



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..... 2
 Cases 2
 Advocacy in Action 5
 Learn More..... 5
 Upcoming Webinars & Conferences 6
 Other Disability Rights Newsletters .. 7

Special thanks to DRBA member, Danica Gonzalves, Advocacy Attorney with Paralyzed Veterans of America, for compiling this newsletter.

This is the fifth 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 June 30th, 2023, to Heather Ansley, DRBA Policy Committee Chair, HeatherA@PVA.org.

FEDERAL UPDATES

HUD’S PROPOSED RULE REQUESTS PUBLIC COMMENTS TO FURTHER FAIR HOUSING

On February 9, 2023, the U.S. Department of Housing and Urban Development (HUD) issued a proposed rule to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act (FHA). The proposed rule, Affirmatively Furthering Fair Housing (AFFH), outlines policies to implement the AFFH obligation and ensure that federal funding is used in a systematic way to further the policies and goals of the FHA. The proposed rule seeks to improve community engagement, reduce segregation, promote integration, increase transparency and accountability, and emphasize goal setting and measuring progress. The comment period was extended to April 24, 2023.

DOJ RELEASES SECTION 508 COMPLIANCE REPORT

In January 2023, the U.S. Department of Justice (DOJ) released data on the accessibility of federal government technology for the first time in over a decade. Section 508 of the Rehabilitation Act requires federal agencies to ensure that their information and communication technology is accessible to people with disabilities, unless certain exceptions apply. DOJ was required to provide a report every two years on federal technology accessibility, but the last report was issued in 2012. Due to the failure to meet reporting requirements, Senator Bob Casey (D-PA) called on DOJ to improve transparency around Section 508 compliance by returning to their mandated full biennial reporting.

EEOC ISSUES TECHNICAL ASSISTANCE DOCUMENT ON HEARING DISABILITIES

The U.S. Equal Employment Opportunity Commission issued a new technical assistance document, “Hearing Disabilities in the Workplace and the Americans with Disabilities Act,” that provides information on how the Americans with Disabilities Act applies to job applicants and employees with hearing disabilities. The document outlines when an employer may ask an applicant or employee questions about a hearing condition, voluntary disclosures, reasonable accommodations, and safety concerns.

LEGISLATION

LEGISLATION INTRODUCED TO IMPROVE THE AIR TRAVEL EXPERIENCE OF PASSENGERS WITH DISABILITIES

Although the Air Carrier Access Act (ACAA) has prohibited disability discrimination in air travel for over 35 years, advocates have urged for further protections and enforcement. The Air Carrier Access Amendments Act (S. 545/H.R. 1267), reintroduced by Senator Tammy Baldwin (D-WI) and Representative Dina Titus (D-NV-1), seeks to strengthen ACAA enforcement to include specific protections of the rights of passengers with disabilities and create a private right of action. It will also ensure airplanes are designed for accessibility, protect passengers with disabilities during boarding and deplaning in aisle chairs, require visually accessible announcements, and add better stowage options for assistive devices. Representative Titus also introduced the WHEELChairs on Airplanes Act (H.R. 1772) to prevent discrimination against airline passengers with disabilities who use lithium-ion-powered wheelchairs and mobility devices.

Senator Tammy Duckworth (D-IL) and Representative Steve Cohen (D-TN-9) introduced the Prioritizing Accountability and Accessibility for Aviation Consumers Act (S. 400/H.R. 1445). This legislation would require the U.S. Department of Transportation to publish an annual report disclosing all disability-related complaints made throughout the year, including specifics about how these complaints were resolved.

NOTICE AND CURE BILL LOOKS TO IMPEDE ADA LAWSUITS

Representative Ken Calvert (R-CA-41) reintroduced a bill that delays and impedes lawsuits under the Americans with Disabilities Act (ADA). The ADA Compliance for Customer Entry to Stores and Services Act (ACCESS Act) (H.R. 241) would require individuals to provide a business owner or operator with a written notice of an accessibility violation, identifying the specific barrier. The business owner or operator would then have sixty days to reply with a description of improvements it will make. They would have an additional 120 days to remedy the issues. The person would only be allowed to file an ADA lawsuit if the owner or operator failed to take substantial steps towards remedying the barriers during the allotted timeframe.

