



Spring 2018 ADA National Conference
The official e-Newsletter of the National Association of ADA Coordinators
Serving the ADA Coordination and 504 Compliance Community Since 1992
(888) 679-7227 **FAX (877) 480-7858**
NAADAC4INFO@AOL.COM **[WEB SITE: WWW.ADAcoordinators.org](http://WWW.ADAcoordinators.org)**



Volume 26 - No. 1

Pages 30

January - February 2018

ANNOUNCING

2018 Spring National Association of ADA Coordinators Conference

Co-hosted by the State of Florida

Filling the Gap:

Sound Information from Reliable Sources

April 16-19, 2018

Tampa, Florida

Some Federal agencies are pulling their guidance documents from their websites. Other Federal agencies have put off new ADA rulemaking indefinitely. No new guidance documents from Federal agencies are on the horizon. But ADA Coordinators need to have ready access to usable, understandable, accurate information on what the ADA requires and on “best practices” to open programs, services, and activities to persons with disabilities.

The National Association of ADA Coordinators stands ready to fill the gap. We have once again assembled a formidable team of outstanding ADA experts. For four days in April we will provide reliable, practical information on how to comply with the ADA; we’ll answer your questions; and we’ll give you usable documents to take home. We are the steady hand in uncertain times. So come to Tampa, Florida in April 2018, and you will find that NAADAC’s Spring Conference is ***“Filling the Gap with Sound Information from Reliable Sources.”***

John Wodatch, Association President

Includes current case law, best practices, policy examples, and reasonable solutions to trending and complex ADA situations. Updated Free ADA library on USB drive at conference.

The Fall 2017 conference was rated outstanding by 97% of the participants’ on their evaluations.

“This was by far the most informative conference I have ever attended in my 15+ years in higher education. The expert presenters provided excellent case studies & practical info that I take back to my campus.” C. V., Major Texas University.

“My expectations are met again and exceeded. Every conference has provided up-to-date and pertinent information that has proven very useful in my work. The faculty is top notch and so enthusiastic! Great job!” S. M., State Architect’s Office

“This was my first time at the conference and it was wonderful. I will definitely be coming back.” L. M., California County

The Spring 2018 National Conference Faculty includes:

**12 ADA attorneys, 3 ADA architects, 4 ADA Coordinators and
Section 504 Compliance Officers, ADA Web Experts, and Medical Professionals**

Conference faculty scheduled for the tracks include:

Keynotes

**Rebecca Bond, Chief, Disability Rights Section (invited), US DOJ
Christopher Kuczynski, Assistant Legal Counsel and ADA/GINA Policy Director, US EEOC**

Access, Services, and Design Track

**John Wodatch, J.D.; Jim Bostrom; Irene Bowen, J.D.; Joe Dolson (Web)
Jim Esselman, J.D. (DOT) (invited) ; Dean Perkins, R.A.; Jim Terry, AIA;
Rachel M. Weisberg, J.D. (invited)**

Employment Track

**Christopher Kuczynski, J.D., LL.M. (EEOC); Brian Nelson, J.D.; Phong Nguyen, M.D.
Mary Jo O'Neill, J.D. (EEOC) Allison Nichol, J.D.; Michael Sullivan**

Higher Education Track

Melissa Frost, J.D.; Howard Kallem, J.D., Jim Long, J.D.; Shelley Ducatt, Ph.D.

**Other conference sessions planned on *Law Enforcement*, *Transportation and Transit*,
Emergency Preparedness, *Medical Issues*, and *Web Site Accessibility/Design Issues***

See full conference agenda, and faculty bios in this newsletter and on the
Association web site at: www.adacoordinators.org

WHAT YOU TAKE BACK FROM THE CONFERENCE

*Current case law, best practices, policy examples, and reasonable solutions
to trending and complex ADA situations. Training ideas. Free ADA library on USB drive at conference.*

WHY PARTICIPANTS RAVE ABOUT OUR ADA USB FLASH DRIVE LIBRARY AND CONFERENCE HANDOUTS

Each participant will receive over numerous important ADA Handouts - **FREE** - on the updated Conference 2016 USB ADA Library Drive. The updated USB drive is only available at the Spring 2018 National Conference **and is as part of your conference package at no cost.** The *value* of these materials, if you had to research, compile, and edit, *is estimated at over several thousands of dollars* as well as the time saving required if you had to develop and produce on your own . . . **AND . . .**

In addition, that at the conference, there are added faculty PowerPoint presentations and handouts dealing with many trending and best practice topics, and how to save time and money. These can provide information to develop your own ADA training and education programs.

