

Human Resources ADA Update



A Quarterly Newsletter by the
State ADA Coordinator's Office
Georgia State Financing and Investment Commission

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Happy Birthday ADA!

Twenty years ago, on July 26, 1990, President George Bush signed the Americans with Disabilities Act (ADA) into law. This landmark civil rights legislation provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, telecommunications and transportation.

Title II of the ADA calls on state and local governments to ensure that qualified individuals with physical and mental disabilities are afforded equal opportunity to participate in those programs, services and activities offered by state and local governments. Title II prohibits all public entities, regardless of size of workforce, from discriminating in all aspects of their employment practices against qualified



individuals with disabilities.

In the 20 years since the ADA was passed, great strides have been made in the full inclusion and participation of people with disabilities into all aspects of daily life. Buildings have become more accessible, with ramps and elevators as well as stairs, and raised lettering and Braille on signs and elevator keys. Curbscuts appear on many street corners, and public transit has become more and more accessible to all. People with disabilities have also become more integrated into the workplace and community, taking their rightful places among their peers without disabilities.

More remains to be done, however, and the full integration and participation of people with disabilities is an ongoing process. So, let's take a moment to celebrate all that has been achieved so far, and then renew our commitment to ensuring that all people, with and without disabilities, are freely able to participate in all aspects of community life.

Demonstrate Your Agency's Commitment to Promoting Full ADA Implementation



Join the Georgia State ADA Coordinator's Office, Georgia cities, and many state and local organizations by joining the 2010 by 2010 Campaign and signing the [Proclamation of Recommitment to Full Implementation of the ADA](#).

Source: <http://www.2010anniversary.org/2010Proclamation.html>

ADA Anniversary Toolkit



The [ADA Anniversary Toolkit](#) and [ADA Southeast Region Supplemental Toolkit](#) include an Overview of the ADA and the ADA Amendments Act of 2008 (ADAAA); ADA from a Civil Rights Perspective, ADA Resources and Publications, and Statistics You Can Use. All publications are available in PDF, Text and Large Print formats. These materials may be used year round to celebrate and highlight ADA accomplishments; duplication and sharing are encouraged.

Source: http://sedbtac.org/ada/publications/ada_anniversary/index.php?idpg=35#packet

YouTube [ADA Anniversary Celebration Video](#)



We encourage you to use this video from the ADA National Network by DBTAC in your ADA celebrations and with media outlets throughout the year.

Source: <http://www.youtube.com/user/ADANationalNetwork>

Accurate, Confidential and Free Answers to Your ADA Questions



Do you have questions about employees' rights and your responsibilities under the Americans with Disabilities Act (ADA)? Call the [DBTAC: Southeast ADA Center](#) at 1-800-949-4232 (voice/TTY) for a free and confidential consultation about your specific ADA situation. Additional ADA information is also

available on sedbtac.org.

The State of Georgia ADA Coordinator's Office

We are proud to play a vital role in helping state and local government agencies ensure that people with disabilities have access to the programs, services and information offered by the State of Georgia.

To learn more about the State of Georgia ADA Coordinator's Office and how we can assist you, see the [Frequently Asked Questions](#) below and visit our website – ada.georgia.gov.

Frequently Asked Questions

What does the State ADA Coordinator's Office do?

Our office provides state agencies the technical support and assistance necessary to implement the ADA's requirements applicable to their public mission; assists state agencies in updating, strengthening and enhancing the scope of self-evaluation and transition plans to ensure compliance with the ADA mandate; and develops simplified and disability-friendly methods for people with disabilities to access the ADA and other disability-related services and information offered by the State of Georgia; and manages the State Facility Improvement Program. For more information, see [About the ADA and Our Office \[State of Georgia ADA Coordinator's Office\]](#).

Is the State ADA Coordinator's Office an enforcement agency?

Our office is not an enforcement agency. However, we do serve as a technical resource to State Agencies and the general public for the ADA's Title II general nondiscrimination requirements, program accessibility, communications and employment (including the reasonable accommodation process), as well as compliance with the State Accessibility Code.