INTRODUCED BILL PROHIBITS EXCLUSION FROM FEDERAL JURY SERVICE DUE TO AGE OR DISABILITY

Senator Edward Markey (D-MA) and Representative Katie Porter (D-CA-47) introduced the Disability and Age in Jury Service Nondiscrimination Act (S. 1086/H.R. 2442) that prohibits excluding a person from federal jury service due to their age or disability. Currently, federal law only prohibits excluding an individual from jury service on account of race, color, religion, sex, national origin, or economic status. The new legislation adds age and disability alongside these protected characteristics.

READDI ACT IMPROVES DISASTER RELIEF FOR PEOPLE WITH DISABILITIES

The Real Emergency Access for Aging and Disability Inclusion for Disasters (READDI) Act was reintroduced on March 29, 2023, (S. 1049/H.R. 2371) by Senator Bob Casey (D-PA) and Representative Debbie Dingell (D-MI-6), to ensure older residents and people with disabilities are included in the preparation, response, recovery, and mitigation of disasters. The READDI Act creates a national commission to study the needs of these populations and develop best practices for local, state, and federal levels; creates a network of centers focused on training and technical assistance; directs the U.S. Department of Justice (DOJ) to review the spending of disaster funds by federal agencies to ensure they are spent in accordance with the Americans with Disabilities Act; and requires DOJ to examine how the civil rights of people with disabilities are or are not upheld during and following disasters.

NEW LEGISLATION REQUIRES FDA TO CREATE AND ENFORCE NONVISUAL ACCESSIBILITY STANDARDS

Representative Janice Schakowsky (D-IL-9) reintroduced the Medical Device Nonvisual Accessibility Act (H.R. 1328), that calls on the U.S. Food and Drug Administration (FDA) to create and enforce nonvisual accessibility standards for home-use medical devices, so devices are fully accessible for individuals with vision disabilities. The Act also requires FDA to consult with the disability community throughout the process.

REINTRODUCED BILLS PROVIDE DUE PROCESS BEFORE DETENTION OR IMPRISONMENT

Senator Tammy Duckworth (D-IL) and Representative Mark Takano (D-CA-39) re-introduced the Korematsu-Takai Civil Liberties Protection Act (S. 129/H.R. 639) that prohibits the detention or imprisonment of an individual based solely on an actual or perceived protected characteristic, including disability. The Act seeks to ensure due process protections for these populations.

LEGISLATION MOVES TO PHASE OUT SUBMINIMUM WAGE

Bipartisan and bicameral legislation seeks to provide states and employers with the resources to transition workers with disabilities into fully integrated and competitive jobs, while phasing out subminimum wages. The Transformation to Competitive Integrated Employment Act (S. 533/H.R. 1263) was introduced by Senator Bob Casey (D-PA) and Representative Bobby Scott (D-VA-3) to combat the subminimum wages paid to workers with disabilities. Under Section 14(c) of the Fair Labor Standards Act, employers can apply for special certificates from the U.S. Department of Labor to pay individuals with disabilities less than federal minimum wage. The legislation would create state grant programs and funds for businesses to transition their business models to support individuals with disabilities into competitive integrated employment, while freezing the issuance of new 14(c) certificates.

NEW LAW AIMS TO PROHIBIT USE OF QUALITY-ADJUSTED LIFE YEARS

The Protecting Health Care for All Patients Act (H.R. 485), introduced by Representative Cathy McMorris Rodgers (R-WA-5), aims to prohibit all federal health care programs and federally funded state health care programs from using prices that are based on quality-adjusted life years (QALYs), when determining whether treatment is cost-effective enough to be paid for by the federal government. QALYs are used to assess a person's anticipated lifespan and whether treatment will be cost effective. QALYs tend to place a lower value on treatments which extend the lives of people with chronic illnesses and disabilities, resulting in treatment denial.

PROPOSED ACT CREATES A BILL OF RIGHTS TO REDUCE GUARDIANSHIPS

On March 30, 2023, Senator Bob Casey (D-PA) introduced a bill (S. 1148) to establish rights for people being considered for and in protective arrangements, including guardianships and conservatorships, or other arrangements, and provide decision supports. The Guardianship Bill of Rights Act would create a national council charged with promoting less restrictive arrangements for people living under or being considered for guardianships, create recommended practices for assisting someone out of a guardianship, averting placement in a guardianship, and modifying a guardianship to minimize what it covers. The bill would provide funding to establish or expand protection and advocacy system for oversight and monitoring of state and local guardianships, conservatorships, and other protective arrangements.