OTHER CONFERENCE EVENING EVENTS

There is an Association **President's Reception** on Tuesday evening with snacks and refreshments. Your opportunity to meet the speakers and our Board of Directors in a relaxed atmosphere.

Again by popular demand a **KARAOKE night** is planned for Wednesday evening. Refreshment and goodies provided for all. At the Spring 2018 Conference over \$150 in donated cash prizes will be awarded in three categories - "First Place", "Most Innovative" and "Most Inspired".

Come join the fun after an informative and busy day at the conference.
Be entertained, even if you do not want to sing. Audience picks the winners.

INFORMATION FOR NON-ASSOCIATES

If you are not an Associate, now is the time to become an Individual, Professional (P.A.), or Organizational Associate. If you join when registering for this conference you can register at Associate registration rate on the conference registration form. Associates received an additional email discount offer, worth over \$300 off this 2018 Spring conference. The Associates' Version of this Newsletter contains an additional 12 emailed pages on ADA case law.

UPDATE OF OUR PROFESSIONAL ASSOCIATES (P.A.) PROGRAM

We recognized 5 new P.A.s at the Fall 2017 conference and another 9 completed their P.A. requirements at the Fall conference. There are almost 200 Associates in various phases of completing the PA program. See our website at: www.adacoordinators.org for more information on the Association's Professional Associate (P.A.) program

CONFERENCE LOCATION AND HOTEL

The conference is being held at the **Hilton Tampa Airport Westshore, 2225 North Lois Ave., Tampa, FL 33607**. Complimentary shuttle provided from/to Tampa International Airport and within three miles of the hotel. Hotel self-parking and guestroom Internet are complimentary. ***Participant is responsible for making own lodging reservation. Credit card guarantee is required.*** The Association has negotiated a special conference rate from three days before/after the conference at a per room rate of \$132.00 per night, plus taxes (single/double) if reserved by **3/20/2016**, provided room block has not been sold out. To make lodging reservations *call Hilton reservations at 800-445-8667, or the hotel at 813-877-6688*; and mention you are attending the National Association of ADA Coordinators conference.

Registration closes 3/24/2018

Spring 2018 ADA National conference
April 16-19, 2018 – Tampa, Florida

ADA ARTICLES OF INTEREST

(Articles for information purposes only and are not to be considered as legal advice)

Spring ADA Conference, April 16-19, 2018, to cover these and other ADA important ADA issues.

EEOC Issues FY 2017 Performance Report

The U.S. Equal Employment Opportunity Commission (EEOC) made significant progress in managing the pending inventory of charges during fiscal year 2017, which ended Sept. 30, the agency reported in its annual Performance and Accountability Report published on Nov. 15.

EEOC offices deployed new strategies to more efficiently prioritize charges with merit and more quickly resolve investigations once the agency had sufficient information. Together with improvements in the agency's digital systems, these strategies produced an increase in charge resolutions and a significant decrease in charge inventory. As a result, in fiscal year 2017 the EEOC resolved 99,109 charges and reduced the charge workload by 16.2 percent to 61,621, the lowest level of inventory in 10 years. Additionally, during the fiscal year, the EEOC handled over 540,000 calls to the toll-free number and more than 155,000 contacts about possible charge filing in field offices, resulting in 84,254 charges being filed.

"The pending inventory of private sector charges (the backlog) has been a longstanding issue for the EEOC and the public it serves," said EEOC Acting Chair Victoria A. Lipnic. "Early in the calendar year, we made addressing the backlog a priority. A primary point of this effort was to share strategies among our offices that have been particularly effective in dealing with the pending inventory, while ensuring we are capturing charges with merit. I thank EEOC's employees for their work and congratulate them on this progress."