Does the State ADA Coordinator's Office provide ADA-related training?

Our office conducts general and customized training on ADA topics for state agencies and other targeted audiences to ensure appropriate familiarity with the Act's

requirements applicable to State government utilizing various delivery methods. Trainings provided by our office may be “stand-alone” or part of a larger project or technical support request. If you have a specific ADA training request, please contact our office at Phone: (404) 657-7313 [voice], TTY: (404) 657-9993, or [Email: gaada@gsofic.ga.gov](mailto:gaada@gsofic.ga.gov).

Employment Case Law Update

Each issue of this newsletter will provide summaries of relevant court cases affecting employers and employees in the Southeast Region. The case summaries in this issue focus on reasonable accommodations.



McKane v. UBS Financial Services, Inc., 363 Fed.Appx. 679 (11th Cir. Jan. 19, 2010)

The Court addressed the requirements for the interactive process that employers should engage in after a reasonable accommodation has been requested. The case involved a financial advisor, McKane, with a quick temper and verbally abusive tendencies caused by hypoglycemia (an effect of Type I Diabetes). McKane requested that his disability be accommodated by moving his office to a more remote location within the UBS office to allow him to interact peacefully with his colleagues. After numerous requests were denied without interactive dialogue, McKane was eventually fired when he verbally abused and threatened a co-worker he had summoned to his office.

The District Court held that McKane’s accommodation was unreasonable because he could not show that it would allow him to perform the essential functions of his job, which included interacting professionally and collaboratively with his colleagues. The Court relied on the fact that the behavior that led to his termination took place *inside his* office after he had summoned the co-worker there. Therefore, moving the office would not have fully accommodated essential job function of peacefully interacting with his co-workers. The Circuit Court affirmed the District Court, holding that the employer had the right to deny McKane’s previous requests because an employer does not have an obligation to engage in the interactive process when an employee does not meet his burden of demonstrating the availability of a reasonable accommodation.



Webb v. Donley, 347 Fed.Appx. 443 (11th Cir. Sept. 14, 2009)

The Court addressed a discrimination claim against the U.S. Air Force. (Webb brought the action under the ADA, but the Court technically addressed it under the Rehabilitation Act – which is governed by the same standards – because Webb was a federal employee). Webb, a project manager of a help desk for one of the Air Force’s computer operating systems, requested a modified work schedule which would split her day between work at the office and work at home, as an accommodation for her carpal tunnel syndrome, fibromyalgia, and myofascial pain syndrome. Although the

Air Force initially granted this accommodation, it later recanted and eventually fired Webb for her continued unavailability and inability to work a regular schedule.

The District Court held that Webb's request was not reasonable because she failed to demonstrate that she could perform the essential functions of the job (supervising and communicating with her team) off-site. Her only evidence of reasonableness was that the Air Force had allowed her to work from home previously. This was not enough, according to the court. The Circuit Court affirmed, taking the District Court's reasoning a step further by asserting that presence at the worksite was an essential function of Webb's position. It held that a modified work schedule was therefore an unreasonable accommodation because working from home would change an essential function of the job. The Court noted that an employer's previous granting of an accommodation request does not render that accommodation reasonable.



**Anderson v. Embarg/Sprint,
Slip Copy, 2010 WL 1999298 (11th Cir. May 20, 2010)**

The Court addressed the ADA Title I discrimination claim of Anderson, a "distribution center person," who had been on short term disability leave for an off-duty injury and sought to return with a "light-duty work" accommodation. As a distribution center person, Anderson's duties included collecting orders and preparing them for shipment, building and shrink-wrapping pallets, and loading trucks. His injury had resulted in chronic back and neck pain that reduced his physical capacity to lift, push, and pull. Accordingly, his light duty request called for his not moving objects over 10 pounds.

The Court held that Anderson was not a qualified individual for purposes of the ADA because he had not shown he could still perform the essential functions of his job with his accommodation. In determining what the essential functions were, the court relied on the fact that the job description required pushing, pulling, and lifting objects weighing up to seventy pounds more than 33% of the time. This was enough of a percentage to be considered essential. Because his light-duty accommodation request would eliminate an essential function of his job, the accommodation of light duty was not considered to be reasonable.