KANSAS PASSES LAW THAT COULD PUNISH PEOPLE FILING WEBSITE INACCESSIBILITY LAWSUITS

Kansas passed a law, S. Sub for HB2016, that could punish parties that file website inaccessibility discrimination lawsuits, citing the lack of federal standards as the need for this law. Under the law, defendants in website disability discrimination lawsuits can sue the plaintiffs for “abusive litigation,” and be awarded attorney fees and costs and punitive damages, up to three times the attorney fees. The law does not define abusive litigation. Instead, the court will look at a number of factors, including, but not limited to, the number of lawsuits filed by the plaintiff or attorney in the last ten years; the defendant’s resources to defend or correct the violation; where the lawsuit was filed; and whether the plaintiff is a Kansas resident. If the business took good faith efforts to cure the alleged violation within thirty days after notice, there would be a rebuttable presumption that the case was abusive litigation, but not if the company failed to correct the violation within ninety days. The law adds that if the U.S. Department of Justice issues standards for website accessibility, the law will expire.

CASES

SCOTUS GRANTS CERT IN ADA HOTEL WEBSITE TESTER CASE

The U.S. Supreme Court granted certiorari to review a case to determine whether a “tester” can bring a lawsuit for a hotel’s failure to provide accessibility information on their website, even when the plaintiff has no intention of actually visiting the hotel. In the case, *Acheson Hotels, LLC v. Laufer*, Deborah Laufer, an individual with a disability and a self-deemed “tester,” regularly visits hotel websites checking whether they have accessibility information. Under the Americans with Disabilities Act (ADA) reservation rule, hotels must identify and describe the accessibility features of the hotel in enough detail for a guest to decide if the hotel will meet their needs. Laufer sued Acheson Hotels for failing to provide accessibility information on its website. The U.S. District Court for the District of Maine dismissed the case, holding Laufer lacked standing. The U.S. Court of Appeals for the First Circuit reversed the decision of the district court, holding that the lack of information alone was sufficient to establish standing under the ADA. The U.S. Supreme Court granted the petition for a writ of certiorari and will hear the case, with oral argument expected in the fall.

SCOTUS RULES ADA LAWSUIT CAN BE FILED PRIOR TO EXHAUSTING IDEA ADMINISTRATIVE PROCESS

In a unanimous decision, the U.S. Supreme Court ruled, in *Perez v Sturgis Public Schools*, that a lawsuit under the Americans with Disabilities Act (ADA) seeking compensatory damages for the denial of a free and appropriate education may proceed without exhausting the administrative processes of the Individuals with Disabilities Education Act (IDEA) because the remedy sought is not one the IDEA provides. The Deaf student sought to sue his school under the ADA for compensatory damages over profound lapses in his education. The school system argued that the plaintiff failed to exhaust the IDEA’s administrative procedures before filing the ADA lawsuit, but the Court held that the ADA does not require a student to fully pursue their IDEA claims in administrative proceedings before going to federal court.

ADVOCATES UNITE IN TRANSPORTATION ACCESSIBILITY CASE

Seventeen disability rights organizations filed an amicus brief to the U.S. Court of Appeals for the Second Circuit in support of the plaintiff-appellant in *Woods v. Centro of Oneida, Inc.*, et al, explaining why accessible bus stops are required under the Americans with Disabilities Act (ADA). Woods argued that the transportation system failed to provide accessible bus stops and, instead, offered paratransit in lieu of making the stops accessible. Bus stations were also modified, bringing into question whether the “alteration” ADA scoping requirements should apply. Advocates argued the importance of accessible transportation systems and that paratransit is insufficient to meet program access standards.

EYE SURGERY PROVIDERS AGREE TO PROVIDE WHEELCHAIR TRANSFERS

The U.S. Department of Justice (DOJ) reached a settlement agreement with Barnett Dulaney Perkins Eye Centers (BDP) and American Vision Partners (AVP) based on a complaint that the eye surgery providers refused to provide services to patients needing wheelchair transfer assistance or required the patient to pay for their own transfer services. DOJ sued BDP, alleging the eye surgery provider refusal violated the Americans with Disabilities Act. DOJ amended the complaint to join AVP. Under the settlement agreement, the providers must cease their policy of denying patients needing transfer assistance, pay for patient transfers if needed, and implement policies to provide wheelchair users full access to their services.

