



# DISABILITY RIGHTS BAR ASSOCIATION

Disability Rights Bar Association  
Quarterly educates advocates on federal government guidance and updates, recently enacted legislation, new regulations and proposed rules, issued reports, and additional news.

Federal Updates ..... 1  
 Legislation..... 3  
 Cases ..... 4  
 Reports ..... 6  
 Learn More..... 7  
 Other Disability Rights Newsletters .. 7

Newsletter drafted by Paralyzed Veterans of America, a congressionally chartered organization serving veterans who have experienced spinal cord injury or dysfunction.

This is the second edition of this newsletter. DRBA members are encouraged to share cases or policy information for inclusion in future newsletters. Suggested articles for the next quarterly newsletter are due by September 30th, 2022, to Heather Ansley, DRBA Policy Committee Chair, [HeatherA@PVA.org](mailto:HeatherA@PVA.org).

## FEDERAL UPDATES

### SENATORS DEMAND DOJ ANSWER ON WEB ACCESSIBILITY FOR PEOPLE WITH DISABILITIES

On June 30, 2022, a bipartisan group of Senators sent a [letter](#) to U.S. Department of Justice (DOJ) demanding answers on web accessibility in the federal government. Section 508 of the Rehabilitation Act of 1973 requires the federal government to make all its information technology accessible to people with disabilities and directs DOJ to publicly report on the government’s compliance every two years. However, DOJ has not published a report since 2012. The [2012 report](#) provided crucial recommendation for improving federal compliance.

### SENATORS CALL ON DOJ TO ISSUE GUIDANCE AND REGULATIONS FOR STATE AND LOCAL GOVERNMENT TECHNOLOGY

On June 10, 2022, a group of Senators issued a [letter](#) to U.S. Department of Justice (DOJ) to provide better guidance and regulations to help state and local governments comply with the Americans with Disabilities Act’s (ADA) accessibility requirements on their websites, applications, and other forms of technology. The letter called on DOJ to promulgate updated regulations to align with requirements under Section 508 of the Rehabilitation Act of 1973; clarify that current regulations apply to websites, online systems, mobile applications, and other forms of information and communication technology; update existing guidance; and pursue additional agreements highlighting technology accessibility.

### DOE ISSUES FAQs ON DISABILITY-RELATED RIGHTS OF STUDENT VETERANS WITH DISABILITIES

May 23, 2022, the U.S. Department of Education (DOE), Office for Civil Rights (OCR) issued a [Frequently Asked Questions](#) (FAQs) document on the disability-related rights of student veterans with disabilities in higher education. Under Section 504 of the Rehabilitation Act of 1973, colleges and universities that receive federal funds are required to provide appropriate academic adjustments to qualified student veterans with disabilities to ensure they are afforded an equal opportunity to achieve academic success.

### ACCESS BOARD HOLDS PUBLIC MEETING ON LOW TRANSFER HEIGHTS FOR MEDICAL DIAGNOSTIC EQUIPMENT

On May 12, 2022, the U.S. Access Board held a [public meeting](#) to obtain comments on the appropriate low transfer height for medical diagnostic equipment. The meeting discussed the Access Board's commissioned reports to determine the low transfer height

standards. There are no current enforceable standards. The meeting looked at setting the standard between 17"-19". After the meeting, the Board accepted public comments.

### DOJ AND EEOC WARN AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT

On May 12, 2022, the U.S. Department of Justice (DOJ) and U.S. Equal Employment Opportunity Commission (EEOC) released [technical assistance](#) documents about disability discrimination in the use of artificial intelligence (AI) and other software tools used by employers. EEOC's, "[The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees](#)," focuses on preventing discrimination against job seekers and employees with disabilities. DOJ's, "[Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring](#)," provides a broad overview of the rights of people with disabilities and employer responsibilities.

### CMS OUTLINES ACTION PLAN TO ADDRESS ONGOING EFFORTS TOWARDS HEALTH EQUITY

On April 20, 2022, the Centers for Medicare & Medicaid Services (CMS) outlined an [action plan](#) with ongoing efforts to provide high-quality, affordable health care and drive health equity. The plan seeks to close gaps in health care access, quality, and outcomes for underserved populations; build on outreach efforts to enroll eligible people into federal health care plans; expand and standardize the collection and use of data on disability; and ensure CMS programs serve as a model and catalyst to advance health equity.

