

2016

**State of Utah, Plaintiff/ Appellee, v. Dennis Rolland Atkinson,  
Defendant/ Appellant.**

Utah Court of Appeals

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Case No. 20150640-CA

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IN THE  
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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

DENNIS ROLLAND ATKINSON,  
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Brief of Appellee

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Consolidated appeals from prison sentences for failure to register as a sex offender, identity fraud, forgery, and two counts of driving while intoxicated, all third degree felonies in the Fifth Judicial District, Iron County, the Honorable Keith C. Barnes presiding

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Oral Argument Not Requested

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- Americans with Disabilities Act of 1990, 42 U.S.C.A. §§12101-12213 (West 2008)
- 42 U.S.C.A. § 2000e-5 (West 2009) (Equal Employment Opportunity Commission Enforcement Provisions)
- 42 U.S.C.A. §2000e-16 (West 2014) (Equal Employment Opportunity Commission Employment by Federal Government)

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STATE OF UTAH,  
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DENNIS ROLLAND ATKINSON,  
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Brief of Appellee

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STATEMENT OF JURISDICTION

Defendant appeals from his sentences for failure to register as a sex offender, identity fraud, forgery, and two counts of driving while intoxicated, all third degree felonies. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2016).

INTRODUCTION

While on probation, Defendant went on a crime spree, amassing nineteen different charges. Defendant pleaded guilty to five charges in exchange for the State dismissing the rest.

The trial court sentenced Defendant to prison, consistent with the recommendation in the presentence investigation report (PSI). The PSI

outlined Defendant's fifteen year criminal history, his numerous probation and parole violations, and his current criminal behavior.

Defendant now argues that the court abused its discretion by sentencing him to prison. First, Defendant argues that the Americans with Disabilities Act and Rehabilitation Act required the court to grant him a downward departure in the charges, jail time, or probation to accommodate his disabilities. Second, Defendant argues that the trial court did not properly consider his mitigating circumstances, in particular, his disabilities, his extenuating family circumstances, and his remorse.

### STATEMENT OF THE ISSUE

Did the trial court abuse its discretion when it sentenced Defendant to prison rather than probation or jail time?

*Standard of Review.* Appellate courts "review a trial court's decision to deny probation under an abuse of discretion standard." *State v. Killpack*, 2008 UT 49, ¶18, 191 P.3d 17.



## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes are reproduced in Addendum A:

- Rehabilitation Act of 1973, §§2-701, as amended, 29 U.S.C.A. §§791-794(f) (West 2014)
- Americans with Disabilities Act of 1990, 42 U.S.C.A. §§12101-12213 (West 2008)
- 42 U.S.C.A. § 2000e-5 (West 2009) (Equal Employment Opportunity Commission Enforcement Provisions)
- 42 U.S.C.A. §2000e-16 (West 2014) (Equal Employment Opportunity Commission Employment by Federal Government)

### STATEMENT OF THE CASE<sup>1</sup>

#### A. Summary of facts.

##### *Background*

From September 2014 to May 2015, Defendant amassed nineteen criminal charges in five separate cases. R700:3-1, 92; R701:2-1; R293:2-1; R294:3-1; R765:3-5. In September 2014, at the beginning of his eight month

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<sup>1</sup> Because Defendant pleaded guilty, the facts are taken from the pleadings, including the presentence investigation report.

Also, this is a consolidated appeal from Defendant's convictions in cases 141500700, 141500701, 151500293, 151500294, and 141500765. Where necessary, the State will cite to the records as R700:\_\_, R701:\_\_, R293:\_\_, R294:\_\_, and R765:\_\_. Because the five cases proceeded together below, the records are largely duplicative. To avoid redundancy, the State will cite to R700 unless otherwise necessary to explain any procedural difference in an individual case.

crime spree, Defendant was on probation for a 2009 theft conviction. R700:92. In November 2014, in three unrelated cases not part of his crime spree, Defendant was convicted of (1) DUI, a class B misdemeanor (case no. 145001379); (2) damage/interrupt a communications device, a class B misdemeanor, and intoxication, a class C misdemeanor (case no. 14100380); and (3) assault, a class B misdemeanor; intoxication and disorderly conduct, both class C misdemeanors (case no. 14100506); and placed on three new probations. R700:92. Thus, from November 2014 to May 2015, Defendant was on four different probations. R700:92.

*Defendant's crime spree*

Case 141500701: On September 22, 2014, Defendant's girlfriend called police reporting that Defendant, after drinking heavily, assaulted her, then drove off. R701:86-85. Defendant was subsequently charged with felony driving under the influence and driving as an alcohol-restricted person. R701:2-1, 8-7.

Case: 141500700: Ten days later, on October 2, 2014, Defendant caused a single car roll-over accident. R700:85-84. He was subsequently charged with driving under the influence, failure to stay in one lane, driving as an alcohol-restricted driver, having an open container in his car, and failure to wear a safety belt. R700: 13, 85-84.



**Case 141500765:** On December 10, 2014, Defendant stole a beer from a convenience store. R765:74-73. While investigating that theft, police discovered that Defendant had failed to update his sex offender registration. R765:74-73. Defendant was then charged with retail theft and failure to register as a sex offender. R765:5-3.

**Cases 151500293, 151500294:** Six months later, on May 3, 2015, Defendant, who is listed as a prescription drug seeker, went to the hospital, registered under his brother's name and received narcotic pain medications and a Percocet prescription. R294:3-1; 50-49. From this visit alone, Defendant's hospital bill was over \$6,000. R294:3-1, 65 (State's Exhibit 1), 66.

Eight days later, on May 11, 2015, Defendant returned to the hospital and again registered as his brother, sought medical care, and received another prescription for Percocet. R293:45. Defendant's brother became aware of these incidents only when the hospital called him requesting payment of the bill. R294:50, 65 (State's Exhibit 2). From these two incidents, Defendant was charged with two counts of identity fraud, two counts of forgery, four counts of obtaining a prescription under false pretenses, one count of felony theft and one count of misdemeanor theft. R293:2-1; R294:50.

**B. Summary of proceedings.**

As part of a plea agreement, Defendant pleaded guilty to identity fraud, forgery, failure to register as a sex offender, and two counts of driving while intoxicated cases. In exchange, the State agreed to dismiss the other fourteen charges. R293:32; R294:32; R765:59; R700:74; R701:73.

*AP&P's Recommendation.* AP&P recommended five one-to-five-year statutory prison terms — one prison sentence for each conviction. R700:81-80. AP&P based its recommendation on Defendant's fifteen-year criminal history, his history of violating the terms of probation and parole, that his attitude was not conducive to community supervision and his history of institutional disciplinary actions while incarcerated. R700:81-80, 89.

The PSI detailed Defendant's extensive criminal history. Defendant was first placed on probation in 1999 for a possession-of-marijuana conviction. R700:90. In 2001, Defendant was placed on probation again for forcible sexual abuse. R700:90. As part of that probation, Defendant was ordered to complete substance abuse and sex offender treatment. R700:91. Defendant violated the terms of that probation multiple times. R700:90-91. Two of his violations were DUI convictions. R700:90. In total, Defendant was revoked and reinstated three separate times on that one probation.

R700:90. Finally, in 2004, Defendant was sent to prison to complete his sentence. R700:90, 92.

He was paroled in May 2006, but his parole was revoked four times. R700:92.<sup>2</sup> His parole was first revoked in October 2006, only five months after it had been granted. R700:92. He was paroled again in January 2009. *Id.* Following his 2009 theft conviction, Defendant's parole for forcible sexual abuse was revoked for a second time in July 2009. *Id.* In June 2010, he was paroled for a third time, and seven months later, in December 2010, he was revoked again. *Id.* He was paroled for a fourth time in March 2011, but revoked again in May 2012 then sent back to prison. *Id.* In January 2013, Defendant was released from prison. R700:93.

In February 2014, Defendant was charged with DUI. Defendant pleaded guilty to this charge on November 6, 2014 and was sentenced to probation. R700:92. As part of that probation, Defendant was ordered to get a substance abuse assessment and to complete treatment. R700:92. In April 2014, Defendant was charged with intoxication and damage to a communication device. *Id.* On November 13, 2014, Defendant pleaded guilty to those charges and was sentenced again to probation. *Id.* As part of

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<sup>2</sup> The specific reasons for each of Defendant's parole revocations are unclear from this record.



that probation, Defendant was ordered to complete domestic violence treatment. *Id.* In May 2014, Defendant was charged with assault, intoxication, and disorderly conduct and was sentenced to probation for those crimes on November 13, 2014. *Id.*; see Iron County Justice Court Docket, Case No. 141000506 at 5-6 (available on Xchange)<sup>3</sup>. Following Defendant's September 2014 through May 2015 crime spree, orders to show cause were filed in each of these cases. R700:92.

Finally, at the time the PSI was filed in this case, Defendant still had a pending class B misdemeanor theft charge. R700:91.

The PSI also detailed Defendant's interview with AP&P. R700:89. Defendant explained that he committed his crimes because he was self-medicating to treat his disability from a back injury. *Id.* He explained that proper treatment for his back pain and health insurance would help him avoid future poor life choices and to receive the treatment he needs. *Id.*

Last, AP&P interviewed Defendant's victim, his brother. R700:93. Defendant's brother said that Defendant was a constant threat to the

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<sup>3</sup> Utah R.Evid. 201 allows this Court to take judicial notice that Defendant was placed on probation in case number 141000506. See *Mel Trimble Real Estate v. Monte Vista Ranch, Inc.*, 758 P.2d 451, 456 (Utah Ct. App. 1988) (interpreting Rule 201, Utah Rules of Evidence allows this Court to take judicial notice).

community, a liar, and a thief. He warned that if Defendant were released, he would continue to commit crimes. *Id.* Defendant's brother stated that Defendant should remain incarcerated until he is no longer a threat to society. *Id.*

*Sentencing hearing.* Prior to the sentencing hearing, Defendant wrote a letter to the court asking for leniency because he was "just declared disabled" and his fiancé has cancer. R293:57-56. Defendant told the court that he would accept "whatever punishment the court deems fit." R293:56. Defendant submitted a letter from a deputy at the jail who explained that Defendant assisted him when he was assaulted by another inmate. R700:100. Defendant also provided the court a copy of his substance abuse assessment. R700:12-15.

At the consolidated sentencing hearing, Defendant's counsel argued for probation with jail time and a substance abuse treatment requirement. R106:4. Counsel argued that all of Defendant's crimes resulted from his substance abuse issues, and that Defendant should have "one last final opportunity to show" that "he is serious about treatment this time." *Id.* Counsel alternatively argued for concurrent prison terms. *Id.*

Defendant then addressed the court, asking "for a chance." R106:5. Defendant told the court that he was "committed to do the right thing from

here on out.” *Id.* Defendant explained that because his fiancé has cancer, he needs “to be there for” his family. R106:5. Defendant also explained that he was “recently declared disabled” from his back injuries, that he needed surgery, and that he committed his crimes because he was “self-medicating” for the pain from his back injuries. R106:6.

The State argued for prison sentences as recommended by AP&P and asked the court to run some of the sentences consecutively. R106:3. The State informed the court that Defendant had been to prison, been on parole, had “several violations on several occasions” while on probation and parole, and that he has had “several institutional disciplinary actions while he’s been incarcerated.” R106:6.

The court then addressed Defendant. The court explained that it hoped that Defendant would “make better decisions down the road.” R106:7. But the court explained that it was “not acceptable” for Defendant to commit so many crimes in such a short period. R106:7. The court explained that it was “concerning . . . when someone has committed th[is] number of offenses and what the offenses are.” R106:7. The court explained that it was concerned that Defendant had committed crimes against his own brother. *Id.* And the court explained that it was concerned with keeping the community safe. R106:7.

The court then sentenced Defendant to four concurrent prison terms of zero-to-five years for his failure to register as a sex offender, forgery, and two DUI convictions. R106:7-8. The court sentenced Defendant to a consecutive prison term of zero-to-five years for his identity fraud conviction. R106:7-8.

Defendant timely appealed. R700:115-114.

### **SUMMARY OF ARGUMENT**

Defendant argues that the trial court abused its discretion by sentencing him to prison instead of a more lenient, non-prison sentence. Defendant argues that the Rehabilitation Act (Rehab Act) and the Americans with Disabilities Act (ADA) apply to criminal sentencing decisions. Defendant argues that the trial court was required to accommodate him under the Acts granting him a downward departure in the charges, jail time, or probation rather than sentencing him to prison. Additionally, Defendant argues that the trial court did not properly consider his mitigating circumstances, in particular, his disabilities, his extenuating family circumstances, and his remorse.

Defendant's ADA and Rehab Act claim is unpreserved and he does not argue plain error. This Court should not consider it.



Regardless, Defendant has not shown that the sentencing court erred, let alone plainly so. Neither the Rehab Act nor the ADA applies to a criminal sentencing decision.

The Rehab Act applies only to the federal agencies or state agencies receiving federal funds. And no evidence supports that the trial court was receiving any federal funds.

The ADA legislates for equal access in a civil context and is designed to protect individuals with disabilities from discrimination. The ADA does not contemplate any application to criminal law. And it certainly does not contemplate that career criminals with disabilities remain free to reoffend no matter how many opportunities for freedom and reform they have squandered in the past. Further, the ADA requires giving disabled persons a “reasonable accommodation.” Yet another release into society for someone who uses those releases to commit more crimes is not a reasonable accommodation.

Even if the ADA did apply to the trial court’s sentencing decision, Defendant would not qualify for protection under them. Defendant is not a qualified disabled person under either Act.

Defendant also argues that the trial court did not give his mitigating factors adequate weight. But the record shows that the trial court reviewed

all of Defendant's mitigating circumstances. And because has an extensive criminal record riddled with probation and parole violations and committed the numerous crimes in this case while on probation, Defendant has not shown – and cannot show – that the trial court abused its discretion when it decided not to give Defendant another chance to commit more crimes while on probation.

### ARGUMENT

DEFENDANT'S UNBROKEN RECORD OF PROBATION AND PAROLE VIOLATIONS, AND HIS LENGTHY CRIMINAL RECORD—INCLUDING HIS PENCHANT FOR COMMITTING CRIMES WHILE ON PROBATION OR PAROLE—LEFT THE TRIAL COURT WITH LITTLE CHOICE BUT TO DENY HIS REQUEST FOR "ONE LAST FINAL OPPORTUNITY" AT PROBATION

Defendant challenges only his sentence. He argues that the trial court abused its discretion by denying his request for probation so he would have "open last final opportunity to show" that "he is serious about treatment this time." R106:4; Br. Appt. 44-45. Defendant argues that the Rehabilitation Act (Rehab Act) and the Americans with Disabilities Act (ADA) both (1) apply to criminal sentencing decisions, and (2) required the trial court to accommodate his disabilities by giving him a downward departure in the

charges, jail time or probation.<sup>4</sup> Br. Aplt. 31-40. And he argues that the trial court improperly rejected his bid for yet another chance at probation by not giving sufficient weight to his mitigating circumstances; in particular, his disabilities, his extenuating family circumstances and his remorse. Br. Aplt. 40, 45. But given his unbroken record of failure on probation and parole, the number and types of crimes Defendant committed in his fifteen year criminal history, and the number and types of crimes he committed in only eight months before the court decided not to give him another chance at probation, the trial court properly exercised its discretion to deny him "one last final opportunity" at probation. R106:4.