**Moore v. Wal-Mart Stores East,
L.P., 2009 WL 3109823 (M.D. Ga. Sept. 23, 2009)**

This case addressed the requirement that an employer have actual or constructive knowledge of the employee's disability in order to trigger its duty to accommodate. The case involved a plaintiff who requested and received a leave of absence from her employer after being injured in an automobile accident. Plaintiff alleged her employer violated the ADA by not allowing her to return to work after her leave of absence, and eventually terminating her. The defendant argued that plaintiff never informed defendant of her disability.

The Court held that, while "vague or conclusory statements revealing an unspecified incapacity are not sufficient to put an employer on notice," defendant knew of plaintiff's work restrictions and her accident due to information in medical notes and

plaintiff's requested leave of absence. It was immaterial that plaintiff never asked for a reasonable accommodation in writing.



Celestica Corporation Settles EEOC Disability Accommodation Lawsuit

Celestica Inc., a Canadian electronics manufacturer service company doing business in the United States as Celestica Corporation, will pay \$102,100 and provide other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC's suit (No. 3:09-0813, filed in the U.S. District Court for the Middle District of Tennessee) had charged that Celestica willfully ignored requests for reasonable accommodations under the Americans with Disabilities Act (ADA). An employee, hired through a placement agency, worked inside a 400,000-square-foot warehouse in Mount Juliet, Tennessee, operated by Celestica. She has lupus, chronic obstructive pulmonary disease and cardiomyopathy. She requested use of her own electric wheelchair to get to her desk inside the warehouse from a handicapped parking space close to the side entrance. Although the placement agency allowed use of the wheelchair, Celestica ignored her requests and acted as if they had never occurred. EEOC filed suit after first attempting to reach a voluntary settlement. Besides providing monetary relief, the two-year consent decree settling the suit, signed by Judge Todd Campbell on April 7, 2010, enjoins Celestica from further refusing or ignoring any request from an individual with a disability for a reasonable accommodation.

Source: <http://www.eeoc.gov/eeoc/newsroom/release/4-8-10a.cfm>

Reasonable Accommodations —Your Responsibilities under the ADA



Requesting Reasonable Accommodation

Source: The U.S. Equal Employment Opportunity Commission (EEOC), [Small Employers And Reasonable Accommodation](http://www.eeoc.gov/facts/accommodation.html) <http://www.eeoc.gov/facts/accommodation.html>

- [How must an individual request a reasonable accommodation?](#)

The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use "plain

English" and need not mention the ADA or use the phrase "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

- [What must an employer do after receiving a request for reasonable accommodation?](#)

When the **disability and/or the need for accommodation is not obvious**, the employer may ask the individual for **reasonable documentation** about his/her disability and functional limitations. The employer and the individual with a disability should **engage in an informal process** to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

- [Must an employer provide the reasonable accommodation that the individual wants?](#)

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

- [How quickly must an employer respond to a request for reasonable accommodation?](#)

An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation.

Additional Resources on Reasonable Accommodations

[EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](http://www.eeoc.gov/policy/docs/accommodation.html)
<http://www.eeoc.gov/policy/docs/accommodation.html>

[The ADA: Your Responsibilities As An Employer](http://www.eeoc.gov/facts/ada17.html)
<http://www.eeoc.gov/facts/ada17.html>

[Small Employers and Reasonable Accommodation](http://www.eeoc.gov/facts/accommodation.html)
<http://www.eeoc.gov/facts/accommodation.html>



Need help with finding a reasonable accommodation?



