

Selected Recent Case Law Under the ADA:

Siekaniec v. Columbia Gas Company, 2002 U.S. App. LEXIS 21091 (6th Cir. Oct. 4, 2002) Not Recommended for Publication.

The Court of Appeals for the 6th Circuit held that it posed an undue hardship on the employer, Columbia Gas Company, to require the employer to accommodate an employee dispatcher with chronic headaches by calling in another employee whenever the ill employee suffered a headache on the job, or was not able to come in to work due to her headaches. The employee was terminated after several years of increasing absenteeism due to debilitating headaches. The court was concerned about the safety critical nature of her job, which involved handing emergency and fire calls as well as calls for instructions, information and assistance. Due to the unpredictable nature of the employee's absences, and the safety aspect of the job, the court found it was unreasonable to use the on call system to accommodate the employee's frequent headaches which by the end of her term of employment were occurring from one to eight times per month.

Employers may use this case for the proposition that attendance can be considered an essential requirement for certain positions, and thus absences -- even when caused by a certified disability -- don't have to be accommodated. For further considerations on when this would and would not be appropriate, and what steps an employer must take in using the defense, see the tips for employers in the Nov. 19, 2002 [Employment Law Alert](#) by Keller and Heckman.

[*Access Now, Inc. v. Southwest Airlines*](#), Case No. 02-21734-CIV, United States District Court, Southern District of Florida. Decided Oct. 18, 2002. (Order granting Defendant's Motion to Dismiss)

In this case a non-profit, access advocacy organization for disabled individuals, and Robert Gumson, a blind individual, filed a four count complaint under the ADA contending that Southwest Airlines Internet website, southwest.com, excludes the plaintiffs as the goods and services offered (ability to make reservation and buy tickets online) are inaccessible to blind persons. Southwest Airlines moved to dismiss on the grounds that southwest.com is not a place of public accommodation within Title III of the ADA. The Court granted the Airline's motion to dismiss.

The Plaintiffs alleged that the website in question failed to provide "alternative text" which would provide a screen reader program the ability to translate into synthesized speech, and that the site failed to provide online forms that could be readily filled out by visually impaired persons, and also did not have a skip navigation bar, which facilitates access to the main content.

The Court declined to hold the website was covered under the ADA, reasoning that the law as drafted covers accommodations that are physical concrete structures, not virtual

spaces, citing the Eleventh Circuit cases of *Rendon v. Valleycrest Prod. Ltd.* 294 F. 3d 1279 (11th Cir. 2002) and *Stevens v. Premier Cruises, Inc.* 215 F.3 1237 (11th Cir. 2000).

The Court seemed to be somewhat influenced in its decision by not being able to find any well-defined, generally accepted standards for programming assistive software and websites so as to make them uniformly compatible. The Court also noted the Web Content Accessibility Guidelines (W3C Recommendations) offered by the Plaintiffs were over three years old. See footnote 1 in the opinion.

The Advocacy group plans to appeal the decision.

Shapiro v. Lakewood, 2002 U.S. App. LEXIS 10302 (3rd Cir. 2002)

Defining the nature of "interactive"

What is the nature of the employer's obligation to assist an employee who requests a reasonable accommodation? This question was recently (May 29, 2002) addressed by the Third Circuit Court of Appeals.

Howard Shapiro was employed by Lakewood Township as a police dispatcher and later as an Emergency Medical Technician (EMT). While working as an EMT, Shapiro injured his back. Due to physical limitations, he was not able to resume active status as an EMT.

After becoming disabled, Shapiro made repeated requests for accommodations to allow him to work in a light duty position. Shapiro's attorney sent a letter to Lakewood Township's Municipal Manager, requesting reasonable accommodation on behalf of his client, and highlighting his client's many skill, and also wrote to Lakewood's attorney, asking what type of training his client should pursue in order to be provided with a reasonable accommodation.

The record indicates the only advice from Lakewood to Shapiro was that he should go to the Town Hall and fill out a job application. Lakewood Township made no attempt at any interactive

discussion with Shapiro. The record indicates Shapiro was fully qualified to work as a police dispatcher. Lakewood Township hired five police dispatchers in the time period when Shapiro was seeking an accommodation.