SOBER LIVING HOMES MEET DISABILITY STATUS FOR HOUSING

The U.S. Court of Appeals for the Ninth Circuit reversed a district court decision in SoCal Recovery, LLC v. City of Costa Mesa, and held that individualized proof of disability is not required for sober living housing. Costa Mesa had implemented policies that made it unlawful to operate sober living homes without a permit and required all sober living homes to be located more than 650 feet away from any other sober living home or any state-licensed drug and alcohol treatment centers. SoCal Recovery alleged these ordinances violated the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA), and the California Fair Employment and Housing Act (FEHA). The district court held that SoCal Recovery did not establish that residents in their sober living homes were actually disabled, or that the city regarded their residents as disabled. The Ninth Circuit reversed, finding sober living home operators can satisfy the disability prong of the ADA, FHA, or FEHA on a collective basis by demonstrating that they serve or intend to serve individuals with disabilities and they did not need to provide individualized evidence for each of their residents.

SIXTEEN FLORIDA ATTORNEYS UNDER COURT SCRUTINY FOR BOILERPLATE ADA LAWSUITS

Sixteen Florida attorneys are facing court scrutiny for allegedly ignoring the rules for accessibility lawsuits against Florida businesses. A judge for the U.S. District Court for the Middle District of Florida opened a case against the attorneys for filing “vague, boilerplate” lawsuits under the Americans with Disabilities Act. The lawsuits most often settle after the business makes a payment. According to the judge’s order, more than 200 negative orders have been filed against the attorneys. The court is contemplating implementing fines or banning them from filing similar cases in the future.

ADVOCACY IN ACTION

PROMINENT DISABILITY RIGHTS ADVOCATE JUDY HEUMANN PASSES AWAY

Judy Heumann, a renowned disability rights activist, often referred to as the “mother of the disability rights movement,” died on March 4, 2023, at the age of 75. Heumann founded national and international disability advocacy organizations, held senior federal government positions, co-authored her memoir, *Being Heumann*, and its Young Adult version, *Rolling Warrior*, and was featured in the Oscar-nominated documentary film, *Crip Camp: A Disability Revolution*. She was instrumental in passing legislation, including the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and the Rehabilitation Act. President Joe Biden regarded her legacy as “an inspiration to all Americans.”

CCD SENDS PRIORITIES LETTER TO NEW CONGRESS

The Consortium for Constituents with Disabilities (CCD) sent a letter to the new Congress on its priorities and positions and urged legislators to consider the needs of people with disabilities in policy and appropriations. Each task force outlined its main priorities for the upcoming term, including reintroduction and passage of listed legislation.

NCD ISSUES BRIEF ANALYZING THE IMPACT OF THE CUMMINGS DECISION

The National Council on Disability (NCD) assessed the impact of the U.S. Supreme Court decision in *Cummings v. Premier Rehab Keller PLLC*. In *Cummings*, the Supreme Court ruled that plaintiffs cannot recover damages for emotional distress resulting from intentional disability-based discrimination under Section 504 of the Rehabilitation Act of 1973 or Section 1557 of the Patient Protection and Affordable Care Act. NCD's brief, *Cummings v. Premier Rehab Keller PLLC: Implications and Avenues for Reform*, analyzes the decision; discusses challenges when emotional distress damages are not available; describes the impact of the ruling on people with disabilities, including impacts already experienced; lists the availability of emotional distress damages under state laws; and recommends a legislative fix to the decision.

LEARN MORE

USA TODAY REQUESTS STORIES ON DAMAGED OR LOST MOBILITY DEVICES BY AIR CARRIERS

USA Today released a request for stories on lost or damaged mobility device by airlines in 2023. USA TODAY wants to track these incidents throughout the year with the goal of bringing light to this all-too-common issue.

NEW DATA AND TOOLS ON THE EMPLOYMENT OF PEOPLE WITH DISABILITIES RELEASED

On January 4, 2023 the U.S. Department of Labor (DOL) released COVID-19 and Employment Trends for People with Disabilities. DOL's report found people with disabilities have re-entered the labor force in greater numbers and have even surpassed the pre-pandemic level. In addition, National Trends in Disability Employment 2022 Year-End Special Edition, issued by Kessler Foundation and the University of New Hampshire's Institute on Disability, reached the same conclusion. DOL also released data specific for the employment of people with disabilities in skilled trade professions, with a data spotlight on the employment of Black workers with disabilities in skilled trade professions. The Office of Disability Employment Policy also published new interactive data maps to help policymakers, employers, and others better understand the disability employment landscape in their states and across the nation.