[JAN— Job Accommodation Network](http://www.jan.org)
(800) 526-7234 or TTY (877) 781-9403
<http://AskJAN.org>

Regulatory Updates from the U.S. Department of Justice and the U.S. Equal Employment Opportunity Commission

ADA Amendments Act of 2008 Summary

The ADA Amendments Act (ADAAA) became effective on January 1, 2009. Congress passed the ADAAA in response to numerous court cases that had viewed the definition of disability narrowly and, therefore, denied protection without analyzing whether discrimination had occurred. The ADAAA focuses on the discrimination at issue instead of the individual's disability. It makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of Equal Employment Opportunity Commission's (EEOC) ADA regulations.

The ADAAA retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that the statutory terms should be interpreted. Most significantly, the ADAAA:

- Directs EEOC to revise the portion of its regulations that defines the term "substantially limits" as meaning "significantly restricts," finding that the EEOC's current definition sets too high a standard for protection;
- Expands the definition of "major life activities" by including two non-exhaustive lists:
 - The first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
 - The second list provides that major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, respiratory, neurological, brain, circulatory, endocrine, and reproductive functions") are considered to be major life activities;
- States that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- Clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- Provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and

minor;

- Provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and
- Emphasizes that the definition of "disability" should be interpreted broadly.

Source: [EEOC Notice About Americans with Disabilities Act Amendments Act of 2008](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm) - www.eeoc.gov/laws/statutes/adaaa_notice.cfm

Additional Resources—ADAAA

[Notice Concerning The Americans With Disabilities Act \(ADA\) Amendments Act of 2008](http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm)

http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm



ADAAA Resource Sheet

- [Word File of ADAAA Resource Sheet](http://sedbtac.org/ada/publications/adaaa_resources.doc)
http://sedbtac.org/ada/publications/adaaa_resources.doc
- [Text file of ADAAA Resource Sheet](http://sedbtac.org/ada/publications/adaaa_resources.txt)
http://sedbtac.org/ada/publications/adaaa_resources.txt

[ADA Amendments Act Proposed Rules - Q&A with EEOC \(Audio Conference Archive\)](http://ada-audio.org/Archives/AudioConference/index.php?type=transcript&id=2009-10-20&app=1)

<http://ada-audio.org/Archives/AudioConference/index.php?type=transcript&id=2009-10-20&app=1>

Settlement Agreements under Project Civic Access



The following Settlement Agreements resolve cases that are part of the Department of Justice's [Project Civic Access](#), a wide-ranging effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. In addition to improving access to public facilities, several of the settlements include training and response to 9-1-1 and relay calls, access and inclusion to emergency services, and accessible websites.

- [Glynn County, GA Settlement Agreement under the ADA](http://www.ada.gov/glynn_co_pca/glynnco_sa.htm)
(11/02/09) http://www.ada.gov/glynn_co_pca/glynnco_sa.htm
- [City of Atlanta, GA Settlement Agreement under the ADA](http://www.ada.gov/atlanta_pca/atlanta_sa.htm)
(12/08/09) http://www.ada.gov/atlanta_pca/atlanta_sa.htm
- [City of Savannah, GA Settlement Agreement](http://www.ada.gov/savannah.htm)
(1/30/02) <http://www.ada.gov/savannah.htm>
- [Chatham County, GA Settlement Agreement under the ADA](http://www.ada.gov/ChathamSA.htm)
(8/05/04) <http://www.ada.gov/ChathamSA.htm>



Source: <http://www.ada.gov/civicac.htm>

Training Opportunities

Respectful Interaction and Excellent Customer Service for Georgians with Disabilities

The Georgia State ADA Coordinator's Office and the Institute for Human Development and Disability are offering training on "Respectful Interaction and Excellent Customer Service for Georgians with Disabilities." For more information and to schedule a training, contact the State ADA Coordinator's Office at Phone (404) 657-7313 [voice], TTY (404) 657-9993, or [Email gaada@gsfic.ga.gov](mailto:gaada@gsfic.ga.gov).