Other fiscal year 2017 highlights include:

- (1) The EEOC secured approximately \$484 million for victims of discrimination in the workplace. This includes \$355.6 million in monetary relief for those who work in the private sector and state and local government workplaces through mediation, conciliation and other administrative enforcement, and \$42.4 million in monetary relief for charging parties through litigation. The EEOC also secured \$86 million in monetary relief for federal employees and applicants. Importantly, in each of these categories, the agency obtained substantial changes to discriminatory practices to remedy violations of equal employment opportunity laws and prevent future discriminatory conduct.
- (2) In fiscal year 2017, the EEOC filed 184 merits lawsuits, including 124 suits on behalf of individuals, 30 non-systemic suits with multiple victims, and 30 systemic suits. This is more than double the number of suits filed in fiscal year 2016. Additionally, EEOC's legal staff resolved 109 merits lawsuits for a total monetary recovery of \$42.4 million and achieved a favorable result in 91 percent of all district court resolutions. In addition, a number of very significant suits were successfully resolved.
- (3) The agency's outreach programs reached 317,000 people during the year through participation in more than 4,000 no-cost educational, training and outreach events. The EEOC continued to promote the online Small Business Resource Center to provide a one-stop shop to help small businesses easily access information about employer responsibilities. The Small Business Administration Ombudsman's Report again gave EEOC an "A" rating for responsiveness to small business concerns.

(4) On the technology front, the agency further enhanced its online capabilities for the public and made internal operational improvements. For the public, the EEOC advanced its online services by way of a pilot program which allowed individuals in five EEOC offices to submit inquiries online, schedule interviews, and submit and receive charge information. This pilot led to the nationwide launch of the EEOC Public Portal in November 2017. Internally, the agency replaced many paper procedures with more efficient online tools.

(5) In the federal sector program, the agency resolved 6,661 hearings complaints and secured more than \$72.7 million in relief for federal employees. EEOC also resolved 4,284 appeals of agency decisions on federal sector complaints, a 14 percent increase over the previous year, including 47.3 percent of them within 180 days of receipt, and secured more than \$13.3 million in relief. Our federal program also reduced its pending inventory of appeals by 11 percent to 3,658 the lowest level in nine years.

DOJ FOR GUIDANCE IN WAKE OF ADA LAWSUITS

The two major credit union trade associations in November each sent letters to the Department of Justice asking the DOJ to address an alleged “gray area” in parts of the Americans with Disabilities Act covering website accessibility.

According to the Credit Union National Association (CUNA) and the National Association of Federally-Insured Credit Unions (NAFCU), because requirements for access to credit union websites under the ADA are unclear, many CUs are being hit with litigation or, in lieu of lawsuits, demand letters seeking money.

The president and CEO of CUNA, wrote in his letter these demand letters threaten litigation under the ADA that targets “highly technical alleged violations, based on unclear requirements for compliance.”

“Over the past few months, credit unions have seen a drastic rise in the number of demand letters threatening class action litigation concerning website accessibility requirements,” he wrote. “Often the same law firms and lawyers will target many different credit unions, even under the guise of seeking protection for non-members of the credit union that could arguably have no reason for wanting to access the website. These shakedowns are harming credit unions and their members and are making it more difficult for credit unions to serve all members, including those who are protected by the ADA.”

The president and CEO of NAFCU, likewise urged the DOJ to move forward with proposed rulemaking to clarify the act's standards.

“NAFCU and our members respectfully request the department consider issuing additional guidance and/or an interim final rule that provides clear 'rules of the road' for financial institutions in the area of website accessibility under the ADA. The current 'gray area' has led to an increase in frivolous litigation, which is equating to real dollars being taken out of the hands of credit union members to be put into the pockets of plaintiffs' attorneys.”

As the DOJ pursues rulemaking to clarify the ADA, he asked the department to keep in mind credit unions' status as "member-focused community-based financial institutions" and look to limit potential regulatory burdens credit unions could face as a result of website accessibility requirements.

CUNA's president said the threats of litigation are having the “exact opposite effect” of increasing the ability to provide services to all members. “For example,” he wrote, “some credit unions have considered taking their website down altogether because of the confusion.”

He mentioned said the previous leadership at the Department of Justice “failed to finalize” regulations governing website accessibility after issuing an Advanced Notice of Proposed Rulemaking on this issue in 2010.

“Plaintiffs’ firms have taken advantage of this ambiguity to force credit unions and their members into paying settlement costs and of course, their attorneys’ fees,” the CuNA president wrote in his letter. “The courts have also taken liberties in interpreting DoJ’s intent and have, in certain instances, required a standard despite no due process for what is required.”

