

MINUTES
WORKFORCE DIVERSITY AND INCLUSION COMMITTEE
OCTOBER 28, 2009 3:30 P.M.
BEVERLY LIVESAY CONFERENCE ROOM

Present: L. McBean-Clairborne; S. Martel Moore; L. Roberts; M. DeSouza; C. DeMarco; B. Doling; L. Holmes
Excused: K. Belanger; A. Fitzpatrick M. Lynch; P. Carey; K. Herrera, K. Kephart
Staff: K. Fuller, Deputy Clerk of the Legislature
Guests: S. Reistetter, S. Estes, J. Mareane

Call to Order

The meeting opened at 3:35 p.m.

Announcements

- The 16th Annual Conference on Depression: Living in Difficult Times, will be held on Tuesday, November 10th, 9:00 a.m. at the Borg Warner Room. Advance registration is requested due to space limitations. The Reverend Rebecca W. Dolch will be the keynote speaker. Following the conference a panel discussion will occur addressing the question, "Why do problems in the economy and individual financial difficulty contribute so directly to the difficulties we face now?" Included on the panelists are representatives from various banks, a social worker, representatives from Cornell Cooperative Extension, and Mr. Shinagawa of the Tompkins County Legislature.

Civil Service

Ms. Reistetter reported the Cornell Institute of Public Affairs students have almost completed their first semester's work on the project. A presentation of the information compiled will be held on December 2nd, 2:00 p.m. to 5:00 p.m., in the Beverly Livesay Conference Room.

The second of a two-part Civil Service test-taking training took place last Monday at the Workforce New York offices with 14 of the 17 registered individuals in attendance. She will work further with the City of Ithaca, Mr. Estes, and Ms. Fitzpatrick to discuss future training seminars with the hope of holding them in January and February.

Mr. Estes said Ms. Fitzpatrick, Mr. Mareane, and he have spoke to Richard Ciprioni, Director of Municipal Services Division of the State Civil Service offices, about the work being completed. Mr. Estes does not anticipate the State offices to be forthcoming with information and may need to submit a Freedom of Information Law (FOIL) request. He expressed concern that information requested would be provided as quickly as the County would like in order to proceed with the project.

Mrs. McBean-Clairborne spoke of discussions on the topic of Civil Service Reform at the New York State Association of Counties Conference and Olean County as well as others expressed interest in the work being completed here.

American Disabilities Act – Disclosure Notices

Ms. Martel Moore said she presented to Department Heads information on the revisions in the American with Disabilities Act. The discussion was well received, with many expressing concern about accessibility issues relating to meetings. There was discussion concerning other services provided (ASL, language interpretation, etc.) to determine if a cost-savings could be realized by combining separate contracts.

Mrs. McBean-Clairborne said she often hears of constituent requests for certain services to assist them with participation at meetings. Many do not come forward and ask, but many have expressed an interest in doing so.

Mr. Roberts spoke of the disclosure statements placed on his agency's agendas and noted that deaf individuals consider ASL as another language rather than a disability, the agendas have been amended to indicate "ASL or another accommodation".

The Committee agree discuss this topic again at a future meeting.

Commons Regulations and Redesign

Mrs. McBean-Clairborne said the City of Ithaca is considering regulations to prohibit smoking on the Commons and that have asked for public comments.

Mr. Roberts spoke of his participation on the Committee considering the redesign of the Commons. They too are seeking input for this project. He believes the project could result in an exciting change for an important part of the community.

Presentation – American Disabilities Act

Ms. Martel Moore provided the following Powerpoint presentation outlining the changes in the Employer Responsibilities portion. During the presentation various scenarios were provided to show how the law would apply. Mr. Roberts noted that part of the reason the act was amended is that the Supreme Court made decisions based on their interpretation that were not consistent with what Congress felt the intent of the legislation was.