**A. The Americans with Disabilities Act and the Rehabilitative Act do not apply to criminal proceedings at all and certainly do not require freeing a proven criminal so he can commit more crimes.**

Defendant argues that the trial court failed to accommodate him under the ADA and the Rehab Act when it sentenced him to prison instead of a non-prison sentence. Br. Aplt. 39. But Defendant's claim is unpreserved, and this Court should not consider it. In any event, neither Act applies to a criminal sentencing decision at all. And even when they do apply, they

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<sup>4</sup> Defendant's brief does not specify which versions of the Rehab Act and the ADA statutes or the publisher that he relies on. Thus, the State assumes he is referring to the most recent versions and cites to the most recent version of the annotated code throughout its brief.

require granting only a *reasonable* accommodation. Giving someone probation who has consistently failed at probation is not reasonable.

**1. Defendant's ADA and Rehab Act claim is unpreserved;  
thus, this Court should not consider it.**

Claims "not raised before the trial court may not be raised on appeal." *State v. Garner*, 2008 UT App 32, ¶11, 177 P.3d 637 (citation omitted). To preserve an issue for appeal, a defendant must object and the "objection must 'be specific enough to give the trial court notice of the very error' of which [the party] complains." *Id.* (quoting *State v. Bryant*, 965 P.2d 539, 546 (UT App. 1988)). If a defendant "does not argue that exceptional circumstances or plain error justifies review" of an unpreserved issue, this Court will "decline to consider it on appeal." *State v. Pledger*, 896 P.2d 1226, 1229 n.5 (Utah 1995) (internal citation omitted).

Below, Defendant argued only that his substance abuse played a role in the commission of his crimes; thus, on the court *should* give him probation to receive substance abuse treatment. R106:4. But Defendant never argued that the ADA or Rehab Act *required* giving him probation. Thus, Defendant failed to preserve this claim. *See State v. Bradley*, 2014 UT App 295, 341 P.3d 946 (unpreserved claim where Bradley only argued below that the trial court should sentence him to probation because of his health and not that a prison sentence was inappropriate because the prison



could not provide proper health care); *In re M.S.*, 174 Cal. App. 4th 1241, 1253, 95 Cal. Rptr. 3d 273 (2009) (no preservation where M.S. did not make ADA argument or request reasonable accommodation below). And Defendant does not argue on appeal that exceptional circumstances or plain error justifies review of the claim. Thus, this Court should not consider it.

**2. The Rehab Act and the ADA do not apply to a criminal sentencing decision.**

Defendant argues that the trial court violated the Rehab Act and the ADA by sentencing him to prison. Br. Appt. 33-35. Defendant believes that the Acts' reasonable accommodation requirement obligated the trial court to sentence him to no more than a downward departure in the charges, probation, or jail time. *Id.*

But neither Act applies. The Rehab Act and ADA apply only to civil claims, not to criminal proceedings or a trial court's criminal sentencing decision.

The Rehab Act cannot apply to Defendant's state court sentencing decision because it applies only the federal agencies or state agencies receiving federal funds. 29 U.S.C.A. §§791-794(f) (West 2014, 1992). Defendant has not shown that the sentencing court was receiving federal funds.

The ADA is the state and local government, and private sector counterpart to the Rehab Act. 42 U.S.C.A. §§12101, 12111 (West 2008). But it likewise does not apply to the state criminal sentencing proceedings. 42 U.S.C.A. §12101 (West 2008). Like the Rehab Act, the ADA prohibits discrimination and ensures equal opportunities for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. 42 U.S.C.A. §12101. The ADA requires public entities that provide a service, program, or activity to make reasonable accommodations when necessary to allow disabled individuals have equal access. 42 U.S.C.A. §§12131-32 (West 1990).

To state an ADA claim, a *plaintiff* must prove in a civil suit that he is a qualified disabled person who was denied access to a program or activity because of his disability. *Spencer v. Utah State Bar*, 2012 UT 92, ¶19, 293 P.3d 360. A *plaintiff* is limited to seeking *civil and administrative* remedies, like injunctive relief or back pay. 29 U.S.C.A. §794(a) (civil remedies for Rehab Act violations); 42 U.S.C.A. §§12133 (ADA and Rehab Act remedies the same); 42 U.S.C.A. §2000e-16 (West 2014) (EEOC enforces ADA through civil suit, injunctive relief, civil appeals); 42 U.S.C.A. §2000e-5 (f), (g), (j) (West 2009) (same); see e.g., *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (civil suit where wheelchair bound plaintiffs sued for courthouse access); *In Re*

K.C, 2015 UT 92, ¶17, 362 P.3d 1248 (civil suit challenging parental rights termination holding that the Division of Child and Family Services (DCFS) must comply with ADA); *Spencer*, 2012 UT 92, ¶24 (civil suit where state bar not required to forgo practice requirement as reasonable accommodation); *Frame v. City of Arlington*, 657 F.3d 215, 231 (5th Cir. 2011) (civil suit seeking wheelchair accessible sidewalks). Neither Act allows for any criminal remedy. 29 U.S.C.A. §794a; 42 U.S.C.A. §12133; see *State v. McCammon*, 276 P.3d 838, 892 (Kan. Ct. App. 2012) (unpublished) (neither the Rehab Act nor the ADA provide for enforcement of anti-discrimination procedures as part of a criminal case).

*Defendant* brought no civil action as a plaintiff seeking a civil remedy. Instead, the State brought a criminal action as a plaintiff against Defendant. The ADA contemplates no application in the criminal context—especially not to a trial court’s sentencing decision. 42 U.S.C.A. §§12101-12213; *Wilson v. Commonwealth*, 31 Va. App. 200, 202, 522 S.E. 2d 385 (1999) (“nowhere in the ADA does it appear that Congress intended the Act to provide rights that could be asserted in a criminal proceeding or a probation revocation hearing.”); *M.S.*, 174 Cal. App. 4th at 1252-53 (ADA claim inapplicable to juvenile dispositional hearing); *McCammon*, 276 P.3d at 4 (“clearly only provides relief in civil proceedings”).

And the ADA's plain language limiting it to the civil context promotes sound policy. To stretch the ADA's reach to criminal proceedings "would indirectly but unmistakably undermine the laws that regulate dangerous behavior." *Despears v. Milwaukee County*, 63 F.3d 635, 637 (7th Cir. 1995) (Judge Richard Posner, writing). Applying the ADA to limit criminal sanctions would allow disabled persons to escape appropriate criminal penalties for their criminal behaviors, giving them unequal preferential treatment compared to healthy persons. *Id.* Under Defendant's reading of the ADA, an alcoholic who drives drunk would face a lighter sentence than a healthy person simply because it is more difficult for the alcoholic to avoid drunk driving behavior. *Id.* But of the two, the alcoholic's lack of control makes him the greater threat to the public. Treating him more leniently than the non-alcoholic drunk driver would undermine the purpose of both the criminal law and the ADA. *Id.*

Regardless, Defendant claims the trial court maintained an "affirmative obligation to accommodate" him in its capacity as a public entity. Br. Aplt. 33. But Defendant cites no authority that states that the ADA applies to a criminal sentencing decision. Nor does Defendant cite to any authority that states that the trial court violates the ADA by imposing a statutory sentence.



Because neither Act applies, nor should apply, to sentencing decisions, Defendant's ADA challenge to his sentence fails.

**3. Even if the ADA applied to a trial court's sentencing decision, it would not require giving probation to a career criminal with an unbroken record of probation and parole violations.**

Defendant argues that he is a qualified disabled individual under the Acts, thus, the trial court had an "affirmative obligation to accommodate him" by giving him a non-prison sentence. Br. Aplt. 33. But even if the ADA actually applied to a trial court's criminal sentencing decision, it would not have obligated the court to provide Defendant a non-prison sentence.

Under the ADA, a person is only entitled to a reasonable accommodation if he is a qualified disabled individual and the accommodation is necessary and reasonable. *Lane*, 541 U.S. at 512; see 42 U.S.C.A. § 12111(9), (10). Defendant is not a qualified disabled person. And a "reasonable accommodation" would not include giving him probation after so many failed prior probations and paroles, and his lengthy criminal history.

To prove that he is a qualified disabled person, Defendant must show that he has a recognized impairment and that impairment substantially limits one or more major life activities. *Carter v. Pathfinder Energy Services, Inc.*, 662 F.3d 1134, 1142 (10th Cir. 2011); 42 U.S.C.A.

§12112(2). A recognized impairment is any “physiological disorder or condition . . . affecting one or more of the following body systems:” “neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, [or] digestive.” 29 C.F.R. § 1630.2(h)(1) (West 2011). Major life activities are any function such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 29 C.F.R. § 1630.2(i) (EEOC definition); *see Dillon v. Mountain Coal Co.*, 569 F.3d 1215, 1218 (10th Cir. 2009) (working is a major life activity); *Holt v. Grand Lake Mental Health Ctr., Inc.*, 443 F.3d 762, 767 (10th Cir. 2006) (major life activity includes feeding oneself, driving, grooming, and cleaning house). And “[a]n impairment is substantially limiting when it renders an individual either unable or significantly restricted in her ability to perform a major life activity compared to the average person in the general population.” *Johnson v. Weld Cnty., Colo.*, 594 F.3d 1202, 1218 (10th Cir. 2010) (internal quotation omitted). An individual must prove that his impairment is substantial. *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 195 (2002), superseded by statute, ADA Amendments Act of 2008, Pub.L. No. 110-325, 122 Stat. 3553 (redefining “substantially limits”) (“insufficient for individuals attempting to prove disability status . . . to merely submit evidence of medical diagnosis of an impairment”). Thus,

merely having a medical condition does not make one disabled for purposes of the Acts. *See id.*

Here, Defendant fails to show that his back injury, drug abuse, and alcoholism qualify him as disabled under either Act. No objective record evidence supports a finding that Defendant's back issues were a qualifying disability. Although Defendant testified that he was "recently declared disabled from back injuries," that he needed surgery, and his substance abuse evaluation documented his self-report of this injury, that is not enough to show that he is a qualified-disabled-person. R106:4; R700:13 (substance abuse evaluation where Defendant describes back injury but no supporting medical records provided); *compare Carter*, 662 F.3d at 1142-1145 (Carter proved that he was a qualified disabled individual through medical testimony that he had diabetes and hepatitis C and that the diseases affected his digestive and circulatory systems and prevented him from performing common household tasks); *Carmona v. Sw. Airlines Co.*, 604 F.3d 848, 857-59 (5th Cir. 2010) (plaintiff's testimony that his arthritis made him unable to walk, along with corroborating medical records, was enough to conclude that plaintiff was a qualified disabled individual).

Defendant also cites no objective medical evidence or testimony to show that his back issues prevent him from performing any major life

activity. Indeed, the record shows that Defendant is quite capable of performing major life activities. Defendant committed all of his crimes here despite his back injury. *See* R700:13 (date of injury unclear but substance abuse assessment implies occurred prior to his crimes). And despite exacerbating his back injury in a car accident when he committed his second DUI, Defendant was able to ride a bicycle to his substance abuse assessment appointment only a month and a half later. R700:12, 13. Given that Defendant was able to continue to commit crimes and perform strenuous physical activity, the evidence before the court showed that Defendant's injury did not substantially limit his major life activities. *See Johnson*, 594 F.3d at 1218 (impairment is substantially limiting when an individual is unable or significantly restricted in ability to perform a major life activity). Thus, Defendant's back issues did not qualify him for a reasonable accommodation under the ADA.

Nor has Defendant provided any evidence that he qualified because of his drug abuse and alcoholism. Alcoholism and drug abuse protections only apply to the workplace, not to services, programs, or activities. 42 U.S.C.A. § 12114 (c) (covered entities are employers). And there, the ADA will protect an employee only if he is participating in or has successfully completed supervised drug rehabilitation program and no longer using

illegal drugs. 42 U.S.C.A. § 12114 (b)(1),(2); *see e.g., Despears*, 63 F.3d at 637 (no ADA or Rehab Act protection for employee who lost driver's license after 4th DUI conviction and was demoted to a job that did not require driving ); *Coates v. Dept. of the Navy*, 74 M.S.P.R. 362, 370 (1997) (employee driving under the influence of alcohol in government van while on work duty was not qualified person with disability under Rehab Act and termination was proper penalty).

Defendant is not seeking protection in the workplace. He points to no evidence that he is in rehabilitation or has already completed a rehabilitation program. To the contrary, he asked for "one last final opportunity" to do so. R106:4. And Defendant has not shown that he is no longer using alcohol. *See* 42 U.S.C.A. § 12114. Thus, Defendant is not a qualified disabled person under the Acts.

And even if Defendant could have made it passed the qualified disabled person hurdles, giving someone probation with Defendant's record would not have been a reasonable accommodation. *Lane*, 541 U.S. at 512; *see* 42 U.S.C.A. §12111(9),(10). A reasonable accommodation requires only "reasonable modifications" that do not "fundamentally alter the nature of the service provided." *Lane*, 541 U.S. at 512; *see* 42 U.S.C.A. §12111(9),(10); *see e.g., Spencer*, 2012 UT 92, ¶30 (waiver of attorney practice requirement for



state bar admittance not a reasonable accommodation). A reasonable accommodation is only required when a disabled individual is not receiving equal access to programs, services, or activities. *Lane*, 541 U.S. at 531.

Here, the trial court had no obligation to reasonably accommodate Defendant with a non-prison sentence. *Lane*, 541 U.S. at 531 (states must take reasonable measures to accommodate disabled persons, but no requirement to employ “any and all means” to accommodate). At bottom, Defendant argues that a non-prison sentence is required because of his back injury and his substance abuse. Br. Appt. 33. But Defendant provides no evidence that the prison could not provide medical services for his back and substance abuse treatment. *See Bradley*, 2014 UT App 295, ¶6, (trial court did not abuse discretion for sentencing elderly infirm defendant to prison where AP&P officer testified that defendant would receive medical care). Indeed, the prison provides such services to inmates every day. *See id.* (explaining prisoners receive medical assessments at intake, medications, and are housing according to medical needs); Utah Department of Corrections Program for Inmates, [http://corrections.utah.gov/index.php?option=com\\_content&view=article&id=1060&Itemid=185](http://corrections.utah.gov/index.php?option=com_content&view=article&id=1060&Itemid=185) (last visited July 6, 2016) (award winning substance abuse program offered). Thus, because Defendant has access to medical

care and substance abuse treatment in prison, the trial court was under no obligation to sentence Defendant differently as a reasonable accommodation.

Further, Defendant's has failed supervised release and substance abuse treatment almost every time a court has granted it. And he has historically and in this case currently, used his releases on probation and parole to commit more crimes. Yet another release into society for someone who uses those releases to commit more crimes is not a reasonable accommodation. It would not remedy any unequal treatment for Defendant. But it would certainly be unfair to the persons he would likely victimize as has victimized others in the past.

**B. The trial court properly considered Defendant's mitigating factors when it sentenced him to prison.<sup>5</sup>**

Defendant argues that the trial court improperly considered his disabled status, family circumstances, and remorse. Br. Aplt. 39-40, 42, 44. Defendant argues that his mitigating factors support a non-prison sentence of probation, or possibly with jail time. Br. Aplt. 44-45.

At bottom, Defendant disagrees with the trial court's decision that his mitigating factors did not weigh in favor of giving him "one last final opportunity" for success on probation. R106:4; Br. Aplt. 38-45. Given that

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<sup>5</sup> This section responds to sections B, C, and D of Appellant's brief.

Defendant committed all of his crimes while on probation, that he had an extensive criminal record with multiple probation and parole violations, and that the trial court reviewed all of Defendant's mitigating circumstances, Defendant has not shown—and cannot show—that the trial court abused its discretion when it chose not to give him probation this time around.