The requirement for an interactive process with regard to reasonable accommodations is contained in a regulation promulgated under the ADA. The regulation states:

To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. 29 CFR § 1630.2 (o) (3).

Lakewood Township argued that Shapiro's failure to formally apply for any of the dispatcher positions meant it was not required to consider Shapiro, as doing so would require a deviation from the Township's policy regarding transfers. The Township policy places the burden on the employee seeking a transfer to monitor postings and apply for the position.

The Court of Appeals looked to the recent decision by the U.S. Supreme Court in *U.S. Airways v. Barnett*. *Barnett* addressed the interaction of neutral employment policies and the ADA.

Following the rule set out in *Barnett*, an employee must show first that the accommodation requested is reasonable in the run of cases. If the employee can make this showing, the burden shifts to the Employer to show that a deviation from the neutral policy would cause undue hardship on the Employer.

The employee can also show that even if the accommodation is not reasonable in the run of cases, special circumstances make the accommodation reasonable in this instance.

After considering Barnett, the Court of Appeals ruled that the District Court grant of summary judgment in favor of the Township could not stand, and the case was sent back for further proceedings.

While it is unclear what the ultimate holding in Lakewood Township case will be, it offers pointers for employers who have a disabled employee seeking an accommodation:

The request for a reasonable accommodation is not a unilateral burden imposed on the disabled employee, rather it is an “interactive process” to be undertaken over time between the employer and the employee.

This “interactive process” does not need to be formally initiated or follow some set procedure.

The initial request for reasonable accommodation and/or notification of the extent of the disability by the employee may be interpreted as the initiation of process.

If a formal employment transfer procedure or seniority system exists, the interactive process need not follow it.

A reasonable accommodation by its very nature usually involves a change in the status quo, and the Supreme Court has recognized this by giving limited deference to neutral employment policies.

Chevron U.S.A. Inc. v. Echazabal (No. 00-1406) Decided June 10, 2002

In a unanimous opinion authored by Justice Souter, the Supreme Court upheld EEOC regulation

29 CFR § 1630.15(b)(2) interpreting the Americans with Disabilities Act. The regulation in question was used by Chevron to justify the company's refusal to hire an employee whose performance on the job would pose a danger to his own health, owing to a disability. The regulation in question states as follows:

Direct threat as a qualification standard. The term "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See Sec. 1630.2(r) defining direct threat.)

The respondent Mario Echazabal, worked as an independent contractor at an oil refinery owned by Chevron, but was turned down for an employment position with the company due to his failure to pass the company physical. The doctors who examined Echazabal stated that the respondent's liver damage (due to Hepatitis C) would be aggravated by continued exposure to toxins at the refinery.

The Court declined to rule on whether or not Echazabal was a "qualified individual" under the ADA. Instead, the Court used standard canons of statutory construction to defeat Mr.

Echazabal's argument that the EEOC had exceeded its authority in adopting language (threat to self) that was not specifically contained in the law. The ADA creates an affirmative defense for an employment action taken pursuant to a qualification standard that is job related or consistent with business necessity. The statute explicitly allows "a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace."

While most of the decision was focused on statutory construction, the Court did address policy considerations as well. At pages 9- 10 of the online opinion, the Court made reference to another case involving Chevron. In *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*,

467 U.S. 837 (1984) the Supreme Court held that with regard to judicial review of an agency's construction of the statute which it administers, if Congress has not directly spoken to the precise question at issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. Accordingly, since Congress had not spoken exhaustively on threats to a worker's own health, the Supreme Court in the Echazabal case found the agency regulation could claim adherence to the rule cited in Chevron, 467 U.S. at 843, as long as the regulation makes sense of the statutory defense for qualification standards that are job related and consistent with business necessity. In finding the rule reasonable the Court noted as follows:

Chevron's reasons for calling the regulation reasonable are unsurprising: moral concerns aside, it wishes to avoid time lost to sickness, excessive turnover from medical treatment or death, litigation under state tort law, and the risk of violating the national Occupational Safety and Health Act of 1970, 84 Stat. 1590, as amended, 29 U.S.C. §651 et seq.

The Court then went on to discuss the OSHA issues, and concluded by stating that if the employer were to hire an individual who knowingly consented to the dangers posed by the job to his/her health, "there is no denying that the employer would be asking for trouble: his decision to hire would put Congress's policy in the ADA, a disabled individual's right to operate on equal terms within the workplace, at loggerheads with the competing policy of OSHA, to ensure the safety of 'each' and 'every' worker."