WORKFORCE DIVERSITY & INCLUSION COMMITTEE



**AMERICAN WITH DISABILITIES ACT
2008 AMENDMENTS**

Presenter
Shawn Martel Moore, Esq.
Vice-Chair
Workforce Diversity & Inclusion Committee

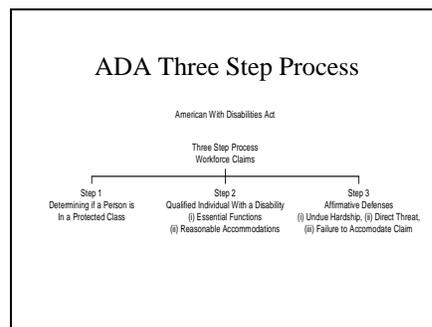
October 28, 2009

APPLICABLE STATUTE

- ❖ Title II of The Americans with Disabilities Act of 1990 (Known as the "ADA")
- ❖ Amendment Signed by the President September 25, 2008
- ❖ Amendment Effective January 1, 2009

AMERICAN WITH DISABILITIES ACT

<u>Objective</u>	<u>Two Significant Rights</u>
1. Amendments of 2008	1. Non-Discrimination
2. Workforce (15 or More Employees)	2. Reasonable Accommodations
3. Three Step Process	



S1: QUALIFIED INDIVIDUAL

- Qualified individual with a disability means – an individual with a disability *Who, With or Without Reasonable Accommodations*, can perform the essential functions of the job position that they currently hold or the applicant is seeking.

S1: DEFINITION OF DISABILITY

- ❖ If he or she has a *physical or mental impairment* that substantially limits one or more of a person's major life activities;
- ❖ Has a *record* of such an impairment; or
- ❖ Is *regarded* as having such an impairment.

PHYSICAL OR MENTAL IMPAIRMENT

- Nature and Severity of the impairment
- Duration or Expected duration of the impairment
- Permanent or Long Term Impact (resulting from the impairment) Sect. 1630.2(j)

RECORD OF IMPAIRMENT

- Method of Proof – Record
- Physical or Mental Impairment – Substantially Limits a Major Life Activity
- Includes Misclassified or Not Currently Impaired Sec. 1630.2(k)

PERCEIVED AS DISABLED

- Person has a physical or mental impairment that *does not substantially limit major life activities* but is treated – by an Entity as constituting such limitation
- Has a physical or mental impairment that substantially limits major life activities only as a *result of the attitudes of others* towards such impairment; or
- Has *NONE* of the impairments, but is treated by – Entity as having a substantially limiting impairment. Sec. 1630.2(1)

S2: WHAT ARE ESSENTIAL FUNCTIONS?

- Limited number of employees are available to perform the job function
- Employer's Judgment
- Written Job Description
- Time spent performing the function
- Terms of Collective Bargaining Agreement
- Work performed in the past/present incumbents in the job

CASE STUDIES

- Guice-Mills v. Derwinski – reporting on time is an essential function.
- Kuntz v. City of New Haven – if only some members of a job classification actually perform a job function, it is not essential; if a job function is performed for only a small percentage of the employee's time it is not essential.

S2: REASONABLE ACCOMMODATIONS

- Facility – Readily Accessible
- Job Restructuring
- Part-time or Modified Work Schedules
- Reassignment to another position
- Acquisition or modification equipment or devices
- Adjustment or modification of examinations, training materials or policies
- Qualified Readers or Interpreters or other similar accommodations

BURDEN OF PERSUASION

- Remains on Employer to prove whether or not they can make reasonable accommodations
- Employee must bear the burden of coming forward with evidence that suggest that accommodation may in fact be reasonably made.

S3: DEFENSE: UNDUE HARDSHIP

Employer's Affirmative Defense:

- Employee rejects the accommodation offered by the employer
- The request would cause an undue hardship on the employer's business operation. Sec. 102(b)(5)(A). (Review the scope, size, financial resources of operation)

S3: DEFENSE: DIRECT THREAT

Employer's Affirmative Defense:

- Unable to provide by Law (Federal) (Ex. Communicable disease – food handler)
- Impose direct safety to health and safety of the workplace. How does an employer make this determination?
 - Reasonable Medical Judgment
 - Duration of Risk
 - The Nature and Severity of the potential harm
 - Likelihood of potential harm
 - Imminence of the potential harm

S3: FAILURE TO ACCOMMODATE

Employee's Claim:

- Employee is a qualified individual with a disability
- Employer is aware of the disability
- Employee requires an accommodation
- The Accommodation will not cause undue hardship
- Employer knows or should know of the need for the accommodation
- Employer FAILS to provide the accommodation

ADA AMENDMENT ACTS OF 2008

1. Broad Interpretation
2. Shall Not Require Extensive Analysis
3. Threshold Shift – Burden on Employer
4. Reinstates Pre-Sutton Premise of "Substantially Limits"
5. Expands Definition of "Major Life Activities"

Signed by President on September 25, 2008
 Effective January 1, 2009

SHIFT IN STATUTORY INTERPRETATION

Maintains the definition of disability: a physical or mental impairment that substantially limits one or more major life activity, a record of ... or being regarded as having such an impairment.