Trial courts have “wide latitude and discretion in sentencing.” *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997). A sentence will not be overturned “unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion.” *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991 (internal quotation marks and citations omitted); *see also State v. Helms*, 2002 UT 12 ¶8, 40 P.3d 626.

This Court “assumes that ‘the mitigating factors presented to the [sentencing] court were appropriately considered.’ ” *State v. Nichols*, 2016 UT App 52, ¶10, 370 P.3d 575 (*citing State v. Moa*, 2012 UT 28, ¶41, 282 P.3d 985). A trial court is not required to articulate what information it considered or make specific findings in support of its sentencing decision. *Nichols*, 2016 UT App 52, ¶10, (*citing Moa*, 2012 UT 28, ¶40 and *Helms*, 2002 UT 12). A trial court has complete discretion to choose which factors matter

most in sentencing and how to weigh those factors. *See State v. Russell*, 791 P.2d 188, 192 (Utah 1990) (trial courts have discretion in weighing minimum-mandatory sentences because “one factor in mitigation or aggravation may weigh more than several factors on the opposite scale”). *See e.g., Helms*, 2002 UT 12, ¶14 (Helm’s belief that different sentence more appropriate because of mitigating factors is not proof that the trial court did not properly consider all factors); *Woodland*, 945 P.2d at 671 (trial court had no duty to reduce Woodland’s charges because of his mitigating factors of diminished capacity, age, and no prior criminal record); *Bradley*, 2014 UT App 295, ¶6 (no abuse of discretion where Bradley sentenced to prison despite his ill-health where he had long criminal history and failed supervised release at least twice). A sentencing court abuses its sentencing discretion only when “no reasonable [person] would take the view adopted by the trial court.” *State v. Maestas*, 2012 UT 46, ¶36, 299 P.3d 892 *accord State v. Thorkelson*, 2004 UT App 9, ¶12, 84 P.3d 854.

Defendant has not and cannot show that even in light of his mitigating factors, “no reasonable” person would deny probation to someone like him who had consistently failed at probation before and had used his freedom on probation to rack up more crimes and more victims. *See State v. McClendon*, 611 P.2d 728, 729 (Utah 1980) (sentence “should be

appropriate” in light of a defendant’s background, crimes, and “serve the interests of society”). Defendant was on multiple probations when he committed his crimes. R700:92. And Defendant’s habit of violating probation is not new. During his fifteen year criminal history, Defendant was revoked from probation seven times. R700:91-92. On his forcible sex abuse probation alone, Defendant was revoked then reinstated three separate times. R700:92. While on that probation, Defendant continued to commit crimes—committing two DUIs. R700:90.

Defendant’s parole history is equally abysmal. Defendant’s parole was revoked four different times before he was eventually recommitted to prison. R700:91-92. Defendant has failed supervised release almost every time a court has granted it. R700:92. Defendant treats supervised release only as an opportunity to continue to commit crimes, not as an opportunity to get help with his substance abuse issues. This alone supports the trial court’s decision not to give him “one last final opportunity: at probation in order to seek treatment. R106:4.

Moreover, the record shows that the trial court properly considered all of Defendant’s mitigating factors. *See Nichols*, 2016 UT App 52, ¶10 (court assumes mitigating factors were appropriately considered). The trial court reviewed Defendant’s PSI and letters, and heard Defendant’s testimony.

R106:6-7 (trial court referenced letters and PSI); R700:107-108 (judgment says trial court reviewed file in “detail”); *see Nichols*, 2016 UT App 52, ¶10 (trial court does not have to list out factors it considered, this Court assumes mitigating factors appropriately considered). The PSI outlined Defendant’s substance abuse issues, detailing that Defendant has multiple DUI convictions and a prior history of drug and alcohol abuse. R700:82; R700:89 (Defendant’s statement); R700:90-91 (DUI criminal history); 700:94 (substance abuse history). In his letter, Defendant asked the court for leniency and to consider his “remorsefulness and commitment to change” when sentencing him. R293:57. Defendant also explained that he was “tru[ly] sorry” for his crimes, that he “learned from [his] mistakes,” and that any time away from his fiancé was “harsher than any sentence” that the court could give. R293:56. The trial court reviewed a letter from a jailer commending Defendant for assisting him. R106:6-7. Last, the trial court heard Defendant’s testimony that his fiancé has cancer, that he is disabled from a back injury, and that he is “committed to do the right thing from here on out.” R106:5-6.

With this knowledge, the trial court chose to follow AP&P’s recommendation and sentence Defendant to prison. Given this record, there was nothing “inherently unfair” about that decision. *Sotolongo*, 2003 UT



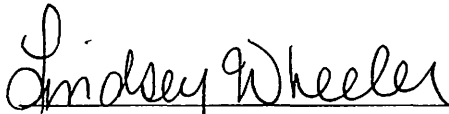
App 214, ¶3. In fact, this record left the trial court with no real choice. While the trial court had a duty to consider Defendant's situation, it also had a duty to protect society from Defendant's relentless criminality. Probation and parole had proven inadequate to that end. Defendant may disagree that the Court should have given him that "one last opportunity" to see whether it would work this time. But that disagreement does not show that a reasonable person could conclude that Defendant had already had opportunities enough. *See Helms*, 2002 UT 12, ¶14 (fact that Helms views his situation differently than the trial court does not prove that the trial court neglected to consider the factors); *Thorkelson*, 2004 UT App 9, ¶12; *State v. Montoya*, 929 P.2d 356, 358 (UT App. 1996).

### CONCLUSION

For the foregoing reasons, the Court should affirm.

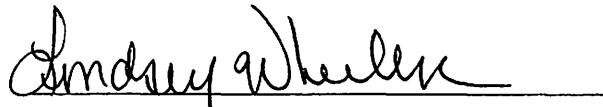
Respectfully submitted on July 11, 2016.

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## CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 6,299 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.

A handwritten signature in cursive script, reading "Lindsey Wheeler", written over a horizontal line.

LINDSEY WHEELER  
Assistant Attorney General

## CERTIFICATE OF SERVICE

I certify that on July 11, 2016, two copies of the Brief of Appellee were

☒ mailed ☐ hand-delivered to:

Matthew Carling  
51 East 400 North  
Building #1  
Cedar City, Utah 84720

Also, in accordance with Utah Supreme Court Standing Order No. 8,  
a courtesy brief on CD in searchable portable document format (pdf):

☐ was filed with the Court and served on appellant.


☒ will be filed and served within 14 days.

Jee Nakamura

# Addenda



# Addendum A

 KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted    Preempted by    Joren v. Napolitano,    7th Cir.(Ill.),    Feb. 07, 2011

KeyCite Yellow Flag - Negative Treatment    Proposed Legislation

United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 791

§ 791. Employment of individuals with disabilities

Effective: July 22, 2014

Currentness

**(a) Interagency Committee on Employees who are Individuals with Disabilities; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions**

There is established within the Federal Government an Interagency Committee on Employees who are Individuals with Disabilities (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Equal Employment Opportunity Commission (hereafter in this section referred to as the "Commission"), the Director of the Office of Personnel Management, the Secretary of Veterans Affairs, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services. Either the Director of the Office of Personnel Management and the Chairman of the Commission shall serve as co-chairpersons of the Committee or the Director or Chairman shall serve as the sole chairperson of the Committee, as the Director and Chairman jointly determine, from time to time, to be appropriate. The resources of the President's Disability Employment Partnership Board and the President's Committee for People with Intellectual Disabilities. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government and the Smithsonian Institution, and to insure that the special needs of such individuals are being met; and (2) to consult with the Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

**(b) Federal agencies; affirmative action program plans**

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Regulatory Commission) in the executive branch and the Smithsonian Institution shall, within one hundred and eighty days after September 26, 1973, submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities in such department, agency, instrumentality, or Institution. Such plan shall include a description of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan



provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

**(c) State agencies; rehabilitated individuals, employment**

The Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with disabilities, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

**(d) Report to Congressional committees**

The Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with disabilities by each department, agency, and instrumentality and the Smithsonian Institution and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Commission under subsections (b) and (c) of this section.

**(e) Federal work experience without pay; non-Federal status**

An individual who, as a part of an individualized plan for employment under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

**(f) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

**(g) Redesignated (f)**

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 501, Sept. 26, 1973, 87 Stat. 390; Pub.L. 98-221, Title I, § 104(b)(3), Feb. 22, 1984, 98 Stat. 18; Pub.L. 99-506, Title I, § 103(d)(2)(C), Title X, §§ 1001(f)(1), 1002(e)(1), (2)(A), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub.L. 100-630, Title II, § 206(a), Nov. 7, 1988, 102 Stat. 3311; Pub.L. 102-54, § 13(k)(1)(B), June 13, 1991, 105 Stat. 276; Pub.L. 102-569, Title I, § 102(p)(29), Title V, § 503, Oct. 29, 1992, 106 Stat. 4360, 4424; Pub.L. 103-73, Title I, § 112(a), Aug. 11, 1993, 107 Stat. 727; Pub.L. 105-220, Title III, § 341(c), Title IV, § 408(a)(1), Aug. 7, 1998, 112 Stat.

1092, 1202; Pub.L. 109-435, Title VI, § 604(d), Dec. 20, 2006, 120 Stat. 3242; Pub.L. 111-256, § 2(d)(3), Oct. 5, 2010, 124 Stat. 2643; Pub.L. 113-128, Title IV, § 456(a), July 22, 2014, 128 Stat. 1675.)

Notes of Decisions (404)

29 U.S.C.A. § 791, 29 USCA § 791

Current through P.L. 114-181. Also includes P.L. 114-183.

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End of Document

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United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 792

§ 792. Architectural and Transportation Barriers Compliance Board

Effective: July 22, 2014

Currentness

**(a) Establishment; membership; chairperson; vice-chairperson; term of office; termination of membership; reappointment; compensation and travel expenses; bylaws; quorum requirements**

**(1)** There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Access Board") which shall be composed as follows:

**(A)** Thirteen members shall be appointed by the President from among members of the general public of whom at least a majority shall be individuals with disabilities.

**(B)** The remaining members shall be the heads of each of the following departments or agencies (or their designees whose positions are executive level IV or higher):

**(i)** Department of Health and Human Services.

**(ii)** Department of Transportation.

**(iii)** Department of Housing and Urban Development.

**(iv)** Department of Labor.

**(v)** Department of the Interior.

**(vi)** Department of Defense.

**(vii)** Department of Justice.

**(viii)** General Services Administration.

(ix) Department of Veterans Affairs.

(x) United States Postal Service.

(xi) Department of Education.

(xii) Department of Commerce.

The chairperson and vice-chairperson of the Access Board shall be elected by majority vote of the members of the Access Board to serve for terms of one year. When the chairperson is a member of the general public, the vice-chairperson shall be a Federal official; and when the chairperson is a Federal official, the vice-chairperson shall be a member of the general public. Upon the expiration of the term as chairperson of a member who is a Federal official, the subsequent chairperson shall be a member of the general public; and vice versa.

(2)(A)(i) The term of office of each appointed member of the Access Board shall be 4 years, except as provided in clause (ii). Each year, the terms of office of at least three appointed members of the board<sup>1</sup> shall expire.

(ii)(I) One member appointed for a term beginning December 4, 1992 shall serve for a term of 3 years.

(II) One member appointed for a term beginning December 4, 1993 shall serve for a term of 2 years.

(III) One member appointed for a term beginning December 4, 1994 shall serve for a term of 1 year.

(IV) Members appointed for terms beginning before December 4, 1992 shall serve for terms of 3 years.

(B) A member whose term has expired may continue to serve until a successor has been appointed.

(C) A member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.

(3) If any appointed member of the Access Board becomes a Federal employee, such member may continue as a member of the Access Board for not longer than the sixty-day period beginning on the date the member becomes a Federal employee.

(4) No individual appointed under paragraph (1)(A) of this subsection who has served as a member of the Access Board may be reappointed to the Access Board more than once unless such individual has not served on the Access Board for a period of two years prior to the effective date of such individual's appointment.

(5)(A) Members of the Access Board who are not regular full-time employees of the United States shall, while serving on the business of the Access Board, be entitled to receive compensation at rates fixed by the President, but not to exceed the daily equivalent of the rate of pay for level IV of the Executive Schedule under section 5315 of Title 5, including travel time, for each day they are engaged in the performance of their duties as members of the Access Board; and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(B) Members of the Access Board who are employed by the Federal Government shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(6)(A) The Access Board shall establish such bylaws and other rules as may be appropriate to enable the Access Board to carry out its functions under this chapter.

(B) The bylaws shall include quorum requirements. The quorum requirements shall provide that (i) a proxy may not be counted for purposes of establishing a quorum, and (ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).

**(b) Functions**

It shall be the function of the Access Board to--

(1) ensure compliance with the standards prescribed pursuant to the Act entitled "An Act to ensure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968 (commonly known as the Architectural Barriers Act of 1968; (42 U.S.C. 4151 et seq.) (including the application of such Act to the United States Postal Service), including enforcing all standards under such Act, and ensuring that all waivers and modifications to the standards are based on findings of fact and are not inconsistent with the provisions of this section;

(2) develop advisory information for, and provide appropriate technical assistance to, individuals or entities with rights or duties under regulations prescribed pursuant to this subchapter or titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq. and 12181 et seq.) with respect to overcoming architectural, transportation, and communication barriers;

(3) establish and maintain--

(A) minimum guidelines and requirements for the standards issued pursuant to the Act commonly known as the Architectural Barriers Act of 1968 [42 U.S.C.A. § 4151 et seq.];

(B) minimum guidelines and requirements for the standards issued pursuant to titles II [42 U.S.C.A. § 12131 et seq.] and III [42 U.S.C.A. § 12181 et seq.] of the Americans with Disabilities Act of 1990;

(C) guidelines for accessibility of telecommunications equipment and customer premises equipment under section 255 of the Telecommunications Act of 1934 (47 U.S.C. 255); and

(D) standards for accessible electronic and information technology under section 794d of this title;

(4) promote accessibility throughout all segments of society;

(5) investigate and examine alternative approaches to the architectural, transportation, communication, and attitudinal barriers confronting individuals with disabilities, particularly with respect to telecommunications devices, public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation, whether interstate, foreign, intrastate, or local), and residential and institutional housing;

(6) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in paragraph (5);

(7) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of General Services, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Act commonly known as the Architectural Barriers Act of 1968 [42 U.S.C.A. § 4151 et seq.];

(8) make to the President and to the Congress reports that shall describe in detail the results of its investigations under paragraphs (5) and (6);

(9) make to the President and to the Congress such recommendations for legislative and administrative changes as the Access Board determines to be necessary or desirable to eliminate the barriers described in paragraph (5);

(10) ensure that public conveyances, including rolling stock, are readily accessible to, and usable by, individuals with physical disabilities; and

(11) carry out the responsibilities specified for the Access Board in section 794d of this title.

**(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals**

The Access Board shall also (1)(A) determine how and to what extent transportation barriers impede the mobility of individuals with disabilities and aged individuals with disabilities and consider ways in which travel expenses in connection with transportation to and from work for individuals with disabilities can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of individuals with disabilities; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems, and (B) to make housing available and accessible to individuals with



disabilities or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for individuals with disabilities, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

**(d) Electronic and information technology accessibility training**

Beginning in fiscal year 2000, the Access Board, after consultation with the Secretary, representatives of such public and private entities as the Access Board determines to be appropriate (including the electronic and information technology industry), targeted individuals and entities (as defined in section 3002 of this title), and State information technology officers, shall provide training for Federal and State employees on any obligations related to section 794d of this title.