REVISITING THE EEOC’S RULES ON THE GINA

On May 16, 2016, the Equal Employment Opportunity Commission (“EEOC”) issued regulations governing the treatment of wellness programs under the Genetic Information Nondiscrimination Act (“GINA”), as well as under the Americans with Disabilities Act (“ADA”). The rules regarding financial inducements began applying to employer-sponsored wellness programs as of the first day of the first plan year that began on or after January 1, 2017. This move led to a legal challenge by the AARP regarding whether the financial incentives provided for in both laws was consistent with the notion of voluntary participation. The United States District Court for the District of Columbia agreed with the AARP, and on August 22, 2017, just a little over a year after the regulations went into place, the court held in *AARP v. United States Equal Employment Opportunity Commission* that incentives and penalties up to 30% of employee health care costs are inconsistent with the “voluntary participation” requirement under both the ADA and GINA.

While most employers are very familiar with the ins and outs of the ADA, few fully understand GINA, which is a relatively new federal law enacted in 2008 which prohibits employers from requesting “genetic information” from their employees. Specifically, it prohibits employers with 15 or more employees from discriminating against an employee on the basis of the employee’s genetic information. “Genetic information” includes information from genetic tests, the genetic tests of the employee’s family members, and family medical history. GINA also prohibits employers from retaliating against an employee who has opposed a practice made unlawful by GINA. Finally, GINA prohibits employers from requesting an employee’s genetic information, subject to six exceptions.

The first jury verdict based upon a GINA violation came in 2015 when a jury awarded two employees \$2.2 million dollars after their employer forced them to take DNA swab tests to determine whether either of them was defecating on company property. Interestingly enough in that case, neither of the two workers tested ended up being the “devious defecator” at issue.

GINA’s enactment complicated matters for employers interested in offering “wellness programs” to their employees. Wellness programs include things such as health risk assessments, health screenings, flu shots, health fairs and workshops, exercise groups, fitness classes, smoking cessation classes, and/or participation incentives. Wellness programs have obvious benefits to both employers and employees, but they also frequently involve gathering medical (including genetic) information. However, GINA provides an exception for wellness programs if the employee provides prior, knowing, voluntary and written authorization; there is no penalty for not participating in the part of the program seeking genetic information; only the employee and licensed health care professional or counselor receive individually identifiable information concerning the results of such services; and genetic information cannot be disclosed to the employer except in aggregate terms. The issue of when a wellness program is truly “voluntary” and when financial inducements may be offered for participation, has been up for debate ever since.

The May 2016 rule by the EEOC specified, amongst other things, that no more than 30% of the cost of self-only coverage may be given as an inducement for the employee’s participation in an employer sponsored wellness program. Likewise, the maximum total inducement for a spouse to provide information about his or her manifestation of disease or disorder will also be 30% of the total cost of (employee) self-only coverage, so that the combined total inducement will be no more than twice the cost of 30% of

self-only coverage.

The AARP challenged this rule in October 2016, alleging that the 30% incentives permitted by the rule are not consistent with the “voluntary” requirement of the laws. In other words, employees who cannot afford to pay a 30% increase to their premiums will be required to disclose protected information in order to get the incentive, when they otherwise would have kept this information confidential.

The court granted the AARP’s motion for summary judgment on August 22, 2017. Specifically, the court noted that it could find “nothing in the administrative record that explains the agency’s conclusion that the 30% incentive level is the appropriate measure for voluntariness.” Accordingly the court did not award deference to the EEOC on this issue, and instead reasoned that the 30% incentive amount was “arbitrary.” The court then remanded the rules to the EEOC for further consideration.

The EEOC may choose to revise the allowable incentives and then see if the revised amounts pass the legal muster. Alternatively, the EEOC may continue to maintain that 30% is an appropriate amount, but provide a firm legal basis for this rational that would not be considered arbitrary and capricious. It is important for employers to continue to monitor developments on this issue.

7TH CIRCUIT - TEACHING METHODS NOT PROTECTED UNDER ADA & AND SECTION 504

A former special education teacher, who claimed to have engaged in a protected activity when she defended her teaching methods following a negative performance evaluation, could not show that the school district discriminated against her when it terminated her. Finding no evidence of discrimination, the U.S. Court of Appeals for the Seventh Circuit affirmed the district court’s grant of summary judgment in favor of the school in *Frakes v. Peoria School District No. 150*.

