

Greetings from the DBTAC Northwest January 2009

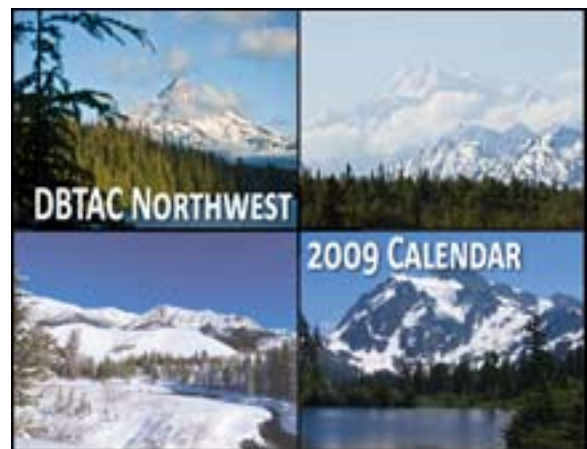
What's New at Your ADA Information Center?

Electronic Newsletter

We are now producing our newsletter in digital format, so that we can reach more readers and also reduce paper use. In upcoming editions, regular features will include updates about new legislation, recent court cases and their implications, news briefs, exemplary ADA compliance case studies, business best practices, news about our affiliates in Region 10, and more!

DBTAC Northwest 2009 Calendar

The new DBTAC Northwest 2009 Calendar is available! If you would like to receive a calendar with 12 months full of ADA information, click here and provide your information in the "Ask a Question" section of our website, www.dbtacnorthwest.org. In the "Message" box, be sure to indicate that you would like a calendar. You can also call us at 800-949-4232.



New Staff Members

We are very pleased to have added two new members to the DBTAC Northwest staff. Miranda Levy, recently graduated from Whitman College, has been an intern since July. As a training and information specialist, Miranda provides technical assistance and training about accessibility, employment, transportation, and service animals. She also assists in creating marketing and educational materials.

Sara Woody just joined our staff in December as the coordinator of the BLUEPath Program. The mission of this program is to support and encourage business owners to become more user-friendly to people with disabilities. Read more about BLUEPath and Sara in the next edition of the newsletter!

CCER- TACE - University of Washington

Many significant changes have been occurring at our center in Mountlake Terrace, Washington. To get all the details, please read the article, *How is the DBTAC Northwest Changing?*

How *is* DBTAC Northwest Changing? And When Did It Trade Vikings for Huskies?



In July, 2008, *DBTAC Northwest* moved from Western Washington University (home of the Vikings) to a new Husky home at the University of Washington. The change offers access to UW's amazing array of expertise in rehabilitation issues as well as the opportunity to



pursue joint activities that will ultimately benefit people with disabilities.

"The opportunities for collaboration with others at UW are excellent," offers Dr. Kathe Matrone, Center Director. "We will be able to work on projects together. For example, we are sponsoring teleconferences that may be very interesting to the business community, and our colleagues at UW have assisted us in identifying outstanding speakers."

"Courses taught through UW's Department of Rehabilitation Medicine, such as their well-regarded '*Medical Aspects of Disability*' course, feature an impressive cast of physicians," says Matrone, "and might be recorded and made accessible to a broad audience interested in disability issues. Expertise previously available only to a small local audience may become accessible on a regional basis."

"We also will be working with graduate students," notes Matrone. "Geri Bell, a new doctoral student in rehabilitation services, has taken a research assistant position with the Center."

Building a strong relationship with universities enhances the purpose of Disability and Business Technical Assistance Centers (DBTACs). With the passage of the Americans with Disabilities Act in 1990 came the need to help business, individuals with disabilities, state and local government, and others answer questions about the law and its application. The federal response was to create ten regional DBTACs. The Northwest Region includes Alaska, Idaho, Oregon, and Washington, and is served by our center, *DBTAC Northwest*, located off campus in suburban Seattle. Five of the ten DBTACs across the nation are located at universities.

DBTAC Northwest is collaborating with Dr. Kurt Johnson and Dr. Bob Fraser, both well known researchers at the University of Washington, to better understand how small and medium sized employers view hiring job seekers with disabilities. The

research will help the *DBTAC Northwest* offer good advice to the business community.

DBTAC Northwest's regional focus is consistent with its parent organization, the Center for Continuing Education in Rehabilitation (CCER), part of the Department of Rehabilitation Medicine at UW. For more than twenty-five years, CCER has provided support, training, and leadership development to the state vocational rehabilitation agencies and hundreds of community employment programs serving people with disabilities in Alaska, Idaho, Oregon, and Washington.

In October, 2008, CCER received a large five-year **TACE** (Technical Assistance and Continuing Education) grant that will continue to support its activities. CCER's long history with the region's rehabilitation community benefits *DBTAC Northwest* through personal relationships in hundreds of cities and towns across the northwest. When there is a problem in Blackfoot, Idaho, for example, someone from CCER knows local residents who can help with a solution. In addition, CCER's long focus on employment for people with disabilities naturally compliments a portion of *DBTAC Northwest's* mission.

ADA Amendments Act of 2008

What Made the ADA Amendments Act Necessary?



The Americans with Disabilities Act of 1990 intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. However, since 1990, there have been a number of U.S. Supreme Court decisions that narrowed the definition of disability and resulted in a restriction of protections for many people with disabilities. The ADA Amendments Act of 2008 intends to restore the original intent of the ADA by stating clearly that the ADA is to provide broad coverage to protect anyone who has, or is regarded as having, a disability. Following are the key points of the ADA Amendments Act of 2008, excerpted from the *Statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008*.

