employment opportunities to people with disabilities through training, technical assistance, and research. They will also analyze existing institutions that either promote or impede the expansion of business ownership in the disability community. The Department of Labor press release is available at

[<http://www.dol.gov/opa/media/press/odep/ODEP20061604.htm>].

[Source: ODEP]

### **Labor Secretary Awards New Freedom Initiative Awards**

10.26.2006 – The U.S. Secretary of Labor Elaine L. Chao recently awarded nine winners of the New Freedom Initiative (NFI) awards. She praised the winners for their efforts to improve employment opportunities for people with disabilities. These awards generally recognize exemplary and innovative efforts to recruit, hire and promote people with disabilities as well as incorporate principles from the President's NFI into the workplace. A list of winners follows:

INDIVIDUAL:

Ilene Morris-Sambur, Marshall, Va.

NON-PROFITS: Disabilityworks, Chicago, Ill.; National Technical Institute for the Deaf, Rochester, N.Y.; PRIDE Industries, Roseville, Calif.; The Rave Program, University of Alabama at Birmingham  
BUSINESSES: Highmark Inc., Pittsburgh, Pa.; Aetna Inc., Hartford, Conn.; Raytheon Missile Systems, a division of Raytheon, Tucson, Ariz.; CVS/pharmacy Inc., Woonsocket, R.I. Profiles of the winners are available at [www.dol.gov/odep].  
[Source: ODEP]

## **Judicial Activities**

### **Court Says UPS Discriminated Against Deaf People**

10.11.2006 – A federal appeals court upheld the ruling of a lower court which found that United Parcel Service of America (UPS), Incorporated had violated the Americans with Disabilities Act (ADA) by automatically prohibiting a hearing impaired driver from driving delivery trucks. In the case of *Bates v. UPS Inc.* (Case No. 04-17295) the issue being addressed is whether UPS can exclude employees who cannot pass a US Department of Transportation hearing standard that does not apply to the vehicles in question from being employed as drivers. A class of UPS employees and applicants who are unable to pass the hearing test claim that this policy by UPS violates the ADA as well as two California laws, the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act.

The judge in this case ruled that the company's practices were in violation of the ADA and that the hearing impaired "should be given the same opportunities that a hearing applicant would be given to show that they can perform the job safely and effectively." UPS has argued that its procedure is a safety issue rather than a case of discrimination. Federal law mandates that trucks exceeding 10,000 lbs may only be driven by those who meet the hearing requirement; however there are no rules on trucks less than 10,000 lbs. Other mail delivery services like the US Postal Service and FedEx Corp. allow some drivers with hearing impairments for the lighter trucks.  
[Source: Diversity Inc., 10/11/2006 & Lexis Nexis]

### **EEOC Sues Denny's For Disability Bias**

9.28.2006 – The EEOC recently filed a federal discrimination lawsuit against Denny's Incorporated claiming that the restaurant chain had not provided reasonable accommodations and fired disabled employees after denying them medical leave in relation to their disabilities. The lawsuit, which was filed in US District Court of Maryland Civil Action No. 1:06-cv-02527-AMD, charges

Denny's with refusing to provide one of its managers a reasonable accommodation for her leg amputation. The restaurant also refused to allow the employee to work in the restaurant because of her disability and eventually fired her. The allegations include a broader claim that the restaurant violated the rights of a class of workers with disabilities by using a maximum medical leave policy that automatically denied additional medical leave beyond a pre-determined limit, even though the additional leave was required by the ADA as a reasonable accommodation. Previous attempts to solve the matter out of court were unsuccessful. [Source: EEOC]

### **Extension of ADA Protection to Certain Physical characteristics Denied**

9.12.2006 – Recently a decision was made in a case involving a lawsuit by the Equal Employment Opportunity Commission (EEOC) against Watkins Motor Lines, alleging that the company's termination of an employee with morbid obesity was a violation of the ADA. In *Equal Employment Opportunity Commission v. Watkins Motor Lines, Inc.* (Case No. 05-3218) the district court found that non-physiologically caused obesity is not an impairment as defined by the ADA. In its appeal, the EEOC argued that the judge had made an error in judgment by not considering non-physiological obesity an impairment and also by judging that the defendant had not perceived the client (Grindle) as substantially limited in major life activities. However, the sixth circuit appeals court decided that the ADA could not be extended to all irregular physical characteristics and held that in order to establish an ADA impairment, a person's obesity, even morbid obesity, must be the result of a physiological condition.

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

#### **Release of Cornell Second Annual Disability Status Reports**

10.4.2006 – A new report released by Cornell University in collaboration with the American Association of People with Disabilities (AAPD) entitled "2005 Disability Status Reports: United States" finds that there is a substantial gap in unemployment and poverty of people with and without disabilities. According to the report only 38 percent of the nearly 21.5 million people with disabilities between the ages of 21-64 were employed last year. It also noted that in 2005, people with disabilities made an average of \$6,000 less for full-time work compared to their counterparts without disability. The report examined data from the 2005 American Community Survey (ACS), a US Census Bureau effort. The reporters cautioned users against making direct comparisons between the 2005 and 2004 data due to changes in the ACS

survey methods. The Cornell report is available at  
[[http://www.ilr.cornell.edu/ped/disabilitystatistics/StatusReports/2005-pdf/2005-StatusReports\\_US.pdf?CFID=12927058&CFTOKEN=19014767](http://www.ilr.cornell.edu/ped/disabilitystatistics/StatusReports/2005-pdf/2005-StatusReports_US.pdf?CFID=12927058&CFTOKEN=19014767)]. ACS datasets are available at [<http://www.census.gov/acs/www/>].  
[Source: *The New Standard*, 10/4/2006]