### DOJ ISSUES GUIDANCE ON ADA PROTECTIONS FOR PEOPLE WITH OPIOID USE DISORDER

On April 5, 2022, the U.S. Department of Justice (DOJ) published guidance that people with opioid use disorder (OUD) are protected under the Americans with Disabilities Act (ADA). This covers people in treatment or recovery, including those who take medication to treat their OUD. The publication, "[The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#)," is intended to help people understand their rights and provide guidance to entities on how to comply with the ADA.

### WHITE HOUSE RELEASES FACT SHEET ON LONG COVID

On April 5, 2022, the Biden Administration released a [fact sheet](#) on the government's effort to prevent, detect, and treat long COVID. Long COVID has a tremendous impact on people with disabilities. The fact sheet raised awareness of Long COVID as a potential cause of disability and that these individuals may be protected under civil rights laws, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act.

### DOJ ISSUES SPRING 2022 UNIFIED REGULATORY AGENDA

The U.S. Department of Justice (DOJ) released its [Spring 2022 Unified Regulatory Agenda](#). The Agenda includes an advance notice of proposed rulemaking (ANPRM), "[Nondiscrimination on the Basis of Disability by State and Local Government, Public Accommodations, and Commercial Facilities: Medical Diagnostic Equipment](#)," to address accessibility standards of medical diagnostic equipment. Also on the agenda is a notice of proposed rulemaking (NPRM), "[Accessibility Guidelines for Electric Vehicle Charging Stations](#)," for scoping and technical requirements for electric vehicle charging stations. In addition, an ANPRM, "[Accessibility Guidelines for Self-Service Transaction Machines](#)," may amend the Architectural and Transportation Compliance Board's existing accessibility guidelines for fixed self-service transaction machines, self-service kiosks, information transaction machines, and point-of sale devices.

## EXECUTIVE ORDER STRENGTHENS ACCESS TO AFFORDABLE, QUALITY HEALTH COVERAGE

On April 5, 2022, the Biden Administration issued an [Executive Order](#) (EO) to continue to strengthen access to affordable, quality health care. The EO recognizes that nearly 4 million Americans continue to be locked out of the Medicaid expansion. The EO orders agencies to review agency actions to identify ways to continue to expand the availability of affordable health coverage, improve the quality of coverage, strengthen benefits, and to help more Americans enroll in health coverage.

## FEDERAL AGENCIES ISSUE ACTION PLANS TO ADVANCE EQUITY

Under Executive Order 13985, [Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government](#), the federal government was directed to advance an equity agenda. In response, over 90 federal agencies conducted equity assessments, and developed Equity Action Plans for addressing and achieving equity. The White House published a [website](#) that includes the agencies' action plans.

## DOJ ISSUES FACT SHEET ON COVID-19 VACCINE WEBSITE ACCESSIBILITY

The U.S. Department of Justice (DOJ) issued a [fact sheet](#) on ensuring that COVID-19 vaccine websites remain accessible, as required by the Americans with Disabilities Act (ADA). The fact sheet recognizes that people with dexterity issues, users who use screen readers, and individuals who use speak text devices may face website barriers. The fact sheet reminds companies that DOJ's work highlights the critical importance of website accessibility for people with disabilities.

## DOE RELEASES VIDEO SERIES ON DIGITAL ACCESSIBILITY

The U.S. Department of Education's (DOE), Office for Civil Rights (OCR) published a [video series](#) covering various topics on digital accessibility in education. The videos include an introduction to digital accessibility, what laws require, recommended practices and tips for digital accessibility, and how to make digital content accessible.

# LEGISLATION

## MASSACHUSETTS LEGISLATURE SEEKS TO PROTECT INDIVIDUALS WITH DISABILITIES IN HEALTH CARE DECISIONS

The Massachusetts House and Senate each introduced An Act Advancing Health Care Research and Decision-Making Centered on Patients and People with Disabilities ([H.201/S.753](#)). The bills would ensure patient protections, including a ban on the use of quality-adjusted life years (QALYs), a requirement for research to meet patient-centeredness criteria, and engagement of the patient and disability communities in health care decision making.