**(e) Investigations; hearings; orders; administrative procedure applicable; final orders; judicial review; civil action; intervention**

(1) The Access Board shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to ensure compliance with the provisions of the Acts cited in subsection (b) of this section. Except as provided in paragraph (3) of subsection (f) of this section, the provisions of subchapter II of chapter 5, and chapter 7 of Title 5 shall apply to procedures under this subsection, and an order of compliance issued by the Access Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building or public conveyance or rolling stock found not to be in compliance with standards enforced under this section. Pursuant to chapter 7 of Title 5, any complainant or participant in a proceeding under this subsection may obtain review of a final order issued in such proceeding.

(2) The executive director is authorized, at the direction of the Access Board--

(A) to bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final order of the Access Board under this subsection; and

(B) to intervene, appear, and participate, or to appear as amicus curiae, in any court of the United States or in any court of a State in civil actions that relate to this section or to the Architectural Barriers Act of 1968 [42 U.S.C.A. § 4151 et seq.].

Except as provided in section 518(a) of Title 28, relating to litigation before the Supreme Court, the executive director may appear for and represent the Access Board in any civil litigation brought under this section.

**(f) Appointment of executive director, administrative law judges, and other personnel; provisions applicable to administrative law judges; authority and duties of executive director; finality of orders of compliance**

(1) There shall be appointed by the Access Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this chapter. The Access Board is authorized to appoint as many administrative law judges as are necessary for proceedings required to be conducted under this section. The provisions

applicable to administrative law judges appointed under section 3105 of Title 5 shall apply to administrative law judges appointed under this subsection.

(2) The Executive Director shall exercise general supervision over all personnel employed by the Access Board (other than administrative law judges and their assistants). The Executive Director shall have final authority on behalf of the Access Board, with respect to the investigation of alleged noncompliance and in the issuance of formal complaints before the Access Board, and shall have such other duties as the Access Board may prescribe.

(3) For the purpose of this section, an order of compliance issued by an administrative law judge shall be deemed to be an order of the Access Board and shall be the final order for the purpose of judicial review.

**(g) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants**

(1)(A) In carrying out the technical assistance responsibilities of the Access Board under this section, the Board may enter into an interagency agreement with another Federal department or agency.

(B) Any funds appropriated to such a department or agency for the purpose of providing technical assistance may be transferred to the Access Board. Any funds appropriated to the Access Board for the purpose of providing such technical assistance may be transferred to such department or agency.

(C) The Access Board may arrange to carry out the technical assistance responsibilities of the Board under this section through such other departments and agencies for such periods as the Board determines to be appropriate.

(D) The Access Board shall establish a procedure to ensure separation of its compliance and technical assistance responsibilities under this section.

(2) The departments or agencies specified in subsection (a) of this section shall make available to the Access Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Access Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this paragraph shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Chairperson,<sup>2</sup> but not exceeding the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of Title 5, including travel time, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such Title 5 for persons in the Government service employed intermittently.

**(h) Omitted**

**(i) Grants and contracts to aid Access Board in carrying out its functions; acceptance of gifts, devises, and bequests of property; report to Congress on accessibility of Federally funded buildings; joint transmittal**

(1) The Access Board may make grants to, or enter into contracts with, public or private organizations to carry out its duties under subsections (b) and (c) of this section.

(2)(A) The Access Board may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the functions of the Access Board under paragraphs (2) and (4) of subsection (b) of this section. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairperson.<sup>2</sup> Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States.

(B) The Access Board shall publish regulations setting forth the criteria the Board will use in determining whether the acceptance of gifts, devises, and bequests of property, both real and personal, would reflect unfavorably upon the ability of the Board or any employee to carry out the responsibilities or official duties of the Board in a fair and objective manner, or would compromise the integrity of or the appearance of the integrity of a Government program or any official involved in that program.

(3) Omitted

**(j) Authorization of appropriations**

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Access Board under this section \$7,448,000 for fiscal year 2015, \$8,023,000 for fiscal year 2016, \$8,190,000 for fiscal year 2017, \$8,371,000 for fiscal year 2018, \$8,568,000 for fiscal year 2019, and \$8,750,000 for fiscal year 2020.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 502, Sept. 26, 1973, 87 Stat. 391; Pub.L. 93-516, Title I, §§ 110, 111(n) to (q), Dec. 7, 1974, 88 Stat. 1619, 1621, 1622; Pub.L. 93-651, Title I, §§ 110, 111(n) to (q), Nov. 21, 1974, 89 Stat. 2-4, 2-6, 2-7; Pub.L. 94-230, §§ 10, 11(b)(13), Mar. 15, 1976, 90 Stat. 212, 214; Pub.L. 95-251, § 2(a)(8), Mar. 27, 1978, 92 Stat. 183; Pub.L. 95-602, Title I, § 118, Nov. 6, 1978, 92 Stat. 2979; Pub.L. 96-88, Title III, § 301(a)(4)(A), Title V, § 507, Oct. 17, 1979, 93 Stat. 678, 692; Pub.L. 96-374, Title XIII, § 1321, Oct. 3, 1980, 94 Stat. 1499; Pub.L. 98-221, Title I, § 151, Feb. 22, 1984, 98 Stat. 28; Pub.L. 99-506, Title I, § 103(d)(2)(C), Title VI, § 601, Title X, § 1002(e)(2)(B) to (D), Oct. 21, 1986, 100 Stat. 1810, 1829, 1844; Pub.L. 100-630, Title II, § 206(b), Nov. 7, 1988, 102 Stat. 3311; Pub.L. 102-52, § 6, June 6, 1991, 105 Stat. 262; Pub.L. 102-54, § 13(k)(1)(A), June 13, 1991, 105 Stat. 276; Pub.L. 102-569, Title I, § 102(p)(30), Title V, § 504, Oct. 29, 1992, 106 Stat. 4360, 4424; Pub.L. 103-73, Title I, § 112(b), Aug. 11, 1993, 107 Stat. 727; Pub.L. 105-220, Title IV, § 408(a)(2), Aug. 7, 1998, 112 Stat. 1202; Pub.L. 105-394, Title II, § 203(a), Nov. 13, 1998, 112 Stat. 3653; Pub.L. 108-364, § 3(b)(3), Oct. 25, 2004, 118 Stat. 1737; Pub.L. 113-128, Title IV, § 456(b), July 22, 2014, 128 Stat. 1675.)

**Footnotes**

<sup>1</sup> So in original. Probably should be "Access Board".

<sup>2</sup> So in original. The word "Chairperson" probably should not be capitalized.

29 U.S.C.A. § 792, 29 USCA § 792

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 793

§ 793. Employment under Federal contracts

Currentness

**(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified individuals with disabilities; regulations**

Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities. The provisions of this section shall apply to any subcontract in excess of \$10,000 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

**(b) Administrative enforcement; complaints; investigations; departmental action**

If any individual with a disability believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with disabilities, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

**(c) Waiver by President; national interest special circumstances for waiver of particular agreements; waiver by Secretary of Labor of affirmative action requirements**

(1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

(2)(A) The Secretary of Labor may waive the requirements of the affirmative action clause required by regulations promulgated under subsection (a) of this section with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related

to the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this chapter.

(B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

**(d) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

**(e) Avoidance of duplicative efforts and inconsistencies**

The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.] are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.].

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 503, Sept. 26, 1973, 87 Stat. 393; Pub.L. 95-602, Title I, § 122(d)(1), Nov. 6, 1978, 92 Stat. 2987; Pub.L. 99-506, Title I, § 103(d)(2)(B), (C), Title X, §§ 1001(f)(2), (3), 1002(e)(3), Oct. 21, 1986, 100 Stat. 1810, 1843, 1844; Pub.L. 100-630, Title II, § 206(c), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(31), Title V, § 505, Oct. 29, 1992, 106 Stat. 4360, 4427.)

Notes of Decisions (73)

29 U.S.C.A. § 793, 29 USCA § 793

Current through P.L. 114-181. Also includes P.L. 114-183.

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Unconstitutional or Preempted Preempted by Joren v. Napolitano, 7th Cir.(Ill.), Feb. 07, 2011  
KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794

§ 794. Nondiscrimination under Federal grants and programs

Effective: July 22, 2014

Currentness

**(a) Promulgation of rules and regulations**

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

**(b) "Program or activity" defined**

For the purposes of this section, the term "program or activity" means all of the operations of--

**(1)(A)** a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

**(B)** the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

**(2)(A)** a college, university, or other postsecondary institution, or a public system of higher education; or

**(B)** a local educational agency (as defined in section 7801 of Title 20), system of career and technical education, or other school system;

**(3)(A)** an entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

**(c) Significant structural alterations by small providers**

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

**(d) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 to 12204 and 12210), as such sections relate to employment.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 504, Sept. 26, 1973, 87 Stat. 394; Pub.L. 95-602, Title I, §§ 119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(32), Title V, § 506, Oct. 29, 1992, 106 Stat. 4360, 4428; Pub.L. 103-382, Title III, § 394(i)(2), Oct. 20, 1994, 108 Stat. 4029; Pub.L. 105-220, Title IV, § 408(a)(3), Aug. 7, 1998, 112 Stat. 1203; Pub.L. 107-110, Title X, § 1076(u)(2), Jan. 8, 2002, 115 Stat. 2093; Pub.L. 113-128, Title IV, § 456(c), July 22, 2014, 128 Stat. 1675.)

**AMENDMENT OF OF SUBSECTION (B)(2)(B)**

<Pub.L. 114-95, Title IX, §§ 9107, 9215(mmm)(3), Dec. 10, 2015, 129 Stat. 2137, 2188, provided that, effective Oct. 1, 2016, subsec. (b)(2)(B) is amended by making a technical amendment to a reference in the original Act to section 7801 of Title 20, resulting in no change in text.>

Notes of Decisions (3222)

29 U.S.C.A. § 794, 29 USCA § 794

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794a

§ 794a. Remedies and attorney fees

Currentness

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e-5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 505, as added Pub.L. 95-602, Title I, § 120(a), Nov. 6, 1978, 92 Stat. 2982; amended Pub.L. 111-2, § 5(c)(1), Jan. 29, 2009, 123 Stat. 6.)

Notes of Decisions (341)

29 U.S.C.A. § 794a, 29 USCA § 794a

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794b

§ 794b. Removal of architectural, transportation, or communication barriers; technical and financial assistance; compensation of experts or consultants; authorization of appropriations

Effective: November 13, 1998  
Currentness

**(a) Technical and financial assistance**

The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance--

(1) to persons operating community rehabilitation programs; and

(2) with the concurrence of the Access Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Access Board under paragraph (2) shall reflect its consideration of cost studies carried out by States.

**(b) Compensation of experts or consultants**

Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of Title 5, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

**(c) Conditions for assistance**

The Secretary, with the concurrence of the Access Board and the President, may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this subsection until a study demonstrating the need for such assistance has been conducted and submitted under section 792(i)(1) of this title.

**(d) Authorization of appropriations**

In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 506, as added Pub.L. 95-602, Title I, § 120(a), Nov. 6, 1978, 92 Stat. 2983; amended Pub.L. 100-630, Title II, § 206(e), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title V, § 507, Oct. 29, 1992, 106 Stat. 4428; Pub.L. 105-220, Title IV, § 408(a)(4), Aug. 7, 1998, 112 Stat. 1203; Pub.L. 105-394, Title II, § 203(b), Nov. 13, 1998, 105-3653.)

29 U.S.C.A. § 794b, 29 USCA § 794b

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794c

§ 794c. Interagency Disability Coordinating Council

Effective: July 22, 2014

Currentness

**(a) Establishment**

There is hereby established an Interagency Disability Coordinating Council (hereafter in this section referred to as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Assistant Secretary of the Interior for Indian Affairs, the Attorney General, the Director of the Office of Personnel Management, the Chairperson of the Equal Employment Opportunity Commission, the Chairperson of the Architectural and Transportation Barriers Compliance Board, the Chairperson of the National Council on Disability, and such other officials as may be designated by the President.

**(b) Duties**

The Council shall--

(1) have the responsibility for developing and implementing agreements, policies, and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this subchapter, and the regulations prescribed thereunder;

(2) be responsible for developing and implementing agreements, policies, and practices designed to coordinate operations, functions, and jurisdictions of the various departments and agencies of the Federal Government responsible for promoting the full integration into society, independence, and productivity of individuals with disabilities; and

(3) carry out such studies and other activities, subject to the availability of resources, with advice from the National Council on Disability, in order to identify methods for overcoming barriers to integration into society, independence, and productivity of individuals with disabilities.

**(c) Report**



On or before July 1 of each year, the Interagency Disability Coordinating Council shall prepare and submit to the President and to the Congress a report of the activities of the Council designed to promote and meet the employment needs of individuals with disabilities, together with such recommendations for legislative and administrative changes as the Council concludes are desirable to further promote this section, along with any comments submitted by the National Council on Disability as to the effectiveness of such activities and recommendations in meeting the needs of individuals with disabilities. Nothing in this section shall impair any responsibilities assigned by any Executive order to any Federal department, agency, or instrumentality to act as a lead Federal agency with respect to any provisions of this subchapter.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 507, as added Pub.L. 95-602, Title I, § 120(a), Nov. 6, 1978, 92 Stat. 2983; amended Pub.L. 96-88, Title V, § 508(m)(2), Oct. 17, 1979, 93 Stat. 694; Pub.L. 98-221, Title I, § 104(b)(4), Feb. 22, 1984, 98 Stat. 18; Pub.L. 99-506, Title VI, § 602, Title X, § 1001(f)(4), Oct. 21, 1986, 100 Stat. 1830, 1843; Pub.L. 102-569, Title V, § 508(a), Oct. 29, 1992, 106 Stat. 4429; Pub.L. 113-128, Title IV, § 456(d), July 22, 2014, 128 Stat. 1676.)

29 U.S.C.A. § 794c, 29 USCA § 794c

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794d

§ 794d. Electronic and information technology

Effective: July 13, 2000

Currentness

**(a) Requirements for Federal departments and agencies**

**(1) Accessibility**

**(A) Development, procurement, maintenance, or use of electronic and information technology**

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology--

(i) individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and

(ii) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

**(B) Alternative means efforts**

When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Access Board under paragraph (2) would impose an undue burden, the Federal department or agency shall provide individuals with disabilities covered by paragraph (1) with the information and data involved by an alternative means of access that allows the individual to use the information and data.

**(2) Electronic and information technology standards**

**(A) In general**

Not later than 18 months after August 7, 1998, the Architectural and Transportation Barriers Compliance Board (referred to in this section as the "Access Board"), after consultation with the Secretary of Education, the Administrator of General Services, the Secretary of Commerce, the Chairman of the Federal Communications Commission, the Secretary of Defense, and the head of any other Federal department or agency that the Access Board determines to be appropriate, including consultation on relevant research findings, and after consultation with the electronic and information technology industry and appropriate public or nonprofit agencies or organizations, including organizations representing individuals with disabilities, shall issue and publish standards setting forth--

(i) for purposes of this section, a definition of electronic and information technology that is consistent with the definition of information technology specified in section 11101(6) of Title 40; and

(ii) the technical and functional performance criteria necessary to implement the requirements set forth in paragraph (1).

### (B) Review and amendment

The Access Board shall periodically review and, as appropriate, amend the standards required under subparagraph (A) to reflect technological advances or changes in electronic and information technology.