### **Transition to Work Programs Have a Few Snags**

A new report "Summary of GAO Conference: Helping California Youths with Disabilities Transition to Work or Postsecondary Education" issued by the Government Accounting Office (GAO) indicates transition-to-work programs that help young people with disabilities adjust to work or college may need a few adjustments. It found that these programs need to be organized more effectively to serve students better. The GAO found that enough attention and time was not spent on programs in high school for students with disabilities who aren't planning on attending college. "Limited coordination among programs and differences in the specific structure of programs were highlighted as issues which hindered students' transitions. In addition, assistive technology that students commonly use in high school is often not available after graduation." View the report at  
[<http://www.gao.gov/htext/d06759sp.html>]. [Source: GAO]

### **Other Items of Interest**

#### **NOD Program Focuses on Employment of Americans with Disabilities**

9.7.2006 – Governor Tom Ridge, Chairman of The National Organization on Disability (NOD) announced the development of the National Employability Partnership (NEP), a NOD program aimed at significantly increasing the employment of people with disabilities. The new program will focus on ensuring that Americans with disabilities of all ages are given the opportunity to work. One of NEP's first initiatives will be a career and employment demonstration project for the U.S. Army's severely wounded warriors (AW2s) from Iraq and Afghanistan. The full NOD article is available at  
[<http://www.nod.org/index.cfm?fuseaction=page.viewPage&pageID=1430&nodeID=1&FeatureID=1621&redirected=1&CFID=10856573&CFTOKEN=31853472>].  
[Source: NOD, 9/7/2006]

#### **UN Convention on the Rights of People with Disabilities Moves Forward**

9.22.2006 – The National Council on Disability (NCD) recently released a statement regarding the United Nations (UN) International Convention on the Rights of People with Disabilities. NCD has played an active role in providing

technical assistance throughout the convention negotiation process. The draft text of the Convention is now with the Drafting Committee. It will then be passed to the UN General Assembly so that the third committee, the General Assembly's arm on social and human treaties, may review it before it is voted on by the full assembly. If the treaty is adopted, it will then be open for signature and ratification. It must then be signed and ratified by twenty countries before it takes effect. [Source: NCD]

#### **Without Strict Remote Worker Policies Costs Increase Five to Ten Times**

10.11.2006 – Gartner Inc., a technology consulting firm has reported that companies that do not implement more stringent remote worker policies and network access controls will experience increased costs from offsite work by 2010. They state that the number one problem with the remote access strategies of most companies is the strong reliance on technology as the "cure-all" for their problems. According to the report, technology use will be more effective if companies provide employees who work remotely with secured access devices and locked them down. However, completely locking down devices would prove to be unproductive and reduce mobility options. "Gartner predicts that the known costs of centrally supporting remote access services will double by 2008 and the unknown costs without centralized management will triple." The article is available at [[http://www.govtech.net/magazine/channel\\_story.php/101618](http://www.govtech.net/magazine/channel_story.php/101618)] [Source: Government Technology, 10/11/2006]

#### **Upcoming Events    Gerontological Society of America Annual Meeting**

The Gerontological Society of America (GSA) will be holding its 59<sup>th</sup> Annual Meeting from November 16<sup>th</sup> – 20<sup>th</sup>, 2006 in Dallas Texas. The GSA is a professional organization that provides researchers, educators, practitioners and policy makers with opportunities to understand, advance, integrate, and use basic and applied research on aging to improve the quality of life as one ages. The theme of the event will be "Education and the Gerontological Imagination." More information is available at [<http://www.geron.org/>]

#### **Perspectives on Employment of Persons with Disabilities Conference**

This conference will be held in Bethesda, Maryland from December 6<sup>th</sup> – 8<sup>th</sup>, 2006. This 25th Annual Perspectives Conference is sponsored by federal government departments and offices and offers attendants new and updated information on personnel policies and practices, developments in technology, legal updates, and resources. It gives federal managers an edge in recruiting

and retaining qualified employees with disabilities. Speakers will include officials and experts who are knowledgeable on the employment of people with disabilities. More information is available at [http://register.grad.usda.gov/Conferences/Perspectives/DisabilitiesInfo.cfm].

### **ATIA 2007 Conference and Exhibition**

The Assistive Technology Industry Association (ATIA) is holding a conference from January 24<sup>th</sup> – 27<sup>th</sup>, 2007 in Orlando, FL. The event will serve as a forum for individuals in the Assistive Technology (AT) community to participate in presentations and discussions about new technology, practical applications, and services. Segments of the Assistive Technology industry (Augmentative and Alternative Communication; Blindness; Computer Access; Curriculum Adaptations; Deaf and Hard of Hearing; Electronic Aids to Daily Living; Games and Recreation; Learning Disabilities/Study Aids/Literacy; Low Vision; and Mechanical Accessories and Mounting Devices) will be represented in various presentations, demonstrations and/or exhibits. The conference site is [http://www.atia.org/conf\_2007.html].



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### **Workplace Accommodations Policy Highlights 4.05**

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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 newsletter is a research project 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.

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., AICP, Director of Research (paul.baker@cacp.gatech.edu).