The Court's decision interprets a regulation that deals with the employment title of the ADA, and does not address the "threat to self" defense utilized by schools in the context of the provision of programs and activities. For a leading case in this area see Knapp v. Northwestern University,

101 F. 3d 473 (7th Cir. 1996) (reh'g en banc denied, 1997 U.S. App. Lexis 93, cert. denied, 138 L. Ed. 2d, 212). For a summary of the threat to self defense in the context of student life, see the Counselonline discussing the latest Supreme Court ADA cases.

Universities claiming this defense in the student programs and activities context may now have additional ammunition for the reasonableness of utilizing such a defense, as long as the standards contained within the ADA are followed. The direct threat defense must be "based on a reasonable medical judgment that relies on the most current medical knowledge and /or the best available objective evidence" and upon an expressly individualized assessment of

- the nature, duration, and severity of the risk;
- the probability that the potential injury will actually occur; and
- whether reasonable modification of policies, practices, or procedures will mitigate the risk.

See also the Jackson Lewis Commentary on this case.

U.S. Airways v. Barnett (No. 00-1250) Decided April 29, 2002

Seniority Systems and Reasonable Accommodation

The Barnett case involves a nuanced reading of the statement in the ADA that reasonable accommodation may include "reassignment to a vacant position" (42 USCS § 12111 (9)).

Barnett was an employee with a serious back injury, which occurred on the job while he was working for U.S. Airways. After his injury, Barnett transferred to the mailroom where he worked

for several years. However, in 1992, in conjunction with the layoff of a number of employees, the position he was working in came up for bid under the seniority system. Mr. Barnett requested as a reasonable accommodation that he be allowed to keep the mailroom position rather than be bumped by a more senior employee, or in the alternative, be provided with special lifting equipment that would allow him to work in the cargo facility, or that the cargo job be restructured so he could only perform office work. U.S. Airways refused to accommodate Barnett and he was terminated.

The U.S. District Court granted summary judgment for U.S. Airways and the Court of Appeals for the 9th Circuit affirmed, but in an en banc rehearing of the case, the 9th Circuit at 228 F. 3d 1105 (C.A. 9, 2000) affirmed in part, reversed in part, and remanded the case back to the District Court for further proceedings. U.S. Airways argued that a seniority system operates as a “per se” or completely automatic bar to reassignment as a reasonable accommodation. The 9th Circuit reviewed the legislative history of the ADA, as well as the EEOC compliance manual, and concluded that a collective bargaining agreement can be a factor in determining the reasonableness of any accommodation, but not a per se bar. The Court went on to point out that in the Barnett case, there was no written collective bargaining agreement, simply a seniority system, and that a seniority system without more should not bar reassignment to a vacant position, as to do so would “sharply limit the range of available accommodations without any required showing of an undue burden on the employer.”

The Court further noted that, “While reassignment might constitute an undue burden in some cases, courts cannot assume that which is the employer's burden to prove.” Rather, a seniority system is only one factor to be considered in the undue hardship analysis.

The case was accepted for argument by the U.S. Supreme Court, limited to the question of

whether or not the ADA requires reassignment of a disabled employee to a vacant position when such reassignment is in conflict with a seniority system. The Supreme Court heard the oral argument in the case on Dec. 4th, 2001.

In a 5-4 ruling issued on April 29th, the Supreme Court held that an employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show, as a matter of law, that an "accommodation" is not "reasonable". However, the employee remains free to present evidence of special circumstances that makes a seniority rule exception reasonable in the particular case. In the opinion, the Court noted that the plaintiff might show that the employer, having retained the right to change the seniority system unilaterally, exercises that right frequently, thus reducing employee expectations that the system will be followed, and concomitantly increasing the likelihood that an accommodation that does not follow the seniority system would be reasonable.

In terms of burden of proof, the employer is thus not required to show on a case by case system that a seniority system should prevail. The plaintiff desiring the accommodation must come forward with evidence that special circumstances exist which would justify deviation from following the seniority system.

As most federal circuits other than the 9th Circuit had held that seniority always trumps a request for a reasonable accommodation to a "vacant" position, the nuanced ruling by the Court actually sets a standard that will be easier for disabled employees to meet than the one that had previously prevailed.