## NEW YORK SENATE PASSES DISABILITY PROTECTION PACKAGE

On May 18, 2022, the New York State Senate passed [legislation](#) to protect the disabled community and strengthen and streamline resources. The proposed bills would legally recognize supported decision-making agreements, eliminate derogatory language from the Social Services Law, combat stereotyping and discrimination, improve provisions for those in individualized education programs, and enhance website accessibility protocols.

## SOUTH CAROLINA PASSES BILL TO ENSURE FAIR WAGES FOR WORKERS WITH DISABILITIES

On May 23, 2022, the South Carolina Governor signed a [joint resolution](#) to prohibit the use of subminimum wages for individuals with disabilities. The bill prohibits employers from using Section 14(c) of the Fair Labor Standards Act of 1938, which allows employers to pay individuals with disabilities less than minimum wage. Under the bill, no employer may pay someone with a disability less than federal minimum wage.

## LEGISLATION INTRODUCED TO BAN USE OF QALYS

On April 28, 2022, the House introduced The Protecting Health Care for All Patients Act ([H.R. 7634](#)) to amend XI of the Social Security Act to prohibit the use of quality-adjusted life years (QALYs) and similar measures in coverage and payment determinations under federal health care programs. QALYs tend to discriminate against individuals with disabilities and chronic illnesses. Some health programs use QALYs to determine whether the treatment is cost-effective enough to be covered, undermining disability and civil rights laws

## CASES

### SUPREME COURT RULES PUERTO RICO RESIDENTS ARE EXCLUDED FROM SSI BENEFITS

In [United States v. Jose Luis Vaello-Madero](#), the U.S. Supreme Court held that the Constitution does not require Congress to extend Supplemental Security Income (SSI) benefits to Puerto Rico residents. The [opinion](#) analyzes whether the equal-protection component of the Fifth Amendment's Due Process Clause requires Congress to make SSI benefits available to residents of Puerto Rico to the same extent that Congress makes those benefits available to residents of the States. In holding that Congress is not required to extend those benefits, the Court determined that since Congress chose to treat residents of Puerto Rico differently from residents of the States for tax law purposes, it could do the same for benefit programs.

### MTA COMMITS TO A 95% ACCESSIBLE SUBWAY SYSTEM BY 2025

The Governor of New York and disability advocates reached a [class action settlement agreement](#) affirming Metropolitan Transportation Authority's (MTA) commitment towards an accessible subway system. The agreement is a result of two class action lawsuits, [Center for Independence of the Disabled, New York, et al. v. MTA, et al.](#) and [De La Rosa et al. v. MTA et al.](#), and is still subject to court approval. Under the agreement, MTA will add elevators or ramps to create a stair-free path of travel at 95% of the currently inaccessible subway stations by 2025.

### SUPREME COURT DISMISSES CHALLENGE ON PUBLIC CHARGE RULE

In [Arizona v. City and County of San Francisco, California](#), the U.S. Supreme Court dismissed the "public charge" immigration rule challenge. The immigration rule, finalized in 2019 and rescinded last year by the Biden Administration, allowed immigration officers to deny green cards to immigrants found likely to need public benefits in the future. The Court threw out an attempt to revive and defend the immigration rule, that made it harder for low-income and immigrants with disabilities to qualify for green cards.

### SECOND CIRCUIT AFFIRMS DISMISSAL OF BOILERPLATE ADA COMPLAINT

On June 2, 2022, the U.S. Court of Appeals for the Second Circuit affirmed the [dismissal](#) of "mad-libs-style" ADA lawsuits. The five cases, consolidated into *Calcano v. Swarovski North America Ltd.*, alleged disability discrimination based on stores' failure to provide Braille gifts cards. The Second Circuit held the allegations were insufficient to establish standing under Title III of the Americans with Disabilities Act and show that plaintiffs faced a "material risk of future harm" that is "sufficiently imminent and substantial."

### ROBLES V. DOMINO'S CASE FINALLY SETTLES

After six years of litigation, on June 6, 2022, the infamous [Robles v. Domino's](#) case finally settled. The plaintiff alleged that Domino's website was inaccessible to visually impaired individuals when he was unable to order a pizza from the website. Although the settlement agreement is not public, the case underlines the issues with inaccessible websites.