### (3) Incorporation of standards

Not later than 6 months after the Access Board publishes the standards required under paragraph (2), the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation and each Federal department or agency shall revise the Federal procurement policies and directives under the control of the department or agency to incorporate those standards. Not later than 6 months after the Access Board revises any standards required under paragraph (2), the Council shall revise the Federal Acquisition Regulation and each appropriate Federal department or agency shall revise the procurement policies and directives, as necessary, to incorporate the revisions.

#### (4) Acquisition planning

In the event that a Federal department or agency determines that compliance with the standards issued by the Access Board under paragraph (2) relating to procurement imposes an undue burden, the documentation by the department or agency supporting the procurement shall explain why compliance creates an undue burden.

### **(5) Exemption for national security systems**

This section shall not apply to national security systems, as that term is defined in section 11103 of Title 40.

### (6) Construction

**(A) Equipment**

In a case in which the Federal Government provides access to the public to information or data through electronic and information technology, nothing in this section shall be construed to require a Federal department or agency--

(i) to make equipment owned by the Federal Government available for access and use by individuals with disabilities covered by paragraph (1) at a location other than that where the electronic and information technology is provided to the public; or

(ii) to purchase equipment for access and use by individuals with disabilities covered by paragraph (1) at a location other than that where the electronic and information technology is provided to the public.

**(B) Software and peripheral devices**

Except as required to comply with standards issued by the Access Board under paragraph (2), nothing in paragraph (1) requires the installation of specific accessibility-related software or the attachment of a specific accessibility-related peripheral device at a workstation of a Federal employee who is not an individual with a disability.

**(b) Technical assistance**

The Administrator of General Services and the Access Board shall provide technical assistance to individuals and Federal departments and agencies concerning the requirements of this section.

**(c) Agency evaluations**

Not later than 6 months after August 7, 1998, the head of each Federal department or agency shall evaluate the extent to which the electronic and information technology of the department or agency is accessible to and usable by individuals with disabilities described in subsection (a)(1) of this section, compared to the access to and use of the technology by individuals described in such subsection who are not individuals with disabilities, and submit a report containing the evaluation to the Attorney General.

**(d) Reports**

**(1) Interim report**

Not later than 18 months after August 7, 1998, the Attorney General shall prepare and submit to the President a report containing information on and recommendations regarding the extent to which the electronic and information technology of the Federal Government is accessible to and usable by individuals with disabilities described in subsection (a)(1) of this section.

**(2) Biennial reports**

Not later than 3 years after August 7, 1998, and every 2 years thereafter, the Attorney General shall prepare and submit to the President and Congress a report containing information on and recommendations regarding the state

of Federal department and agency compliance with the requirements of this section, including actions regarding individual complaints under subsection (f) of this section.

**(e) Cooperation**

Each head of a Federal department or agency (including the Access Board, the Equal Employment Opportunity Commission, and the General Services Administration) shall provide to the Attorney General such information as the Attorney General determines is necessary to conduct the evaluations under subsection (c) of this section and prepare the reports under subsection (d) of this section.

**(f) Enforcement**

**(1) General**

**(A) Complaints**

Effective 6 months after the date of publication by the Access Board of final standards described in subsection (a) (2) of this section, any individual with a disability may file a complaint alleging that a Federal department or agency fails to comply with subsection (a)(1) of this section in providing electronic and information technology.

**(B) Application**

This subsection shall apply only to electronic and information technology that is procured by a Federal department or agency not less than 6 months after the date of publication by the Access Board of final standards described in subsection (a)(2) of this section.

**(2) Administrative complaints**

Complaints filed under paragraph (1) shall be filed with the Federal department or agency alleged to be in noncompliance. The Federal department or agency receiving the complaint shall apply the complaint procedures established to implement section 794 of this title for resolving allegations of discrimination in a federally conducted program or activity.

**(3) Civil actions**

The remedies, procedures, and rights set forth in sections 794a(a)(2) and 794a(b) of this title shall be the remedies, procedures, and rights available to any individual with a disability filing a complaint under paragraph (1).

**(g) Application to other Federal laws**

This section shall not be construed to limit any right, remedy, or procedure otherwise available under any provision of Federal law (including sections 791 through 794a of this title) that provides greater or equal protection for the rights of individuals with disabilities than this section.

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 508, as added Pub.L. 99-506, Title VI, § 603(a), Oct. 21, 1986, 100 Stat. 1830; amended Pub.L. 100-630, Title II, § 206(f), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title V, § 509(a), Oct. 29, 1992, 106 Stat. 4430; Pub.L. 105-220, Title IV, § 408(b), Aug. 7, 1998, 112 Stat. 1203; Pub.L. 106-246, Div. B, Title II, § 2405, July 13, 2000, 114 Stat. 555.)

29 U.S.C.A. § 794d, 29 USCA § 794d

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794e

§ 794e. Protection and advocacy of individual rights

Effective: July 22, 2014

Currentness

**(a) Purpose and construction**

**(1) Purpose**

The purpose of this section is to support a system in each State to protect the legal and human rights of individuals with disabilities who--

(A) need services that are beyond the scope of services authorized to be provided by the client assistance program under section 732 of this title; and

(B)(i) are ineligible for protection and advocacy programs under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.A. § 15041 et seq.] because the individuals do not have a developmental disability, as defined in section 102 of such Act [42 U.S.C. 15002]; and

(ii) are ineligible for services under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.) because the individuals are not individuals with mental illness, as defined in section 102 of such Act (42 U.S.C. 10802).

**(2) Construction**

This section shall not be construed to require the provision of protection and advocacy services that can be provided under the Assistive Technology Act of 1998.

**(b) Appropriations less than \$5,500,000**

For any fiscal year in which the amount appropriated to carry out this section is less than \$5,500,000, the Commissioner may make grants from such amount to eligible systems within States to plan for, develop outreach strategies for, and carry out protection and advocacy programs authorized under this section for individuals with disabilities who meet the requirements of subparagraphs (A) and (B) of subsection (a)(1) of this section.

**(c) Appropriations of \$5,500,000 or more**

**(1) Reservations**

**(A) Technical assistance**

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$5,500,000, the Commissioner shall set aside not less than 1.8 percent and not more than 2.2 percent of the amount to provide a grant, contract, or cooperative agreement for training and technical assistance to the systems established under this section.

**(B) Grant for the eligible system serving the American Indian consortium**

For any fiscal year in which the amount appropriated to carry out this section equals or exceeds \$10,500,000, the Commissioner shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian consortium. The Commission shall make the grant in an amount of not less than \$50,000 for the fiscal year.

**(2) Allotments**

For any such fiscal year, after the reservations required by paragraph (1) have been made, the Commissioner shall make allotments from the remainder of such amount in accordance with paragraph (3) to eligible systems within States to enable such systems to carry out protection and advocacy programs authorized under this section for individuals referred to in subsection (b) of this section.

**(3) Systems within States**

**(A) Population basis**

Except as provided in subparagraph (B), from such remainder for each such fiscal year, the Commissioner shall make an allotment to the eligible system within a State of an amount bearing the same ratio to such remainder as the population of the State bears to the population of all States.

**(B) Minimums**

Subject to the availability of appropriations to carry out this section, and except as provided in paragraph (4), the allotment to any system under subparagraph (A) shall be not less than \$100,000 or # of 1 percent of the remainder for the fiscal year for which the allotment is made, whichever is greater, and the allotment to any system under this section for any fiscal year that is less than \$100,000 or # of 1 percent of such remainder shall be increased to the greater of the two amounts.

**(4) Systems within other jurisdictions**

**(A) In general**

For the purposes of paragraph (3)(B), Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall not be considered to be States.

**(B) Allotment**

The eligible system within a jurisdiction described in subparagraph (A) shall be allotted under paragraph (3)(A) not less than \$50,000 for the fiscal year for which the allotment is made.

**(5) Adjustment for inflation**

For any fiscal year, beginning in fiscal year 1999, in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section for the preceding fiscal year, the Commissioner shall increase each of the minimum grants or allotments under paragraphs (1)(B), (3)(B), and (4)(B) by a percentage that shall not exceed the percentage increase in the total amount appropriated to carry out this section between the preceding fiscal year and the fiscal year involved.

**(d) Proportional reduction**

To provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or to provide minimum allotments to systems within States (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, the Commissioner shall proportionately reduce the allotments of the remaining systems within States under subsection (c)(3) of this section, with such adjustments as may be necessary to prevent the allotment of any such remaining system within a State from being reduced to less than the minimum allotment for a system within a State (as increased under subsection (c)(5) of this section) under subsection (c)(3)(B) of this section, or the minimum allotment for a State (as increased under subsection (c)(5) of this section) under subsection (c)(4)(B) of this section, as appropriate.

**(e) Reallotment**

Whenever the Commissioner determines that any amount of an allotment to a system within a State for any fiscal year described in subsection (c)(1) of this section will not be expended by such system in carrying out the provisions of this section, the Commissioner shall make such amount available for carrying out the provisions of this section to one or more of the systems that the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a system for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the allotment of the system (as determined under the preceding provisions of this section) for such year.

**(f) Application**

In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will--

- (1) have in effect a system to protect and advocate the rights of individuals with disabilities;

(2) have the same general authorities, including the authority to access records and program income, as are set forth in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000;

(3) have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1) of this section;

(4) provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State or the American Indian consortium;

(5) develop a statement of objectives and priorities on an annual basis, and provide to the public, including individuals with disabilities and, as appropriate, the individuals' representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the system including--

(A) the objectives and priorities for the activities of the system for each year and the rationale for the establishment of such objectives and priorities; and

(B) the coordination of programs provided through the system under this section with the advocacy programs of the client assistance program under section 732 of this title, the State long-term care ombudsman program established under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.A. § 15001 et seq.], and the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);

(6) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with disabilities are afforded equal opportunity to access the services of the system; and

(7) provide assurances to the Commissioner that funds made available under this section will be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided.

**(g) Carryover and direct payment**

**(1) Direct payment**

Notwithstanding any other provision of law, the Commissioner shall pay directly to any system that complies with the provisions of this section, the amount of the allotment of the State or the grant for the eligible system that serves the American Indian consortium involved under this section, unless the State or American Indian consortium provides otherwise.

**(2) Carryover**

Any amount paid to an eligible system that serves a State or American Indian consortium for a fiscal year that remains unobligated at the end of such year shall remain available to such system that serves the State or American Indian consortium for obligation during the next fiscal year for the purposes for which such amount was paid.

**(h) Limitation on disclosure requirements**

For purposes of any audit, report, or evaluation of the performance of the program established under this section, the Commissioner shall not require such a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

**(i) Administrative cost**

In any State in which an eligible system is located within a State agency, a State may use a portion of any allotment under subsection (c) of this section for the cost of the administration of the system required by this section. Such portion may not exceed 5 percent of the allotment.

**(j) Delegation**

The Commissioner may delegate the administration of this program to the Commissioner of the Administration on Developmental Disabilities within the Department of Health and Human Services.

**(k) Report**

The Commissioner shall annually prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the types of services and activities being undertaken by programs funded under this section, the total number of individuals served under this section, the types of disabilities represented by such individuals, and the types of issues being addressed on behalf of such individuals.

**(l) Authorization of appropriations**

There are authorized to be appropriated to carry out this section \$17,650,000 for fiscal year 2015, \$19,013,000 for fiscal year 2016, \$19,408,000 for fiscal year 2017, \$19,838,000 for fiscal year 2018, \$20,305,000 for fiscal year 2019, and \$20,735,000 for fiscal year 2020.

**(m) Definitions**

As used in this section:

**(1) Eligible system**

The term “eligible system” means a protection and advocacy system that is established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.A. § 15041 et seq.] and that meets the requirements of subsection (f) of this section.

**(2) American Indian consortium**

The term “American Indian consortium” means a consortium established as described in section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042).

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 509, as added Pub.L. 102-569, Title V, § 510(a), Oct. 29, 1992, 106 Stat. 4430; amended Pub.L. 103-73, Title I, § 112(c), Aug. 11, 1993, 107 Stat. 727; Pub.L. 105-12, § 9(n), Apr. 30, 1997, 111 Stat. 28; Pub.L. 105-220, Title IV, § 408(c), Aug. 7, 1998, 112 Stat. 1206; Pub.L. 105-394, Title IV, § 402(c), Nov. 13, 1998, 112 Stat. 3662; Pub.L. 106-402, Title IV, § 401(b)(3)(C), (D), Oct. 30, 2000, 114 Stat. 1738; Pub.L. 113-128, Title IV, § 457, July 22, 2014, 128 Stat. 1676.)

Notes of Decisions (10)

29 U.S.C.A. § 794e, 29 USCA § 794e

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Negative Treatment Reconsidered by Florida ex rel. Atty. Gen. v. U.S. Dept. of Health and Human Services, 11th Cir.(Fla.), Aug. 12, 2011

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 29. Labor

Chapter 16. Vocational Rehabilitation and Other Rehabilitation Services (Refs & Annos)

Subchapter V. Rights and Advocacy (Refs & Annos)

29 U.S.C.A. § 794f

§ 794f. Establishment of standards for accessible medical diagnostic equipment

Effective: March 23, 2010

Currentness

**(a) Standards**

Not later than 24 months after March 23, 2010, the Architectural and Transportation Barriers Compliance Board shall, in consultation with the Commissioner of the Food and Drug Administration, promulgate regulatory standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.) setting forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician's offices, clinics, emergency rooms, hospitals, and other medical settings. The standards shall ensure that such equipment is accessible to, and usable by, individuals with accessibility needs, and shall allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.

**(b) Medical diagnostic equipment covered**

The standards issued under subsection (a) for medical diagnostic equipment shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

**(c) Review and amendment**

The Architectural and Transportation Barriers Compliance Board, in consultation with the Commissioner of the Food and Drug Administration, shall periodically review and, as appropriate, amend the standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.).

**CREDIT(S)**

(Pub.L. 93-112, Title V, § 510, as added Pub.L. 111-148, Title IV, § 4203, Mar. 23, 2010, 124 Stat. 570.)

29 U.S.C.A. § 794f, 29 USCA § 794f

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

42 U.S.C.A. § 12101

§ 12101. Findings and purpose

Effective: January 1, 2009

Currentness

(a) Findings

The Congress finds that--

- (1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

**(b) Purpose**

It is the purpose of this chapter--

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

**CREDIT(S)**

(Pub.L. 101-336, § 2, July 26, 1990, 104 Stat. 328; Pub.L. 110-325, § 3, Sept. 25, 2008, 122 Stat. 3554.)

Notes of Decisions (191)

42 U.S.C.A. § 12101, 42 USCA § 12101

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated Title 42. The Public Health and Welfare Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)
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42 U.S.C.A. § 12102

§ 12102. Definition of disability

Effective: January 1, 2009  
Currentness

As used in this chapter:

**(1) Disability**

The term “disability” means, with respect to an individual--

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

**(2) Major life activities**

**(A) In general**

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

**(B) Major bodily functions**

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**(3) Regarded as having such an impairment**

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**(4) Rules of construction regarding the definition of disability**

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.



(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph--

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

**CREDIT(S)**

(Pub.L. 101-336, § 3, July 26, 1990, 104 Stat. 329; Pub.L. 110-325, § 4(a), Sept. 25, 2008, 122 Stat. 3555.)

Notes of Decisions (1666)

42 U.S.C.A. § 12102, 42 USCA § 12102

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

42 U.S.C.A. § 12103

§ 12103. Additional definitions

Effective: January 1, 2009

Currentness

As used in this chapter:

**(1) Auxiliary aids and services**

The term “auxiliary aids and services” includes--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

**(2) State**

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

**CREDIT(S)**

(Pub.L. 101-336, § 4, as added Pub.L. 110-325, § 4(b), Sept. 25, 2008, 122 Stat. 3556.)