ADA National Network (DBTAC) Training Series

[ADA Audio Conference Series](#)

- August 17, 2010 ~~ 2:00 p.m. to 3: 30 p.m. ET
ADA & After School and Daycare Programs for children with disabilities
- September 21, 2010 ~~ 2:00 p.m. to 3: 30 p.m. ET
Corrections and the ADA: Balancing the rights of people with disabilities while incarcerated

Source: <http://ada-audio.org/>

[ADA Legal Webinar Series](#)

- September 29 , 2010 ~~ 2:00 p.m. to 3: 30 p.m. ET
Litigation under the ADA Amendments Act
**Deadline to Register - September 28, 2010

Source: <http://ada-audio.org/Webinar/ADALegal/>

ADA National Network (DBTAC) Online Courses

[ADA Title II Tutorial](#)

A free tutorial on the requirements applicable to State and Local government under Title II of the Americans with Disabilities Act (ADA).

Cost: \$0 – Free

Credit: CEU 0.3

Source: <http://adacourse.org/title2/>

[Accommodating People with Cognitive Disabilities in the Workplace Online Workshop](#)

This online workshop provides an enhanced understanding of people with cognitive

disabilities, makes sense of the ADA and legal responsibilities related to people with cognitive disabilities, and provides tools that can be applied in the workplace when addressing accommodations for people with cognitive disabilities.

Cost: \$0 - Free (Registration required).

Source: <http://adagreatlakes.org/Presentations/CognitiveDisabilities/slides.asp>

[Americans with Disabilities Act Employment Course \(Title I\)](#)

A free, self-paced webcourse available 24/7 on the employment requirements in the Americans with Disabilities Act, including the important changes made to the ADA by the ADA Amendments Act of 2008. Continuing education credits are available. The course takes approximately 2.5 hours and includes real life scenarios, quizzes and a final exam.

Cost: \$0 – Free (Registration required).

Credit:

- HR Certification Institute: 2.5 credit hours toward PHR, SPHR, and GPHR recertification
- Commission on Rehabilitation Counselor Certification (CRCC): 2.5 credit hours

Source: <http://adaemploymentcourse.org>

Resources

[ADA National Network: Public Service Announcement \(PSA\) Series](#)

Quick and compelling glimpses into the daily lives of people with disabilities.

- [I Am—“Who’s a person with a disability?”](#)
- [You're Hired –“What do I need to know about hiring someone with a disability?”](#)
- [Where's Brett?—“What’s keeping Brett from joining his birthday party?”](#)
- [Service Animals Welcome—“What’s that dog doing in a supermarket?”](#)
- [Good Morning Class—“College students get a surprise.”](#)
- [Day in Student Life—“On her way to graduate school.”](#)

Source: <http://www.youtube.com/user/DBTACSoutheastADA>

[People with Disabilities in the Workplace](#)

Facts and figures about employees with disabilities tell only one part of the story.

Every month the DBTAC: Southeast ADA Center provides a real-life outlook on

the workplace experiences of employees with a variety of disabilities in the workplace. Individuals profiled to date include: Patricia V., Outreach Training Coordinator; Rene C., Executive Director of the Alliance of Disability Advocates; Francine B., Executive Assistant to the Vice President, IBM Global Services. If you are interested in having your employment experience profiled in this series, please submit your name, phone number with area code, e-mail, and a brief profile summary to to:sedbtacproject@law.syr.edu.

Source: http://sedbtac.org/ada/ada_in_action/empprofiles.php

[Ten Employment Myths: Information about the Americans with Disabilities Act](#)

This new 17-minute video for employers uses a question-and-answer format to explain the ADA in common sense terms and refute unfounded misconceptions and fears that many employers may have about hiring people with disabilities. The video is available online in dial-up and high speed download formats with open captions and audio description.

Source: U. S. Department of Justice

[Creating an Inclusive Environment: A Handbook for the Inclusion of People with Disabilities in National and Community Service Programs](#)

The National Service Inclusion Project (NSIP) developed a comprehensive handbook which, although intended to enhance the participation rate of people with disabilities within service organizations, has excellent content for greater inclusion of people with disabilities within workplaces. Handbook topics include: Inclusive Recruitment, Inclusive Interviewing, Accommodations and Management and Retention.

Source: National Service Inclusion Project (NSIP)

Acknowledgment and Disclaimer:

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