Justice O'Connor would have preferred a holding that stated the effect of a seniority system on the reasonableness of a reassignment as an accommodation for the purposes of the ADA depends on whether the seniority system is legally enforceable. In a concurring opinion, she noted the outcome

under either approach was likely to be similar.

Toyota Motor Manufacturing, Kentucky Inc. v. Williams, No. 00-1089
534 U.S. _____,
2002, decided Jan. 8, 2002.

The facts in this case involved an employee (Ella Williams) of the Toyota Manufacturing Plant in Georgetown, Kentucky, who was diagnosed with bilateral carpal tunnel syndrome and bilateral tendonitis. After her diagnosis, Toyota placed Williams in modified duty jobs. After being rotated to a position that aggravated her underlying condition, Williams requested an accommodation that would allow her to perform only those jobs that would not aggravate her condition. There is some disagreement about the facts at this point, but the end result is that Williams ended up filing a charge of disability discrimination with the EEOC, and then filed suit against Toyota in the U.S. District Court for the Eastern District of Kentucky.

At issue was whether or not the employee's impairment constituted a disability under the Americans with Disabilities Act (ADA) of 1990. Williams claimed the impairment affected her ability to perform manual tasks, and caused some limitation in housework, playing with her children, gardening, lifting and working.

The District Court held that Williams had suffered a physical impairment, but that the impairment did not qualify as a disability as it had not substantially limited any major life activity. The court rejected respondent's arguments that gardening, housework and playing with her kids were major life activities. Although the court agreed that performing manual tasks, lifting, and working were major life activities, the Court found the testimony insufficient to demonstrate that Williams was substantially limited in lifting and working, and further found the claim of limitation on performing manual tasks to be contradicted by Williams testimony.

The Court of Appeals for the Sixth Circuit reversed the District Court on whether or not Williams was disabled, holding that Williams satisfied the definition of disabled because her ailments prevented her from doing the tasks associated with certain types of manual assembly line jobs.

The Supreme Court granted certiorari to consider the proper standard for assessing whether an individual is substantially limited in performing manual tasks. The Court noted that the EEOC regulations are silent as to the question of what a plaintiff must demonstrate to establish a substantial limitation in the specific major life activity of performing manual tasks.

In an unanimous decision, the Supreme Court held that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives, and that the impairment must be permanent or long term.

The Court did not decide the issue of whether or not working is a major life activity. The Court did note that the Appellate Court erred in focusing on William's job in assessing whether or not she could perform manual tasks. The Court stated "When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job."

The Court also noted that the manual tasks unique to any particular job are not necessarily important parts of most people's lives, and that the Appellate Court was wrong to ignore the evidence in the record from the Trial Court that Williams could still bathe, brush her teeth, perform household chores and garden, even after her condition worsened. The need for an individualized

assessment on a case by case basis was once again stressed. The Court reversed the Court of Appeals grant of summary judgment and remanded the case for further proceedings.

Commentators noted that the Court's ruling cuts both ways, making it more difficult for plaintiffs who are substantially limited in workplace tasks to be covered under the statute, but perhaps making it easier for plaintiffs whose limitations affect their daily lives outside the workplace to be covered as "disabled" under the law.

DeVito v. Chicago Park District, 270 F. 3d 532 (7th Cir. 2001).

The decision in this case was really made on the issue of estoppel, but it is a useful case for employers who wish to argue that a gradual return to work full time by an injured employee is a reasonable expectation of an employer, and that the ADA does not require permanent assignment to a light duty job. The facts in this case clearly favor the employer, so to some extent the holding is driven by the facts. The employee was a laborer who injured his back, and who was, due to the injury, precluded from working at his laborer job. In 1985, under a light duty program, he was given a job answering phones. He typically left work after 2 or 3 hours, claiming back pain, but was paid for 8. He was fired when the park district caught him on videotape twisting, bending and climbing in and out of trucks. The employee's appeal to return was turned down, and in this litigation he was seeking a return to a light duty position. Judge Posner found that the employee could not "whipsaw his employer by first obtaining benefits or concessions upon a representation of total disability to work full time and then seeking damages for the employer's failure to accommodate the disability, which the employee now seeks to prove was not total after all." Posner states that "The employment provisions of the Americans with Disabilities Act provide relief only to persons who are capable, with or without an accommodation that would make it

possible for them to work despite a disability, to perform the essential functions of their job, ...

which in the case of a full-time job requires that they be capable of working full- time."

Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and

Human Resources, 532 U.S. 598 (2001). In Buckhannon the Supreme Court overruled a

theory of the law which had been accepted by nine federal courts of appeals. The theory was that

a plaintiff could be considered a prevailing party and entitled to attorney's fees if the lawsuit was a

catalyst for a change in conduct in response to the litigation. The Supreme Court held that failure

to actually secure a judgment or a court-ordered consent means the plaintiff has not prevailed on

the merits and is not entitled to attorney fees. This case was brought in the context of the Fair

Housing Amendments Act of 1988, and the Americans with Disabilities Act of 1990 (ADA), but

numerous federal statutes contain language awarding fees and costs to the "prevailing party".

Bartlett v. New York State Board of Law Examiners, 527 U.S. 1031 (1999). Following its

decisions in Sutton v. United Air Lines, 527 U.S. 471 (1999) (see below), and a companion

case, Albertsons, Inc. v. Hallie Kirkingburg, 527 U.S. 555 (1999), (see below), the Supreme

Court vacated and remanded the decision in Bartlett v. New York State Board of Law

Examiners, 156 F.3d 321 (2nd Cir. 1998). Bartlett had applied for but was denied

accommodations in taking the New York State Bar Exam. The issue in the Bartlett case

involved learning disabilities, and whether extra time in taking the New York State Bar Exam was

an appropriate accommodation. In its 1998 decision, the Court of Appeals for the Second

Circuit held that a person's ability to self-accommodate does not foreclose a finding of disability.

In addition, the Court of Appeals held that the major life activity affected by her disability was

reading and learning, as opposed to working, which had been the basis for the District Court's

holding that an accommodation was necessary.

In the decision on remand, following the Supreme Court's decisions in Sutton and Albertsons, the Court of Appeals for the Second Circuit revisited the issue of whether Bartlett, who is dyslexic, is disabled under the Rehabilitation Act or the ADA. On August 30, 2000, the Court of Appeals held that, despite Bartlett's self-accommodations, she may be disabled under the law if her impairment substantially limits her with respect to the major life activity of reading. As phrased by the Court of Appeals, the following questions must be addressed by the District Court: 1) "whether Bartlett is substantially limited in the major life activity of reading by her slow reading speed, or by any other 'conditions, manner or duration' that limits her reading 'in comparison to most people'"; and, if necessary, 2) "whether [Bartlett] has shown that it is her impairment, rather than factors such as her education, experience or innate ability, that 'substantially limits' her ability to work." Bartlett, 2000 U.S. App. LEXIS 22212, * ___. On the second question, the Court of Appeals distinguished the Bartlett case from Sutton, noting that "the number of lawyers practicing law, relative to the number of people holding a law degree, is surely larger in proportion to the number of global airline pilots relative to the number of people who hold a license to fly," concluding that "if an impairment bars a person with a law degree from practicing law, then that impairment is a disability under the ADA." Bartlett, 2000 U.S. App. LEXIS 22212, * ___.

Cleveland v. Policy Management Systems Corp., 526 U.S. 795 (1999). The Supreme Court held in this case that filing for and receiving SSDI benefits for being unable to work due to a disability does not estop the claimant from pursuing an ADA claim. The claimant must, however, explain how she can perform the essential functions of the job in question, with reasonable accommodation.

Following Cleveland, the Court of Appeals for the Seventh Circuit decided a similar case involving a complaint under the ADA and an SSDI claim. In *Feldman v. American Memorial Life Ins. Co.*, 196 F. 3d 783 (1999) the court stated:

Although Cleveland clarified that an ADA claim is not estopped simply because an individual applied for or received SSDI benefits, a plaintiff cannot avoid summary judgment merely by asserting that she is a qualified individual if she made prior statements, in applying for SSDI regarding her disability that are squarely contradictory. A plaintiff may declare that she was totally disabled in her SSDI application, then declare that she was a qualified individual under the ADA, but she must show that this apparent inconsistency can be resolved with reference to variance between the definitions of "disability" contemplated by the ADA and SSDI. . . . Unlike the plaintiff in Cleveland, Feldman failed to offer any explanation for the contradiction between her SSDI and ADA statements. We therefore will affirm the district court's grant of summary judgment.
[Feldman, 1999 WL 1018083 at *7-8.]