42 U.S.C.A. § 12103, 42 USCA § 12103

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version's Limitation Recognized by Osborne v. Elmer, M.D.La., Aug. 05, 2004

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12111

§ 12111. Definitions

Effective: January 1, 2009

Currentness

As used in this subchapter:

**(1) Commission**

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

**(2) Covered entity**

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

**(3) Direct threat**

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

**(4) Employee**

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

**(5) Employer**

**(A) In general**

The term “employer” means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

**(B) Exceptions**

The term “employer” does not include--

- (i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
- (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of Title 26.

**(6) Illegal use of drugs**

**(A) In general**

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C.A. § 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

**(B) Drugs**

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C.A. § 812].

**(7) Person, etc.**

The terms “person”, “labor organization”, “employment agency”, “commerce”, and “industry affecting commerce”, shall have the same meaning given such terms in section 2000e of this title.

**(8) Qualified individual**

The term “qualified individual” means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

**(9) Reasonable accommodation**

The term "reasonable accommodation" may include--

- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

**(10) Undue hardship**

**(A) In general**

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

**(B) Factors to be considered**

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 101, July 26, 1990, 104 Stat. 330; Pub.L. 102-166, Title I, § 109(a), Nov. 21, 1991, 105 Stat. 1077; Pub.L. 110-325, § 5(c)(1), Sept. 25, 2008, 122 Stat. 3557.)

**VALIDITY**

<For constitutionality of sections 101 and 503 of Pub.L. 101-336, as applied, see Hosanna--Tabor Evangelical Lutheran Church and School v. E.E.O.C., U.S.2012, 132 S.Ct. 694, 181 L.Ed.2d 650, holding that the Establishment and Free Exercise clauses of the First Amendment bar certain actions brought under the ADA.>

Notes of Decisions (500)

42 U.S.C.A. § 12111, 42 USCA § 12111

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limited on Constitutional Grounds by Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.,  
U.S., Jan. 11, 2012

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12112

§ 12112. Discrimination

Effective: January 1, 2009

Currentness

**(a) General rule**

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

**(b) Construction**

As used in subsection (a) of this section, the term “discriminate against a qualified individual on the basis of disability” includes--

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration--

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;



(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

**(c) Covered entities in foreign countries**

**(1) In general**

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

**(2) Control of corporation**

**(A) Presumption**

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

**(B) Exception**

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

**(C) Determination**

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on--

- (i) the interrelation of operations;
- (ii) the common management;
- (iii) the centralized control of labor relations; and
- (iv) the common ownership or financial control,  
of the employer and the corporation.

**(d) Medical examinations and inquiries**

**(1) In general**

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

**(2) Preemployment**

**(A) Prohibited examination or inquiry**

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

**(B) Acceptable inquiry**

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

**(3) Employment entrance examination**

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if--

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that--

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

#### **(4) Examination and inquiry**

##### **(A) Prohibited examinations and inquiries**

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

##### **(B) Acceptable examinations and inquiries**

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

##### **(C) Requirement**

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

#### **CREDIT(S)**

(Pub.L. 101-336, Title I, § 102, July 26, 1990, 104 Stat. 331; Pub.L. 102-166, Title I, § 109(b)(2), Nov. 21, 1991, 105 Stat. 1077; Pub.L. 110-325, § 5(a), Sept. 25, 2008, 122 Stat. 3557.)

Notes of Decisions (2193)

42 U.S.C.A. § 12112, 42 USCA § 12112

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12113

§ 12113. Defenses

Effective: January 1, 2009

Currentness

**(a) In general**

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

**(b) Qualification standards**

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

**(c) Qualification standards and tests related to uncorrected vision**

Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

**(d) Religious entities**

**(1) In general**

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

**(2) Religious tenets requirement**

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

**(e) List of infectious and communicable diseases**

**(1) In general**

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall--

- (A) review all infectious and communicable diseases which may be transmitted through handling the food supply;
- (B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
- (C) publish the methods by which such diseases are transmitted; and
- (D) widely disseminate such information regarding the list of diseases and their modes of transmissibility<sup>1</sup> to the general public.

Such list shall be updated annually.

**(2) Applications**

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

**(3) Construction**

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility<sup>1</sup> published by the Secretary of Health and Human Services.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 103, July 26, 1990, 104 Stat. 333; Pub.L. 110-325, § 5(b), Sept. 25, 2008, 122 Stat. 3557.)

Notes of Decisions (80)

**Footnotes**

<sup>1</sup> So in original. Probably should be "transmissibility".

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 42. The Public Health and Welfare

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Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12114

§ 12114. Illegal use of drugs and alcohol

Effective: January 1, 2009

Currentness

**(a) Qualified individual with a disability**

For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

**(b) Rules of construction**

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who--

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

**(c) Authority of covered entity**

A covered entity--

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under chapter 81 of Title 41;

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that--

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

**(d) Drug testing**

**(1) In general**

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

**(2) Construction**

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

**(e) Transportation employees**

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to--

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 104, July 26, 1990, 104 Stat. 334; Pub.L. 110-325, § 5(c)(2), Sept. 25, 2008, 122 Stat. 3557.)

Notes of Decisions (55)

42 U.S.C.A. § 12114, 42 USCA § 12114

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

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Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12115

§ 12115. Posting notices

Currentness

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 105, July 26, 1990, 104 Stat. 336.)

42 U.S.C.A. § 12115, 42 USCA § 12115

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12116

§ 12116. Regulations

Currentness

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of Title 5.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 106, July 26, 1990, 104 Stat. 336.)

42 U.S.C.A. § 12116, 42 USCA § 12116

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 42. The Public Health and Welfare  
Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)  
Subchapter I. Employment (Refs & Annos)

42 U.S.C.A. § 12117

§ 12117. Enforcement

Currentness

**(a) Powers, remedies, and procedures**

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

**(b) Coordination**

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C.A. § 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed.Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

**CREDIT(S)**

(Pub.L. 101-336, Title I, § 107, July 26, 1990, 104 Stat. 336.)

Notes of Decisions (1438)

42 U.S.C.A. § 12117, 42 USCA § 12117

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter II. Public Services (Refs & Annos)

Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C.A. § 12131

§ 12131. Definitions

Currentness

As used in this subchapter:

**(1) Public entity**

The term "public entity" means--

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of Title 49).

**(2) Qualified individual with a disability**

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 201, July 26, 1990, 104 Stat. 337.)

Notes of Decisions (102)

42 U.S.C.A. § 12131, 42 USCA § 12131

Current through P.L. 114-181. Also includes P.L. 114-183.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted    Validity Called into Doubt by    Klingler v. Director, Dept. of Revenue, State of Missouri,    8th Cir.(Mo.),    May 03, 2004

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter II. Public Services (Refs & Annos)

Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C.A. § 12132

§ 12132. Discrimination

Currentness

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 202, July 26, 1990, 104 Stat. 337.)

Notes of Decisions (803)

42 U.S.C.A. § 12132, 42 USCA § 12132

Current through P.L. 114-181. Also includes P.L. 114-183.

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Subchapter II. Public Services (Refs & Annos)

Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C.A. § 12133

§ 12133. Enforcement

Currentness

The remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 203, July 26, 1990, 104 Stat. 337.)

Notes of Decisions (693)

42 U.S.C.A. § 12133, 42 USCA § 12133

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 42. The Public Health and Welfare

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Subchapter II. Public Services (Refs & Annos)

Part A. Prohibition Against Discrimination and Other Generally Applicable Provisions

42 U.S.C.A. § 12134

§ 12134. Regulations

Currentness

**(a) In general**

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

**(b) Relationship to other regulations**

Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of Title 29. With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of Title 29.

**(c) Standards**

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 204, July 26, 1990, 104 Stat. 337.)

Notes of Decisions (25)

42 U.S.C.A. § 12134, 42 USCA § 12134

Current through P.L. 114-181. Also includes P.L. 114-183.

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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 126. Equal Opportunity for Individuals with Disabilities (Refs & Annos)

Subchapter II. Public Services (Refs & Annos)

Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart II. Public Transportation by Intercity and Commuter Rail

42 U.S.C.A. § 12161

§ 12161. Definitions

Effective: October 11, 1996

Currentness

As used in this subpart:

**(1) Commuter authority**

The term "commuter authority" has the meaning given such term in section 24102(4) of Title 49.

**(2) Commuter rail transportation**

The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) of Title 49.

**(3) Intercity rail transportation**

The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

**(4) Rail passenger car**

The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

**(5) Responsible person**

The term "responsible person" means--

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

**(6) Station**

The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 241, July 26, 1990, 104 Stat. 346; Pub.L. 104-287, § 6(k), Oct. 11, 1996, 110 Stat. 3400.)

42 U.S.C.A. § 12161, 42 USCA § 12161

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 42. The Public Health and Welfare

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Subchapter II. Public Services (Refs & Annos)

Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered

Discriminatory

Subpart II. Public Transportation by Intercity and Commuter Rail

42 U.S.C.A. § 12162

§ 12162. Intercity and commuter rail actions considered discriminatory

Currentness

**(a) Intercity rail transportation**

**(1) One car per train rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

**(2) New intercity cars**

**(A) General rule**

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(B) Special rule for single-level passenger coaches for individuals who use wheelchairs**

Single-level passenger coaches shall be required to--

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

**(C) Special rule for single-level dining cars for individuals who use wheelchairs**

Single-level dining cars shall not be required to--

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

**(D) Special rule for bi-level dining cars for individuals who use wheelchairs**

Bi-level dining cars shall not be required to--

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

**(3) Accessibility of single-level coaches**

**(A) General rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches--

(i) a number of spaces--



(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(ii) a number of spaces--

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after July 26, 1990.

**(B) Location**

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

**(C) Limitation**

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

**(D) Other accessibility features**

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

**(4) Food service**

**(A) Single-level dining cars**

On any train in which a single-level dining car is used to provide food service--

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if--

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

**(B) Bi-level dining cars**

On any train in which a bi-level dining car is used to provide food service--

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

**(b) Commuter rail transportation**

**(1) One car per train rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

**(2) New commuter rail cars**

**(A) General rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(B) Accessibility**

For purposes of section 12132 of this title and section 794 of Title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require--

- (i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;
- (ii) space to fold and store a wheelchair; or
- (iii) a seat to which a passenger who uses a wheelchair can transfer.

**(c) Used rail cars**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(d) Remanufactured rail cars**

**(1) Remanufacturing**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(2) Purchase or lease**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

**(e) Stations**

**(1) New stations**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(2) Existing stations**

**(A) Failure to make readily accessible**

**(i) General rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

**(ii) Period for compliance**

**(I) Intercity rail**

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

**(II) Commuter rail**

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

**(iii) Designation of key stations**

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

**(iv) Plans and milestones**

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

**(B) Requirement when making alterations**

**(i) General rule**

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of Title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

**(ii) Alterations to a primary function area**

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of Title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

**(C) Required cooperation**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 242, July 26, 1990, 104 Stat. 347.)

**Notes of Decisions (6)**

42 U.S.C.A. § 12162, 42 USCA § 12162

Current through P.L. 114-181. Also includes P.L. 114-183.

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Subpart II. Public Transportation by Intercity and Commuter Rail

42 U.S.C.A. § 12163

§ 12163. Conformance of accessibility standards

Currentness

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 12204(a) of this title.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 243, July 26, 1990, 104 Stat. 352.)

42 U.S.C.A. § 12163, 42 USCA § 12163

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Subpart II. Public Transportation by Intercity and Commuter Rail

42 U.S.C.A. § 12164

§ 12164. Regulations

Currentness

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 244, July 26, 1990, 104 Stat. 352.)

42 U.S.C.A. § 12164, 42 USCA § 12164

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Subpart II. Public Transportation by Intercity and Commuter Rail

42 U.S.C.A. § 12165

§ 12165. Interim accessibility requirements

Currentness

**(a) Stations**

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(c) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

**(b) Rail passenger cars**

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 245, July 26, 1990, 104 Stat. 352.)

42 U.S.C.A. § 12165, 42 USCA § 12165

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12141

§ 12141. Definitions

Currentness

As used in this subpart:

**(1) Demand responsive system**

The term “demand responsive system” means any system of providing designated public transportation which is not a fixed route system.

**(2) Designated public transportation**

The term “designated public transportation” means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

**(3) Fixed route system**

The term “fixed route system” means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

**(4) Operates**

The term “operates”, as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

**(5) Public school transportation**

The term “public school transportation” means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

**(6) Secretary**

The term "Secretary" means the Secretary of Transportation.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 221, July 26, 1990, 104 Stat. 338.)

**Notes of Decisions (1)**

42 U.S.C.A. § 12141, 42 USCA § 12141

Current through P.L. 114-181. Also includes P.L. 114-183.

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Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12142

§ 12142. Public entities operating fixed route systems

Currentness

**(a) Purchase and lease of new vehicles**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(b) Purchase and lease of used vehicles**

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(c) Remanufactured vehicles**

**(1) General rule**

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a public entity which operates a fixed route system--

**(A)** to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

**(B)** to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(2) Exception for historic vehicles**

**(A) General rule**

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

**(B) Vehicles of historic character defined by regulations**

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 222, July 26, 1990, 104 Stat. 339.)

Notes of Decisions (9)

42 U.S.C.A. § 12142, 42 USCA § 12142

Current through P.L. 114-181. Also includes P.L. 114-183.

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Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12143

§ 12143. Paratransit as a complement to fixed route service

Currentness

**(a) General rule**

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of Title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

**(b) Issuance of regulations**

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

**(c) Required contents of regulations**

**(1) Eligible recipients of service**

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section--

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the

hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

## **(2) Service area**

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

## **(3) Service criteria**

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

## **(4) Undue financial burden limitation**

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

## **(5) Additional services**

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

## **(6) Public participation**

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

**(7) Plans**

The regulations issued under this section shall require that each public entity which operates a fixed route system--

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

**(8) Provision of services by others**

The regulations issued under this section shall--

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

**(9) Other provisions**

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

**(d) Review of plan**

**(1) General rule**

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

**(2) Disapproval**



If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

**(3) Modification of disapproved plan**

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

**(e) "Discrimination" defined**

As used in subsection (a) of this section, the term "discrimination" includes--

- (1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;
- (2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;
- (3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or
- (4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

**(f) Statutory construction**

Nothing in this section shall be construed as preventing a public entity--

- (1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,
- (2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or
- (3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 223, July 26, 1990, 104 Stat. 340.)

Notes of Decisions (17)

42 U.S.C.A. § 12143, 42 USCA § 12143

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Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12144

§ 12144. Public entity operating a demand responsive system

Currentness

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of Title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 224, July 26, 1990, 104 Stat. 342.)

Notes of Decisions (3)

42 U.S.C.A. § 12144, 42 USCA § 12144

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Part B. Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12145

§ 12145. Temporary relief where lifts are unavailable

Currentness

**(a) Granting**

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary--

- (1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;
- (2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;
- (3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and
- (4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

**(b) Duration and notice to Congress**

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

**(c) Fraudulent application**

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall--

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 225, July 26, 1990, 104 Stat. 343.)

42 U.S.C.A. § 12145, 42 USCA § 12145

Current through P.L. 114-181. Also includes P.L. 114-183.

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12146

§ 12146. New facilities

Currentness

For purposes of section 12132 of this title and section 794 of Title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 226, July 26, 1990, 104 Stat. 343.)