## DISTRICT COURT RULES PLAINTIFF DOES NOT HAVE STANDING IN WEB ACCESSIBILITY LAWSUIT

In [Gomez v. Tribeca Inc.](#), the U.S. District Court of the Central District of California found that the plaintiff did not have standing to bring a Title III lawsuit under the Americans with Disabilities Act, after he encountered an inaccessible website. The court held that the plaintiff, who had filed over 100 website accessibility lawsuits in California, had not credibly demonstrated that he intended to return to the defendant's website for any reason, holding the harm was merely informational and dignitary and insufficient to establish standing.

## SUPREME COURT RULES THAT EMOTIONAL DISTRESS DAMAGES NOT AVAILABLE UNDER SECTION 504 AND THE ACA

On April 28, 2022, in the case, [Cummings v. Premier Rehab Keller, P.L.L.C.](#), with a 6-3 decision, the U.S. Supreme Court held that emotional distress damages are not recoverable under Section 504 of the Rehabilitation Act and the Affordable Care Act (ACA). Based on the ruling, plaintiffs may only obtain injunctive relief or monetary damages, like compensation for an injury.

## DOJ SUES INDIANA TOWN FOR HIV STATUS DISCRIMINATION

The U.S. Department of Justice (DOJ) filed a [complaint](#) against the town of Clarksville, Indiana, after the city gave the complainant a conditional offer of employment as a police officer. The lawsuit alleges that the police department unlawfully revoked the offer based on his HIV diagnosis, because his HIV posed a "significant risk of substantial harm to the health and safety" to his colleagues and the public. DOJ argues that the rescindment of employment is in violation of Title I of the Americans with Disabilities Act.

## DOJ SECURES AGREEMENT WITH CVS TO MAKE ONLINE COVID-19 VACCINE REGISTRATION ACCESSIBLE

On April 11, 2022, the U.S. Department of Justice (DOJ) and U.S. Attorney's Office for the District of Rhode Island entered into a [settlement agreement](#) with CVS Pharmacy, Inc. to eliminate barriers preventing individuals with disabilities from obtaining information about COVID-19 vaccines and booking online vaccination appointments. The agreement is DOJ's fifth agreement with major pharmacies on vaccination website accessibility. DOJ found that CVS' vaccine registration portal was not accessible to individuals who use screen reader software or those unable to use a mouse. Under the settlement, CVS will conform its vaccine web content to Web Content Accessibility Guidelines (WCAG) 2.1, Level AA.

## DOJ FILES A STATEMENT OF INTEREST IN PLASMA DONATION CENTER CASE

The U.S. Department of Justice (DOJ) filed a [Statement of Interest](#) in [State of Illinois v. CSL Plasma Inc.](#), to support Illinois' Motion for Partial Summary Judgment. The case centers around whether blood plasma donation centers are public accommodations under Title III of the Americans with Disabilities Act (ADA). Illinois sued CSL Plasma, alleging they violated the ADA by refusing to make plasma donation centers accessible to individuals with mental health disabilities who use a service animal and people who are deaf from providing and being compensated for plasma. DOJ argues that plasma donation centers are service establishments and, therefore, public accommodations.

## DOJ ENTERS SETTLEMENT AGREEMENT WITH OHIO HOTEL FOR ADA VIOLATIONS

On May 4, 2022, the U.S. Department of Justice (DOJ) entered a [settlement agreement](#) with the Holiday Inn Express Hotel & Suites in Columbus, Ohio. The complainant's spouse uses a wheelchair and reserved rooms after hotel staff told them it had two accessible rooms with roll-in showers. When the family arrived to the hotel, they discovered that neither room had a roll-in shower. After an investigation, DOJ found that the hotel violated the Americans with Disabilities Act (ADA) since the advertised "accessible" rooms were not actually accessible and the hotel did not meet other ADA standards. Under the [agreement](#), the hotel must train staff and make a series of accessible modifications

# REPORTS

## USEBLENET RELEASES MIDYEAR REPORT ON DIGITAL ACCESSIBILITY LAWSUITS

The UsableNet research team monitors all digital accessibility-related lawsuits involving a website, app, or video content filed under the Americans with Disabilities Act (ADA) in federal court or in California state court under the Unruh Civil Rights Act. The [report](#) found that almost 100 lawsuits are filed per week. Although the Department of Justice (DOJ) issued [guidance](#) in March 2022, the report determined that the guidance failed to give businesses sufficient clarity to comply with antidiscrimination laws. UsableNet reported that the top ten plaintiff law firms account for 80% of all filed cases.