It reinstates the pre-Sutton premise of the term "substantially limits" that one should not consider the ameliorative effects of mitigating measures (such as medication, prosthetics, assistive technology, or adaptive strategies), although they may reduce the impact of an impairment on an individual's ability to function (Sutton v. United Air Lines, Inc., 527 U.S. 417; School Board of Nassau County v. Arline 480 U.S. 273 (1987)).

MAJOR LIFE ACTIVITIES

Expands Definition:

1. Daily Living Activities
2. Major Bodily Functions
3. Mitigating Measures

DAILY LIVING ACTIVITIES

- | | |
|----------------------|---|
| • CARING FOR ONESELF | • BREATHING |
| • MANUAL TASK | • LEARNING |
| • VISUAL | • READING |
| • HEARING | • CONCENTRATING |
| • EATING | • THINKING |
| • SLEEPING | • COMMUNICATING |
| • WALKING | • WORKING |
| • STANDING | • OPERATION OF MAJOR BODILY FUNCTIONS – ADDRESS CHRONIC IMPAIRMENTS |
| • LIFTING | |
| • BENDING | |
| • SPEAKING | |

MAJOR LIFE ACTIVITIES

- Remember this list is non-exhaustive:

IMMUNE SYSTEM	CIRCULATORY
NORMAL CELL GROWTH	ENDOCRINE
DIGESTIVE	REPRODUCTIVE
BOWEL	BLADDER
BRAIN	NEUROLOGICAL
RESPIRATORY	

LEARNING DISABILITIES

- Note an individual who may perform well academically may still be limited in a major life activity of *learning, reading, writing, thinking or speaking*.

EPISODIC OR IN REMISSION

Clarifies that an impairment that is *episodic or in remission* is a disability if it would substantially limit a major life activity when active.

Although *transitory illnesses or injuries* (lasting *less than* six months) remain outside the scope of the ADA, chronic conditions that are *episodic or in remission* is considered a disability that would substantially limit a major life activity when active, this includes *acute episodes* that are *shorter* than six months.

Similar to New York State Human Rights Law, Article 15 (allows temporary disabilities)

REASONABLE ACCOMMODATIONS

The ADA specifies provisions of reasonable accommodations for eligible activities and settings, and accommodations may include, but are not limited to:

- ✦ Redesigning Equipment
- ✦ Providing Written Communication in Alternative Formats,
- ✦ Modifying Tests
- ✦ Redesigning Services to Accessibility Locations
- ✦ Altering Existing Facilities
- ✦ Building New Facilities

Climate Survey

Ms. Reistetter distributed to the Committee a draft Climate Survey that would provide information on employee perceptions about their workplace. A discussion followed, during which it was noted that individuals would desire assurance of anonymity rather than the question asking what department they work in. It was also mentioned that the survey could be extended to clients as well as the business community in the future to further provide a knowledge base of the effectiveness of the work completed. Staff members offered to take the survey to determine the length of time for completion; it is approximately 7-8 minutes. It was suggested that modifying the question about what department a staff member is located to reflect a color-coded time card to distinguish the staffing level would be more appropriate.

Ms. Reistetter spoke of using the survey to determine possible discrimination relating to religious holidays. The survey response could provide information that could lead to a more flexible holiday schedule. It was briefly discussed that focusing the question to reflect the climate of the environment around holidays may be more appropriate.

Mr. Mareane said a presentation of the survey could be provided at the November 4th Department Head meeting, followed by a one-month period for suggestions and comments. Mrs. McBean-Clairborne said the survey is an important tool to begin the process of looking at the County as a whole.

Adjournment

The meeting adjourned at 4:50 p.m.