Aligning the construction of the Americans with Disabilities Act with Title VII of the Civil Rights Act of 1964, the bill amends Title I of the ADA to provide that no covered entity shall discriminate against a qualified individual "on the basis of disability."

The bill maintains the ADA's inherently functional definition of disability as a physical or mental impairment that substantially limits one or more life activities; a record of such impairment; or being regarded as having such an impairment. It clarifies and expands the definition's meaning and application in the following ways.

First, the bill deletes two findings in the ADA which led the Supreme Court to unduly restrict the meaning and application of the definition of disability. These findings are that there are "some 43,000,000 Americans have one or more physical or mental disabilities" and that "individuals with disabilities are a discrete and insular minority." The Court treated these findings as limitations on how it construed other provisions of the ADA. This conclusion had the effect of interfering with previous judicial precedents holding that, like other civil rights statutes, the ADA must be construed broadly to effectuate its remedial purpose. Deleting these findings removes this barrier to construing and applying the definition of disability more generously.

Second, the bill affirmatively provides that the definition of disability "shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act."^[1] It retains the term "substantially limits" from the original ADA definition but makes it clear that this is intended to be a less demanding standard than that enunciated by the U.S. Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*.^[2] With this rule of construction and relevant purpose language, the bill rejects the Supreme Court's holding in *Toyota v. Williams* that the terms "substantially" and "major" in the definition of disability must be "be interpreted strictly to create a demanding standard for qualifying as disabled,"^[3] as well as the Court's interpretation that "substantially limits" means "prevents or severely restricts."^[4]

Third, the bill prohibits consideration of mitigating measures such as medication, assistive technology, accommodations, or modifications when determining whether an impairment constitutes a disability. This provision and relevant purpose language rejects the Supreme Court's holdings in *Sutton v. United Air Lines*^[5] and its companion cases^[6] that mitigating

measures must be considered.^[7] The bill also provides that impairments that are episodic or in remission are to be assessed in an active state.

Fourth, the bill provides new instruction on what may constitute “major life activities.” It provides a non-exhaustive list of major life activities within the meaning of the ADA. In addition, the bill expands the category of major life activities to include the operation of major bodily functions.

Fifth, the bill removes from the third “regarded as” prong of the disability definition the requirement that an individual demonstrate that he or she has, or is perceived to have, an impairment that substantially limits a major life activity. Under the bill, therefore, an individual can establish coverage under the law by showing that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment. Because the bill thus broadens application of this third prong of the disability definition, entities covered by the ADA will not be required to provide accommodations or to modify policies and procedures for individuals who fall solely under the third prong. Such entities will, however, still be subject to discrimination claims.

Finally, the bill clarifies that the agencies that currently issue regulations under the ADA have regulatory authority related to the definitions contained in Section 3. Conforming amendments to Section 7 of the Rehabilitation Act of 1973 are intended to ensure harmony between federal civil rights laws.

The ADA Amendments Act rejects the high burden required in these cases and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended, a degree that is lower than what the courts have construed it to be. In addition, the bill provides for application of this standard to a wider range of cases by expanding the category of major life activities. These steps, resulting from extensive bipartisan negotiation and discussion among legislators and stakeholders, are intended to provide for more generous coverage and application of the ADA’s prohibition on discrimination through a framework that is more predictable, consistent, and workable for all entities subject to responsibilities under the ADA.

^[1] This rule of construction is consistent with earlier judicial precedents and parallels the rule of construction in the Religious Land Use and Institutionalized Persons Act, which Congress unanimously passed in 2002.

^[2] *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).

^[3] *Id.* at 197.

^[4] *Id.* at 198. See also, 29 CFR 1630.2.

^[5] *Sutton v. United Airlines*, 527 U.S. 471 (1999).

^[6] *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999), *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

^[7] Ordinary eyeglasses and contact lenses are excluded from this prohibition.

ADA Training Network

How DBTAC Northwest at the University of Washington is Collaborating with Cornell University

Disability and ADA training programs are now available throughout Region XI! The DBTAC Northeast at Cornell University initiated the ADA Trainer Network (ATN). Four of their trainers came to the DBTAC Northwest to conduct a train-the-trainer workshop - now the ATN curriculum is available in Alaska, Idaho, Oregon and Washington. At the present time, there are 41 members in the DBTAC Northwest ATN network who can offer this high quality training.



The Cornell staff members who created the training curriculum provide this description: "Our society is changing. Unemployment is increasing, our population is aging, and our communities and schools are becoming more diverse. These changes will encourage us to broaden our definition of diversity to include the large population of talented people with disabilities. Many organizations are unsure of how best to include people with disabilities. As a result, the DBTAC-Northeast ADA Center offers a series of interactive trainings designed for employers, business leaders, employees, disability professionals and people with disabilities." Programs include:

1. Disability Awareness: Understanding the Americans with Disabilities Act - Communicating Respectfully and Effectively with People with Disabilities
2. Getting Hired and Moving Ahead in a Job when Working with a Disability
3. Tapping into Talent: Best Practices in Hiring, Accommodating and Retaining People with Disabilities
4. Serving Customers with Disabilities: Reaching Out and Expanding Your Market
5. About Hidden Disabilities: The Legal, Practical, and Human Side of Non-Obvious Disabilities
6. Reaching Individuals with Disabilities: Accessibility in Federal, State, or Municipal Entities
7. Reaching Individuals with Disabilities: Accessibility in Private or Commercial Business
8. Accessible Technology in the Workplace
9. Accessible Web Sites: Everyone Benefits!

If you would like more information about any of the training topics or to request training for your business or organization, please fill out the [DBTAC Northwest Training Request Form](#). In the message section, please list topics of interest from the list above. You can also call us at 800-949-4232, or email Jo Fleming, jof@u.washington.edu.