## EEOC ISSUES REPORT ON WORKERS WITH DISABILITIES IN THE FEDERAL SECTOR

In a [report](#), the U.S. Equal Employment Opportunity Commission (EEOC) found that in 2018 people with disabilities made up 9.42% of federal employees, an increase from 2014. The report also found that while employees with disabilities made up 11.2% of all new hires in 2018, this fell below the 12% goal.

## NEW RESEARCH SHOWS THAT DISABILITY INCLUSION CREATES LONG-TERM BUSINESS VALUE

In a report, "[Competitive, Integrated Employment: A Driver of Long-Term Value Creation](#)," research showed that companies with an environmental, social and governance (ESG) strategy that fosters competitive, integrated employment for people with disabilities are creating a competitive advantage and positioning themselves to capitalize on the global disability market. In addition, ESG strategies provide lasting benefits to the brand, reputation, and bottom line of companies. As concluded in the report, a diverse, inclusive culture spurs innovation and growth, while creating accessible products.

## REPORT FINDS GAPS IN INCLUSIVE BANKING PRACTICES

A report by the Financial Research Opportunities Group, "[Inclusion for All: Improving Banking Practices for Customers with Disabilities](#)," found that individuals with disabilities are three times more likely to be unbanked. Even if they are banked, they are less likely to use the full array of services and less likely to use credit or establish a savings account. The report recommended that banks: (1) conduct a self-assessment; (2) create a disability customer advisory group; (3) invest in the disability community; (4) make reasonable accommodations to banking policies and practices; (5) train staff; and (6) include disability in diversity initiatives.

## REPORT FINDS THAT ECONOMIC JUSTICE IS DISABILITY JUSTICE

A report released on April 21, 2022, entitled, "[Economic Justice is Disability Justice](#)," found that disability and poverty often go hand in hand. Barriers to employment included the denial of reasonable accommodations and other types of disability discrimination. The report concluded that a disability lens must be taken in the nation's economic policymaking.

## LEARN MORE

### JULY IS DISABILITY PRIDE MONTH

July is Disability Pride Month. Although not a nationally recognized holiday, cities around the country celebrate the passage of the Americans with Disabilities Act (ADA) with parades and festivities. The [Disability Pride Flag](#) is a charcoal gray flag crossed diagonally with a lightning bolt band of five colors: light blue, yellow, white, red, and green, representing different types of disabilities. Celebrating the 32<sup>nd</sup> anniversary of the passage of the ADA, the White House is hosting [Disabled Stakeholders Calls](#) weekly through the month of July. The calls discuss the Biden Administration's efforts to address issues impacting individuals with disabilities.

### MY DISABILITY ROADMAP DOCUMENTARY

The New York Times Op-Docs released a short documentary, [My Disability Roadmap](#), that looks at the path of adulthood for individuals with disabilities. The creator interviews disability rights advocates, including Lydia X.Z. Brown and Judy Heumann.

## OTHER DISABILITY RIGHTS NEWSLETTERS

Subscribe to other disability rights and advocates' newsletters for more information on the issues impacting individuals with disabilities and efforts to promote civil rights.

[Judy Heumann](#)

[Bazelon Center for Mental Health Law](#)

[Disability Inclusive Employment Policy  
Rehabilitation Research and Training Center](#)

[ADA Southeast Newsletter: ADA and Access Matters](#)

[Disability Rights Advocates](#)

[ADA News from the Mid-Atlantic ADA Center](#)

[Disability Rights International](#)

[Disability Rights Education & Defense Fund](#)

[Seyfarth Shaw's ADA Title III News & Insights Blog](#)

[Disability Scoop](#)