Bragdon v. Abbott, 524 U.S. 624 (1998). In this case, the Supreme Court ruled that the respondent's HIV infection was a disability under the law. While the Court did not rule that HIV infection will always be considered a disability, it seems likely that in most instances it will. The Court also ruled that the ability to reproduce is a major life activity within the meaning of the ADA. Finally, the Court ruled that the existence of a significant risk is determined from the standpoint of the health care professional who refuses to treat the HIV positive patient, and the risk is based on medical or other objective evidence available to the health care profession, and not simply on a good faith belief that a risk exists.

Supreme Court Invalidates EEOC Guidance on Disability

On June 22, 1999, in the case of Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999), the

Supreme Court held that two severely myopic women, whose vision was fully correctable, were

not considered disabled for purposes of coverage under the Americans with Disabilities Act. The

two women had sued United Airlines for failing to hire them as they did not meet the minimum

requirement of uncorrected visual acuity of 20/100 or better. The plaintiffs claimed discrimination

under the Americans with Disabilities Act on the theory that the Airlines "regarded" them as having

a disability. The Supreme Court rejected this argument and held that the women in question did

not meet the definition of "disabled" under the law. The Court also rejected the argument that the

Airline in question had regarded the applicants as having a disability.

The decision is an important one. The EEOC had issued an "Interpretive Guidance" which stated

that "the determination of whether an individual is substantially limited in a major life activity must

be made on a case by case basis, without regard to mitigating measures such as medicines, or

assistive or prosthetic devices." The Department of Justice had issued substantially similar

guidance. The Court clearly rejected this approach and, in a 7-2 decision, stated no agency had

been given the authority to interpret the term "disability." Under the Court's reading of the law,

whether an individual is disabled should be made with reference to measures that mitigate the

impairment. The Court's key holding is as follows: "Looking at the Act as a whole, it is apparent

that if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the

effects of those measures -- both positive and negative -- must be taken into account when

judging whether that person is 'substantially limited' in a major life activity and thus 'disabled' under

the Act." Sutton, 527 U.S. at ____.

Under the Court's approach, a diabetic whose illness does not impair his or her daily activities

would not be considered disabled. Conversely, the negative side effects of mitigating measures for an illness could result in a finding of "disability" if an impairment of major life activities results from taking the medicine, and not from the illness itself.

The Court passed on ruling on the question of whether or not working is considered a major life activity.

In a companion case, *Albertsons, Inc. v. Hallie Kirkingburg*, 527 U.S. 555 (1999), the Court held that the Sutton decision extends to mitigating measures undertaken, whether consciously or not, with the body's own systems. In other words, a person who has compensated for their disability may not be "disabled" under the law.

EEOC Documents Relating to ADA and Employment:

and Using On October 31, 2001, the EEOC released this Fact Sheet on Obtaining Employee Medical Information as Part of Emergency:
<http://www.eeoc.gov/facts/evacuation.html>

Contingent December 2000 Enforcement Guidance on Application of the ADA to Workers Placed by Temporary Agencies and Other Staffing Firms,
online at <http://www.eeoc.gov/docs/guidance-contingent.html>

Application of the Questions and Answers on December 2000 Enforcement Guidance on ADA to Contingent Workers Placed by Temporary Agencies and Other Staffing Firms,
online at <http://www.eeoc.gov/docs/qanda-contingent.html>

Medical Examinations July 2000 Enforcement Guidance on Disability-Related Inquiries and of Employees Under the Americans with Disabilities Act (ADA),
online at <http://www.eeoc.gov/docs/guidance-inquiries.html>.

Questions and Answers on July 2000 Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA), online at <http://www.eeoc.gov/docs/qanda-inquiries.html>.

Reasonable March 1999 EEOC document entitled "Enforcement Guidance: Accommodation and Undue Hardship Under the Americans with Disabilities Act. See <http://www.eeoc.gov/docs/accommodation.html>.