42 U.S.C.A. § 12146, 42 USCA § 12146

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12147

§ 12147. Alterations of existing facilities

Currentness

**(a) General rule**

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of Title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

**(b) Special rule for stations**

**(1) General rule**

For purposes of section 12132 of this title and section 794 of Title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(2) Rapid rail and light rail key stations**

**(A) Accessibility**

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by

individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

**(B) Extension for extraordinarily expensive structural changes**

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least  $\frac{2}{3}$  of such key stations must be readily accessible to and usable by individuals with disabilities.

**(3) Plans and milestones**

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection--

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 227, July 26, 1990, 104 Stat. 343.)

Notes of Decisions (9)

42 U.S.C.A. § 12147, 42 USCA § 12147

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12148

§ 12148. Public transportation programs and activities in existing facilities and one car per train rule

Currentness

**(a) Public transportation programs and activities in existing facilities**

**(1) In general**

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of Title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

**(2) Exception**

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

**(3) Utilization**

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

**(b) One car per train rule**

**(1) General rule**

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of Title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

**(2) Historic trains**

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 228, July 26, 1990, 104 Stat. 344.)

42 U.S.C.A. § 12148, 42 USCA § 12148

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12149

§ 12149. Regulations

Currentness

**(a) In general**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

**(b) Standards**

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 229, July 26, 1990, 104 Stat. 345.)

42 U.S.C.A. § 12149, 42 USCA § 12149

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Subpart I. Public Transportation Other than by Aircraft or Certain Rail Operations

42 U.S.C.A. § 12150

§ 12150. Interim accessibility requirements

Currentness

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

**CREDIT(S)**

(Pub.L. 101-336, Title II, § 230, July 26, 1990, 104 Stat. 345.)

42 U.S.C.A. § 12150, 42 USCA § 12150

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12181

§ 12181. Definitions

Currentness

As used in this subchapter:

**(1) Commerce**

The term "commerce" means travel, trade, traffic, commerce, transportation, or communication--

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

**(2) Commercial facilities**

The term "commercial facilities" means facilities--

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

**(3) Demand responsive system**

The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

**(4) Fixed route system**

The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

**(5) Over-the-road bus**

The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

**(6) Private entity**

The term "private entity" means any entity other than a public entity (as defined in section 12131(1) of this title).

**(7) Public accommodation**

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce--

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

**(8) Rail and railroad**

The terms "rail" and "railroad" have the meaning given the term "railroad" in section 20102(1) of Title 49.

**(9) Readily achievable**

The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include--

(A) the nature and cost of the action needed under this chapter;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

**(10) Specified public transportation**

The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

**(11) Vehicle**

The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 301, July 26, 1990, 104 Stat. 353.)

Notes of Decisions (84)

42 U.S.C.A. § 12181, 42 USCA § 12181

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12182

§ 12182. Prohibition of discrimination by public accommodations

Currentness

**(a) General rule**

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

**(b) Construction**

**(1) General prohibition**

**(A) Activities**

**(i) Denial of participation**

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

**(ii) Participation in unequal benefit**

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

**(iii) Separate benefit**

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service,

facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

**(iv) Individual or class of individuals**

For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

**(B) Integrated settings**

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

**(C) Opportunity to participate**

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

**(D) Administrative methods**

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration--

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

**(E) Association**

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

**(2) Specific prohibitions**

**(A) Discrimination**

For purposes of subsection (a) of this section, discrimination includes--

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

**(B) Fixed route system**

**(i) Accessibility**

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(ii) Equivalent service**

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

**(C) Demand responsive system**

For purposes of subsection (a) of this section, discrimination includes--

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

**(D) Over-the-road buses**

**(i) Limitation on applicability**

Subparagraphs (B) and (C) do not apply to over-the-road buses.

**(ii) Accessibility requirements**

For purposes of subsection (a) of this section, discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

**(3) Specific construction**

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 302, July 26, 1990, 104 Stat. 355.)

Notes of Decisions (408)

42 U.S.C.A. § 12182, 42 USCA § 12182

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12183

§ 12183. New construction and alterations in public accommodations and commercial facilities

Currentness

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes--

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

CREDIT(S)

(Pub.L. 101-336, Title III, § 303, July 26, 1990, 104 Stat. 358.)

Notes of Decisions (31)

42 U.S.C.A. § 12183, 42 USCA § 12183

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12183

§ 12183. New construction and alterations in public accommodations and commercial facilities

Currentness

**(a) Application of term**

Except as provided in subsection (b) of this section, as applied to public accommodations and commercial facilities, discrimination for purposes of section 12182(a) of this title includes--

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

**(b) Elevator**

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 303, July 26, 1990, 104 Stat. 358.)

Notes of Decisions (31)

42 U.S.C.A. § 12183, 42 USCA § 12183

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42 U.S.C.A. § 12184

§ 12184. Prohibition of discrimination in specified public transportation services provided by private entities

Currentness

**(a) General rule**

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

**(b) Construction**

For purposes of subsection (a) of this section, discrimination includes--

(1) the imposition or application by a <sup>1</sup> entity described in subsection (a) of this section of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to--

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and<sup>2</sup>

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**(c) Historical or antiquated cars**

**(1) Exception**

To the extent that compliance with subsection (b)(2)(C) or (b)(7) of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970 [45 U.S.C.A. § 431 et seq.], such compliance shall not be required.

**(2) Definition**

As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car--

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which--

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 304, July 26, 1990, 104 Stat. 359.)

**Notes of Decisions (3)**

**Footnotes**

1 So in original. Probably should be "an".

2 So in original. The word "and" probably should not appear.

42 U.S.C.A. § 12184, 42 USCA § 12184

Current through P.L. 114-181. Also includes P.L. 114-183.

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12185

§ 12185. Study

Currentness

**(a) Purposes**

The Office of Technology Assessment shall undertake a study to determine--

- (1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and
- (2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

**(b) Contents**

The study shall include, at a minimum, an analysis of the following:

- (1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.
- (2) The degree to which such buses and service, including any service required under sections 12184(b)(4) and 12186(a) of this title, are readily accessible to and usable by individuals with disabilities.
- (3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.
- (4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.
- (5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.
- (6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

**(c) Advisory committee**

In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of--

- (1) members selected from among private operators and manufacturers of over-the-road buses;
- (2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and
- (3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

**(d) Deadline**

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

**(e) Review**

In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of Title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 305, July 26, 1990, 104 Stat. 360.)

42 U.S.C.A. § 12185, 42 USCA § 12185

Current through P.L. 114-181. Also includes P.L. 114-183.

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12186

§ 12186. Regulations

Currentness

**(a) Transportation provisions**

**(1) General rule**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections <sup>1</sup> 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

**(2) Special rules for providing access to over-the-road buses**

**(A) Interim requirements**

**(i) Issuance**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

**(ii) Effective period**

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

**(B) Final requirement**

**(i) Review of study and interim requirements**

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

**(ii) Issuance**

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

**(iii) Effective period**

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect--

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

**(C) Limitation on requiring installation of accessible restrooms**

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

**(3) Standards**

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b)(2) and 12184 of this title.

**(b) Other provisions**

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

**(c) Consistency with ATBCB guidelines**

Standards included in regulations issued under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

**(d) Interim accessibility standards**

### **(1) Facilities**

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

### **(2) Vehicles and rail passenger cars**

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

### **CREDIT(S)**

(Pub.L. 101-336, Title III, § 306, July 26, 1990, 104 Stat. 361; Pub.L. 104-59, Title III, § 341, Nov. 28, 1995, 109 Stat. 608.)

### **Notes of Decisions (6)**

#### **Footnotes**

1 So in original. Probably should be "section".

42 U.S.C.A. § 12186, 42 USCA § 12186

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12187

§ 12187. Exemptions for private clubs and religious organizations

Currentness

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) [42 U.S.C.A. § 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 307, July 26, 1990, 104 Stat. 363.)

Notes of Decisions (4)

42 U.S.C.A. § 12187, 42 USCA § 12187

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Subchapter III. Public Accommodations and Services Operated by Private Entities (Refs & Annos)

42 U.S.C.A. § 12188

§ 12188. Enforcement

Currentness

**(a) In general**

**(1) Availability of remedies and procedures**

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

**(2) Injunctive relief**

In the case of violations of sections 12182(b)(2)(A)(iv) and section <sup>1</sup> 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

**(b) Enforcement by Attorney General**

**(1) Denial of rights**

**(A) Duty to investigate**

**(i) In general**

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

**(ii) Attorney General certification**

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

**(B) Potential violation**

If the Attorney General has reasonable cause to believe that--

- (i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or
- (ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

**(2) Authority of court**

In a civil action under paragraph (1)(B), the court--

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter--

- (i) granting temporary, preliminary, or permanent relief;
- (ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and
- (iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount--

- (i) not exceeding \$50,000 for a first violation; and

(ii) not exceeding \$100,000 for any subsequent violation.

**(3) Single violation**

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

**(4) Punitive damages**

For purposes of subsection (b)(2)(B) of this section, the term “monetary damages” and “such other relief” does not include punitive damages.

**(5) Judicial consideration**

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 308, July 26, 1990, 104 Stat. 363.)

Notes of Decisions (420)

**Footnotes**

1 So in original. The word “section” probably should not appear.

42 U.S.C.A. § 12188, 42 USCA § 12188

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12189

§ 12189. Examinations and courses

Currentness

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

**CREDIT(S)**

(Pub.L. 101-336, Title III, § 309, July 26, 1990, 104 Stat. 365.)

Notes of Decisions (30)

42 U.S.C.A. § 12189, 42 USCA § 12189

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12201

§ 12201. Construction

Effective: January 1, 2009

Currentness

**(a) In general**

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

**(b) Relationship to other laws**

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.

**(c) Insurance**

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict--

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter<sup>1</sup> I and III.

**(d) Accommodations and services**

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

**(e) Benefits under State worker's compensation laws**

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

**(f) Fundamental alteration**

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

**(g) Claims of no disability**

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

**(h) Reasonable accommodations and modifications**

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 501, July 26, 1990, 104 Stat. 369; Pub.L. 110-325, § 6(a)(1), Sept. 25, 2008, 122 Stat. 3557.)

Notes of Decisions (37)

**Footnotes**


1 So in original. Probably should be "subchapters".

42 U.S.C.A. § 12201, 42 USCA § 12201

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Unconstitutional or Preempted Held Unconstitutional by Jamison v. Delaware, D.Del., Oct. 06, 2004

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42 U.S.C.A. § 12202

§ 12202. State immunity

Currentness

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in <sup>1</sup> Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 502, July 26, 1990, 104 Stat. 370.)

Notes of Decisions (121)

Footnotes

<sup>1</sup> So in original. Probably should be "in a".

42 U.S.C.A. § 12202, 42 USCA § 12202

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42 U.S.C.A. § 12203

§ 12203. Prohibition against retaliation and coercion

Currentness

**(a) Retaliation**

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

**(b) Interference, coercion, or intimidation**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

**(c) Remedies and procedures**

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 503, July 26, 1990, 104 Stat. 370.)

**VALIDITY**

<For constitutionality of sections 101 and 503 of Pub.L. 101-336, as applied, see Hosanna--Tabor Evangelical Lutheran Church and School v. E.E.O.C., U.S.2012, 132 S.Ct. 694, 181 L.Ed.2d 650, holding that the Establishment and Free Exercise clauses of the First Amendment bar certain actions brought under the ADA.>

Notes of Decisions (655)

42 U.S.C.A. § 12203, 42 USCA § 12203

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12204

§ 12204. Regulations by Architectural and Transportation Barriers Compliance Board

Effective: December 19, 2014

Currentness

**(a) Issuance of guidelines**

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

**(b) Contents of guidelines**

The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

**(c) Qualified historic properties**

**(1) In general**

The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

**(2) Sites eligible for listing in National Register**

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under division A of subtitle III of Title 54, the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

**(3) Other sites**

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 504, July 26, 1990, 104 Stat. 370; Pub.L. 113-287, § 5(k)(5), Dec. 19, 2014, 128 Stat. 3270.)

**Notes of Decisions (1)**

42 U.S.C.A. § 12204, 42 USCA § 12204

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12205

§ 12205. Attorney's fees

Currentness

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 505, July 26, 1990, 104 Stat. 371.)

Notes of Decisions (244)

42 U.S.C.A. § 12205, 42 USCA § 12205

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42 U.S.C.A. § 12205a

§ 12205a. Rule of construction regarding regulatory authority

Effective: January 1, 2009

Currentness

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this chapter includes the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 506, as added Pub.L. 110-325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

42 U.S.C.A. § 12205a, 42 USCA § 12205a

Current through P.L. 114-181. Also includes P.L. 114-183.

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Title 42. The Public Health and Welfare

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Subchapter IV. Miscellaneous Provisions

42 U.S.C.A. § 12206

§ 12206. Technical assistance

Effective: January 1, 2009

Currentness

**(a) Plan for assistance**

**(1) In general**

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

**(2) Publication of plan**

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of Title 5 (commonly known as the Administrative Procedure Act).

**(b) Agency and public assistance**

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

**(c) Implementation**

**(1) Rendering assistance**

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

**(2) Implementation of subchapters**

**(A) Subchapter I**

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I.

**(B) Subchapter II**

**(i) Part A**

The Attorney General shall implement such plan for assistance for part A of subchapter II.

**(ii) Part B**

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II.

**(C) Subchapter III**

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

**(D) Title IV**

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

**(3) Technical assistance manuals**

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

**(d) Grants and contracts**

**(1) In general**

Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions),



and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or <sup>1</sup> grants described in this paragraph.

**(2) Dissemination of information**

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

**(e) Failure to receive assistance**

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 507, formerly § 506, July 26, 1990, 104 Stat. 371; renumbered § 507, Pub.L. 110-325, § 6(a) (2), Sept. 25, 2008, 122 Stat. 3558.)

**Footnotes**

<sup>1</sup> So in original. Probably should be “of”.

42 U.S.C.A. § 12206, 42 USCA § 12206

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12207

§ 12207. Federal wilderness areas

Effective: January 1, 2009

Currentness

**(a) Study**

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

**(b) Submission of report**

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

**(c) Specific wilderness access**

**(1) In general**

Congress reaffirms that nothing in the Wilderness Act [16 U.S.C.A. § 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act [16 U.S.C.A. § 1131 et seq.] no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

**(2) "Wheelchair" defined**

For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 508, formerly § 507, July 26, 1990, 104 Stat. 372; renumbered § 508, Pub.L. 110-325, § 6(a) (2), Sept. 25, 2008, 122 Stat. 3558.)

42 U.S.C.A. § 12207, 42 USCA § 12207

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42 U.S.C.A. § 12208

§ 12208. Transvestites

Effective: January 1, 2009

Currentness

For the purposes of this chapter, the term “disabled” or “disability” shall not apply to an individual solely because that individual is a transvestite.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 509, formerly § 508, July 26, 1990, 104 Stat. 373; renumbered § 509, Pub.L. 110-325, § 6(a) (2), Sept. 25, 2008, 122 Stat. 3558.)