NEW TOOL SHOWS IMAGERY OF SIDEWALKS AND CROSSWALKS

Massachusetts Institute of Technology researchers, in collaboration with multiple other universities, developed an open-source tool, TILE2NET, that uses aerial imagery and image-recognition to create complete maps of sidewalks and crosswalks. The tool aims to assist planners, policymakers, and urbanists who want to expand pedestrian infrastructure. The tool has been developed using a few U.S. areas as initial sources of data, but it can be refined and adapted for use anywhere. The tool was based on a research paper, *Mapping the Walk: A Scalable Computer Vision Approach for Generating Sidewalk Network Datasets from Aerial Imagery*. The idea of complete streets aspires to allow pedestrians, including people with disabilities, to travel safely.

NUMBER OF WEBSITE ACCESSIBILITY LAWSUIT FILINGS IN 2022 SETS NEW RECORD

Released data shows website accessibility lawsuits filed in 2022 reached a new record. Approximately 3,200 website accessibility lawsuits were filed in federal court in 2022, a 12 percent increase over 2021. A majority of the lawsuits were filed in New York, Florida, and California. Despite the higher number of filings, whether online-only businesses are covered by the Americans with Disabilities Act remains a question in the courts.

NCD RELEASES TOOLKIT FOR AMERICAN INDIAN AND ALASKA NATIVE COMMUNITIES WITH DISABILITIES

The National Council on Disability (NCD) released a new resource, *Understanding Disabilities in American Indian & Alaska Native Communities Toolkit Guide*. According to the 2020 U.S. Census, there are over 3.7 million Americans who identify exclusively as American Indian or Alaska Native and over 9.6 million Americans who identify as American Indian or Alaska Native in combination with another ethnicity. The toolkit reports 30 percent of American Indian or Alaska Native adults have a disability, the highest rate of disability of any ethnicity. The toolkit

includes information about disabilities, tribes, resources, examples of culturally informed programs, tips on how to advocate for change, and more.

AP ARTICLE LOOKS AT THE ISSUES VOTERS WITH DISABILITIES FACE

The Associated Press released an article on the experiences of voters with disabilities. The article, “Voters with Disabilities Often Overlooked in Voting Battles,” includes personal stories about how the environment of new polling laws and policies are heavily impacting voters with disabilities.

UPCOMING WEBINARS & CONFERENCES

MAY NATIONAL ADA SYMPOSIUM

The [National ADA Symposium](#) will be held in Kansas City, Missouri from May 21-24, 2023. The [Virtual National ADA Symposium](#) will occur June 12-14, 2023. The symposiums are hosted by the [ADA National Network](#).

ADA TALK SERIES

On the fourth Thursday of every month, from January to October 2023, the [ADA National Network](#) hosts a free [ADA Talk Series](#). Topics include, employment, program access under Title II of the Americans with Disabilities Act (ADA), higher education, digital access, and ADA in the courtroom.

NATIONAL ADA NETWORK TRAININGS

The [National ADA Network](#) regularly [hosts](#) events and trainings on the Americans with Disabilities Act (ADA), disability rights protections, accessibility, and inclusivity. Some upcoming sessions include, [Update on Service Animals in Public Accommodations, Employment, Transportation and Housing](#) (May 17); [Unpacking and Rethinking Guardianship for Disabled People](#) (May 24); [Invisible Disabilities and the ADA](#) (July 12); and [Beach Access Routes: Key Considerations for Public Entities](#) (July 12). The [full calendar](#) lists trainings for all regional centers.

WEBINAR SERIES COVERS PLAIN LANGUAGE AND ACCESSIBILITY

Self Advocacy Resource and Technical Assistance Center, funded by the Administration for Community Living and managed by Self-Advocates Becoming Empowered, is rolling out a new [webinar series](#) on accessibility and plain language. Webinars topics cover: [Plain Language](#) (May 8), [Easy Read Text](#) (June 5), [Easy Read Icons](#) (July 10), and [Formatting Basics](#) (July 31).

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.

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

[Disability Rights Advocates](#)

[Disability Rights International](#)

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

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

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

[Disability Rights Education & Defense Fund](#)

[Disability Scoop](#)