October 1995 EEOC document entitled "ADA Enforcement Guidance on Pre-Employment Disability Related Questions and Medical Examinations." See <http://www.eeoc.gov/docs/preemp.html>.

In August 1996, the EEOC Office of Legal Counsel issued a fact sheet that provides technical assistance on questions that arise about the ADA and Title VII when the Family and Medical Leave Act also applies. See <http://www.eeoc.gov/docs/fmlaada.html>.

On September 3, 1996, the EEOC Office of Legal Counsel issued an enforcement policy guidance that sets forth the EEOC's position on the interaction between Title I of the ADA and the state workers' compensation laws. See <http://www.eeoc.gov/docs/workcomp.html>.

On March 25, 1997, the EEOC issued enforcement guidance on the ADA and Psychiatric Disabilities (Number 915.002). This document can be accessed online at <http://www.eeoc.gov/docs/psych.html>.

Compliance Manual: Portions of the EEOC compliance manual are available online at <http://www.eeoc.gov/policy/compliance.html>. Section 3, "Employee Benefits," added on October 3, 2000, explains how the employment discrimination laws apply to life and health insurance

benefits, long-term and short-term disability benefits, severance benefits, pension or other retirement benefits, and early retirement incentives. The section covers discrimination in these benefits under the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Civil Rights Act of 1964 (Title VII), and the Equal Pay Act (EPA).

The full text of Section 10 of the Compliance Manual covering complaints of Compensation

Discrimination was issued December 5, 2000, by the EEOC. This section covers complaints of

discrimination in compensation based under the Age Discrimination in Employment Act (ADEA),

the Americans with Disabilities Act (ADA), the Civil Rights Act of 1964 (Title VII), and the Equal

Pay Act (EPA). The following are examples of compensation discrimination addressed in the

Compliance Manual:

an employer pays employees inside a protected class less than similarly situated employees

outside the protected class, and the employer's explanation (if any) does not satisfactorily account for the differential;

an employer maintains a neutral compensation policy or practice that has an adverse impact

on employees in a protected class and cannot be justified as job-related and consistent with business necessity;

an employer sets the pay for jobs predominantly held by protected class members below

that suggested by the employer's job evaluation study, while the pay for jobs predominantly

held by employees outside the protected class is consistent with the level suggested by the job evaluation study;

a discriminatory compensation system has been discontinued, but salary disparities caused

by the system have not been eradicated; or

the compensation of one or more employees in a protected class is artificially depressed because of a discriminatory employer practice that affects compensation, such as steering employees in a protected class to lower paid jobs than persons outside the class, or discriminating in promotions, performance appraisals, procedures for assigning work, or training opportunities.

Title VII, the ADEA, and the ADA prohibit discrimination in "compensation" based on race, color, religion, sex, national origin, age, disability, or protected activity.

Online Sites:

<http://www.usdoj.gov/crt/ada/adahom1.htm>
Department of Justice home page on the ADA.

<http://www.eeoc.gov/laws/ada.html>
EEOC site containing the text of the ADA.

http://www.ilr.cornell.edu/library/reference/GUIDES/DW_Primer/default.html
A guide to Web sites dealing with disability and the workplace.

<http://www.ilr.cornell.edu/ped/accessforall/>
ACCESS FOR ALL, A Guide for Implementing the ADA, was produced by the Cornell University Program on Employment and Disability, with funding from the U.S. Department of Education National Institute on Disability and Rehabilitation Research [Grant H133A70005].

<http://www.eeoc.gov/docs/902sum.html>
U.S. EEOC addendum to "Executive Summary: Compliance Manual Section 902, Definition of the Term Disability."

<http://www.eeoc.gov/docs/field-ada.html>

After Supreme U.S. EEOC "Instructions for Field Officers: Analyzing ADA Charges
Court Decisions Addressing 'Disability' and 'Qualified'."

<http://www.ed.gov/offices/OCR/auxaids.html>
"Auxiliary Aids and U.S. Department of Education Office for Civil Rights (OCR),
Education's Services for Postsecondary Students with Disabilities: Higher
Obligations Under Section 504 and Title II of the ADA."

Updated 1/15/02 to add Toyota case
Updated 5/15/02 to add US Airways v. Barnett
Updated 6/10/02 to add Chevron v. Echazabal

Updated 10/31/02 to add Access Now v. Southwest Airlines

Source CUA