42 U.S.C.A. § 12208, 42 USCA § 12208

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12209

§ 12209. Instrumentalities of the Congress

Effective: December 16, 2014

Currentness

The Government Accountability Office, the Government Publishing Office, and the Library of Congress shall be covered as follows:

**(1) In general**

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

**(2) Establishment of remedies and procedures by instrumentalities**

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

**(3) Report to Congress**

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

**(4) Definition of instrumentality**

For purposes of this section, the term "instrumentality of the Congress" means the following: <sup>1</sup> the Government Accountability Office, the Government Publishing Office, and the Library of Congress. <sup>2</sup>

**(5) Enforcement of employment rights**

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

**(6) Enforcement of rights to public services and accommodations**

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

#### **(7) Construction**

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

#### **CREDIT(S)**

(Pub.L. 101-336, Title V, § 510, formerly § 509, July 26, 1990, 104 Stat. 373; Pub.L. 102-166, Title III, § 315, Nov. 21, 1991, 105 Stat. 1095; Pub.L. 104-1, Title II, §§ 201(c)(3), 210(g), Title V, § 504(a)(2), Jan. 23, 1995, 109 Stat. 8, 16, 41; Pub.L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814; renumbered § 510, Pub.L. 110-325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558; Pub.L. 113-235, Div. H, Title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

#### **Notes of Decisions (1)**

#### **Footnotes**

1 So in original. The comma probably should not appear.

2 So in original. The comma probably should not appear.

42 U.S.C.A. § 12209, 42 USCA § 12209

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12210

§ 12210. Illegal use of drugs

Effective: January 1, 2009

Currentness

**(a) In general**

For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

**(b) Rules of construction**

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who--

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

**(c) Health and other services**

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

**(d) "Illegal use of drugs" defined**

**(1) In general**

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C.A. § 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act [21 U.S.C.A. § 801 et seq.] or other provisions of Federal law.

**(2) Drugs**

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C.A. § 812].

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 511, formerly § 510, July 26, 1990, 104 Stat. 375; renumbered and amended § 511, Pub.L. 110-325, § 6(a)(2), (3), Sept. 25, 2008, 122 Stat. 3558.)

**Notes of Decisions (4)**

42 U.S.C.A. § 12210, 42 USCA § 12210

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12211

§ 12211. Definitions

Effective: January 1, 2009

Currentness

**(a) Homosexuality and bisexuality**

For purposes of the definition of "disability" in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

**(b) Certain conditions**

Under this chapter, the term "disability" shall not include--

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 512, formerly § 511, July 26, 1990, 104 Stat. 376; renumbered § 512, Pub.L. 110-325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

Notes of Decisions (2)

42 U.S.C.A. § 12211, 42 USCA § 12211

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42 U.S.C.A. § 12212

§ 12212. Alternative means of dispute resolution

Effective: January 1, 2009

Currentness

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 514, formerly § 513, July 26, 1990, 104 Stat. 377; renumbered § 514, Pub.L. 110-325, § 6(a)(2), Sept. 25, 2008, 122 Stat. 3558.)

Notes of Decisions (2)

42 U.S.C.A. § 12212, 42 USCA § 12212

Current through P.L. 114-181. Also includes P.L. 114-183.

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42 U.S.C.A. § 12213

§ 12213. Severability

Effective: January 1, 2009

Currentness

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

**CREDIT(S)**

(Pub.L. 101-336, Title V, § 515, formerly § 514, July 26, 1990, 104 Stat. 378; renumbered § 515, Pub.L. 110-325, § 6(a) (2), Sept. 25, 2008, 122 Stat. 3558.)

42 U.S.C.A. § 12213, 42 USCA § 12213

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## 42 U.S.C.A. § 2000e-5 Enforcement provisions

### (a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or,

where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)<sup>1</sup> of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings

with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The



person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have

worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court--



(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of Title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

## 42 U.S.C.A. § 2000e-16 Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress  
Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall--

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee

or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to--

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..<sup>1</sup>

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) of this title applicable to compensation discrimination  
Section 2000e-5(e)(3) of this title shall apply to complaints of discrimination in  
compensation under this section.

# Addendum B

IN THE FIFTH JUDICIAL DISTRICT COURT  
OF IRON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

DENNIS ATKINSON,

Defendant.

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Case No. 141500765 FS

Sentencing  
Electronically Recorded on  
July 21, 2015

BEFORE: THE HONORABLE KEITH C. BARNES  
Fifth District Court Judge

APPEARANCES

For the Plaintiff:

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UTAH APPELLATE COURTS

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1                                    P R O C E E D I N G S

2                                    (Electronically recorded on July 21, 2015)

3                                    THE COURT: The Court is going to call State of Utah vs.  
4 Dennis Atkinson. Mr. Atkinson has seven cases before the Court  
5 here today.

6                                    MR. SLACK: Your Honor, Mr. Burns has asked me to stand  
7 in for his portion of this, and I just -- I need (inaudible) few  
8 more minutes (inaudible).

9                                    THE COURT: Okay. Thank you. The matter is placed on  
10 second call.

11                                    (Court handles other matters)

12                                    THE COURT: Mr. Slack, is the defense ready to proceed  
13 on Mr. Atkinson's cases?

14                                    MR. SLACK: We are.

15                                    THE COURT: Okay. The Court is going to call Nos. 2  
16 through 8 on the calendar, State of Utah vs. Dennis Atkinson.  
17 Mr. Slack, have you had an opportunity to review the pre-sentence  
18 investigation report with your client?

19                                    MR. SLACK: Yes, Judge.

20                                    THE COURT: Are you ready to proceed?

21                                    MR. SLACK: I believe we are.

22                                    THE COURT: Mr. Little, is the State ready to proceed on  
23 this?

24                                    MR. LITTLE: Yes, Judge.

25                                    THE COURT: Does the State have a recommendation?

1 MR. LITTLE: Yes, Judge. There are a number of cases  
2 that are before the Court. Mr. Atkinson has pled guilty to -- I  
3 believe we have 1, 2, 3 --

4 THE COURT: I'm sorry, Ms. Mary said can you speak up  
5 just a little bit?

6 MR. LITTLE: Sure. 1, 2, 3, 4, 5, 6 cases -- let's see,  
7 1, 2, 3, 4, 5 cases, right? Yes, five cases --

8 THE COURT: Yes.

9 MR. LITTLE: -- that are before the Court for  
10 sentencing. We do stipulate to the recommendations that are  
11 outlined in the pre-sentence investigation report, Judge.  
12 Mr. Atkinson, part of this plea also has several other cases that  
13 are going to be dismissed pursuant to this plea.

14 There are several cases here, Judge. Mr. Atkinson  
15 has had, I'd say, kind of a bad couple of years in terms of his  
16 criminal activity. Judge, I would recommend that a few of these  
17 run consecutive. I believe that Mr. Atkinson has earned that to  
18 have some of these run consecutively, so we would submit that as  
19 our argument.

20 THE COURT: Thank you. Mr. Slack?

21 MR. SLACK: Your Honor, my client, as you can see,  
22 probably the No. 1 thing that needs to be addressed with him is  
23 his substance abuse issue. All of these cases in all their  
24 forms, whether it be driving under the influence of alcohol,  
25 identity fraud, forgery, I guess to a lesser extent the sex



1 offender, but I would also think that an argument could be made  
2 that the substance abuse really plays a role in this in that the  
3 behaviors that he exhibits are -- you know, the addiction causes  
4 him to basically -- you know, whether it be to commit crimes or  
5 whether it be to procrastinate, whatever it might be, but the  
6 reality is is but for substance abuse, the majority of these  
7 crimes, if not all of these crimes, don't exist.

8           So what my client is asking the Court to do is to  
9 sentence him to county time, to be placed on probation and but to  
10 only be released from the county for purposes of treatment, and  
11 that would be treatment that he would be required to possess and  
12 obtain, of course. We would ask the Court to give him one last  
13 final opportunity to show that it is just substance abuse, and  
14 that he is serious about treatment this time.

15           If the Court in the alternative is not convinced that  
16 that is appropriate, my client is asking that the -- if sentenced  
17 to prison, consistent with what's been asked for by the State,  
18 that they all -- that these matters be ran concurrent, taking  
19 into account, of course, the substance abuse issues that he's  
20 dealing with.

21           If -- furthermore, if the Court does find that prison  
22 time is appropriate, that there be a statement contained within  
23 the judgment that would admonish or exhort the board of pardons  
24 to see to it that he is exposed to substance abuse treatment as  
25 soon as that is humanly possible so that he can deal with these

1 issues. But again, his request is not to be sent to prison, but  
2 to be sent to county time here with only released to treatment.

3 The Court has seen that -- at least through that letter  
4 given a copy -- not given a copy, but had Counsel read a letter  
5 that was provided to me this morning wherein my client exhibited  
6 behavior in the jail that was -- whether we call it appropriate,  
7 whether we call it heroic, whatever you want to call it, that he  
8 was being helpful without any thought to himself trying to help  
9 out in that instance, and that was written by a jailor there.  
10 That's our request. Certainly at this time my client can speak.  
11 The Court's probably fully aware of my request.

12 THE COURT: Thank you. Mr. Atkinson?

13 MR. ATKINSON: Yeah, I would just ask for a chance. My  
14 fiancé has been diagnosed with cervical cancer. It's moved into  
15 her organs, or else she would be here today. I know I've made  
16 past mistakes. I'm committed to do the right thing from here on  
17 out, and I just need to be there for her and my family and not  
18 put myself in these situations.

19 I do -- I have before incarceration and after my DUIs I  
20 have obtained a substance abuse evaluation through Cedar walk-in  
21 center here in Cedar City. I -- I can't remember her last name,  
22 I know her first name is Annie.

23 MR. SLACK: Jamie.

24 MR. ATKINSON: Jamie?

25 MR. SLACK: Yeah.

1           MR. ATKINSON: Yeah. I just -- I do need -- I was  
2 just recently declared disabled from back injuries needing --  
3 shoulders, I need surgery on them. I was self medicating for it.  
4 I just recently was given -- provided with Medicaid for proof  
5 like six days before my arrest, and that can -- those things can  
6 help me get the help I do need and the proper treatment so I can  
7 be there for my fiancé, for her daughter and do the right thing,  
8 make the right decisions in life and not be in front of you  
9 again, your Honor.

10           THE COURT: Thank you. Anything else, Mr. Slack?

11           MR. SLACK: No.

12           THE COURT: Mr. Little?

13           MR. LITTLE: No, Judge. I just -- you know, just wanted  
14 to state I think the Court understands and knows this, but he has  
15 been an parole before. He has been to prison. He had several  
16 violations on several occasions while he was on probation and  
17 parole. Furthermore, I know that you have that letter in front  
18 of you, but he also has had several institutional disciplinary  
19 actions while he's been incarcerated currently as well. I just  
20 don't think he's amenable for county time nor for probation.

21           THE COURT: Thank you. Well, first Mr. Atkinson,  
22 addressing the letter from the jail, you know, yes, the Court  
23 applauds your assisting, but that's what -- that's what we do as  
24 people.

25           MR. ATKINSON: I agree, your Honor.

1           THE COURT: You know, we -- you -- you know, we -- we  
2 help people out when they need help. We try to be honest and  
3 try to be productive in society, and the Court, you know, hopes  
4 that you'll make better decisions down the road.

5           You know, as Mr. Little -- and I'm sure even when you  
6 read this report, Mr. Atkinson -- I mean you're standing before  
7 the Court just on the cases that you pled guilty to to five cases  
8 with 2014/2015 case numbers. This is just in the span of less  
9 than two years, and that's -- it's not acceptable. It's  
10 concerning that, you know, when someone has committed these  
11 number of offenses and what the offenses are, there's what's the  
12 appropriate punishment, but there's also the -- what about the  
13 community? Is the community in harm's way, and in this case, you  
14 know, you had a -- one victim being your brother and what led up  
15 to that.

16           Mr. Dennis Roland Atkinson, it's the sentence order of  
17 this Court in case No. 141500700, charge of driving under the  
18 influence and/or drugs, a 3<sup>rd</sup> Degree Felony, you're sentenced to  
19 serve zero to five years in the Utah State Prison and pay a \$33  
20 court security fee. Case No. 141500701, charge of driving under  
21 the influence of alcohol and/or drugs, a 3<sup>rd</sup> Degree Felony, you're  
22 sentenced to serve zero to five years in the Utah State Prison,  
23 plus a \$33 court security fee. Case No. 141500765, to the charge  
24 of failure to register as a sex offender, a 3<sup>rd</sup> Degree Felony,  
25 ordered to serve zero to five years in the Utah State Prison,

1 plus a \$33 court security fee. Case No. 151500293, charge of  
2 identity fraud crime, a 3<sup>rd</sup> Degree Felony, you're sentenced to  
3 serve zero to five years in the Utah State Prison, plus a \$33  
4 court security fee. In case No. 151500294, the charge of  
5 forgery, a 3<sup>rd</sup> Degree Felony, you're sentenced to serve zero to  
6 five years in the Utah State Prison, plus a \$33 court security  
7 fee. Case Nos. 700, 701, 765 and 294, these are to run  
8 concurrent, and case No. 151500293 is to run consecutive. You  
9 are ordered to be taken into the custody of the Department of  
10 Corrections at this time to serve this sentence. If you --  
11 MR. LITTLE: Judge, if I can just interrupt. In case  
12 No. 151500294, there's also a restitution amount that Valley View  
13 Medical Center is seeking of \$7,747.47.  
14 THE COURT: Thank you. Is that an amount that's  
15 disputed by your client?  
16 MR. SLACK: He's claiming yes.  
17 THE COURT: Okay. Now how in the past on this -- is  
18 this something that's handled by here or by the board of pardons?  
19 MR. LITTLE: Typically, Judge, we have given -- in this  
20 case the State would be -- be happy to have a restitution  
21 hearing. We could have a restitution hearing within a week.  
22 THE COURT: Okay.  
23 MR. SLACK: That's in case 294?  
24 THE COURT: Yes.  
25 MR. LITTLE: We just had the last -- you remember the

1 Christopher Lorenzo case (inaudible) submit it back to us.

2 THE COURT: Correct. Okay. Then restitution -- there

3 will be a restitution hearing then in case No. 151500294, and

4 that will be one week from today, Tuesday, July 28<sup>th</sup>, and we'll

5 have that at 3 p.m.

6 Mr. Atkinson, if you think the Court has made an error,

7 you have 30 days from today's date to perfect an appeal. If you

8 choose to do that, you need to file the appropriate paperwork

9 with this Court during that time frame, and the Court will order

10 that you will stay here in the Iron County Correctional Facility

11 until after the restitution hearing next week.

12 MR. SLACK: Then could we place on the record the cases

13 that are being dismissed as a result of this --

14 THE COURT: Yes.

15 MR. LITTLE: There's the case that (inaudible) that are

16 dismissed are case Nos. 151500018 and 151500097.

17 THE COURT: Case Nos. 151500018 and 151500097 are

18 dismissed. Would that be with or without prejudice? I guess

19 without prejudice at this point.

20 MR. LITTLE: Without prejudice.

21 THE COURT: Without prejudice. Thank you.

22 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH       )  
                          ) ss.  
COUNTY OF TOOELE   )

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.

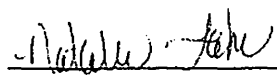
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

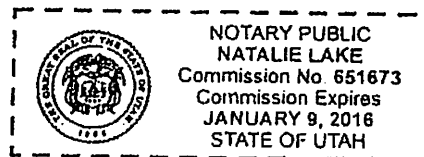
I further certify that I am not interested in the outcome thereof.

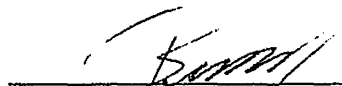
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 20<sup>th</sup> day of August 2015.

My commission expires:  
January 9, 2016

  
\_\_\_\_\_  
Natalie Lake  
NOTARY PUBLIC  
Residing in Tooele County



  
\_\_\_\_\_  
Beverly Lowe, RSR, CCR