After receiving an “unsatisfactory” rating based on several deficiencies, including teaching performance, the teacher and 54 others were honorably dismissed pursuant to a reduction in force in accordance with Illinois law. The teacher filed a case against the school in federal court, asserting violations of Section 504 of the Rehabilitation Act of 1973. Section 504 is a sister statute to the ADA. In the employment discrimination context, Section 504 mirrors the standards applied under Title I of the ADA.

Her claim may have survived if she had set forth evidence that the school failed to provide a free, appropriate public education to students with disabilities by restricting necessary teaching methods identified in the student’s Individualized Education Plan. Instead, the teacher claimed the discrimination was based on the school’s refusal to accept her preferred method for educating students. In the end, the court determined the teacher failed to demonstrate that she engaged in a protected activity, holding that Section 504 protects assertions of right, not preferred, subjective teaching methods.

Prior to making a termination decision, employers should consider whether a negative evaluation was based on preferred teaching methods and whether those methods were connected to providing a free, appropriate public education. If the answer to those

questions is “yes,” the employer may want to consider seeking legal counsel, as an adverse employment action could run afoul to Section 504.

MANAGING THE INTERPLAY BETWEEN THE ADA, FMLA AND WC

The following description may seem quite familiar to those who deal with employee issues on a daily basis. The employee, who has a physically demanding job on the factory floor, has been out on leave for an injury that he contends is work-related. However, ones worker’s compensation insurance carrier has recently denied coverage. Additionally, the employee also has used FMLA intermittently to care for the serious health condition of his spouse before going out on his current leave. And the employee would like to come back to work but his medical condition prevents him from regularly lifting more than 20 lbs., an essential function of the position. In the meantime, the supervisor is complaining and wants an employee who can do the job right now. What are the next steps?

This complicated scenario implicates at least three laws: the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), and worker’s compensation (WC). The above requires one to successfully navigate any decision regarding this employee through all three laws. An employer who fails to consider all three could face costly litigation.

Here are some points to guide the process: Analyze and evaluate the employee’s circumstances under each law separately. In order to do so successfully, one needs to understand the purpose and the applicability of each law.

(1) The ADA is designed to make the workplace more accessible and prohibits discrimination against a qualified individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job. The ADA applies to an employer with at least 15 employees.

(2) The FMLA is designed to help employees balance their work and family responsibilities by offering unpaid leave and applies to an employer with at least 50 employees working within 75 miles of the employee’s worksite. The employee must have worked for the employer for at least 12 months and 1,250 hours to be FMLA-eligible.

(3) WC is designed to provide reimbursement for medical care and lost wages to employees who sustain work-related injuries or illnesses. WC applies to essentially every employee and is typically a state-administered program.

(4) Employers must also be aware of other state laws or their own company policies, which may offer more protections and/or greater benefits to eligible employees.

Understand what each law requires. Consider leave rights, reinstatement rights, medical documentation, fitness to return to work certification, and benefits while on leave under each law.

For example:

Leave rights: The ADA does not require employers to provide a specific amount of leave. However, it does require that employers make “reasonable accommodations” for employees with disabilities unless doing so would create an undue hardship on the company. The FMLA provides an employee with up to 12 weeks of unpaid leave for an employee’s own or a family member’s serious health condition, for the birth or adoption of a child, and for military exigencies. The law also provides for 26 weeks for military caregiver leave. WC laws typically do not provide a specific limit for leave.

Reinstatement: Under the ADA, the employee should be reinstated to his or her previous job unless

doing so would create an undue hardship on the company. Under the FMLA, the employee is required to be reinstated to the same or an equivalent job. There is no undue hardship exception. Under WC, there are no reinstatement rights under most state laws except for a retaliatory discharge. The Equal Employment Opportunity Commission (EEOC) has issued guidance that discusses how the ADA addresses various leave issues, including enforcement guidance on WC and the ADA, as well as reasonable accommodation and undue hardship.

Medical documentation: Under the ADA, medical examinations should be limited to determining an employee's ability to perform the job and whether an accommodation is needed and would be effective. Under the FMLA, a medical certification should demonstrate the need for leave but not exceed what is requested by the Department of Labor's medical certification form. Under WC, medical information should demonstrate the employee's on-the-job injury.

Apply the law that provides the most benefits to the employee. Here are some considerations:

Are you comfortable with the insurer's reasons for denying the WC claim? WC claims can be denied for many reasons, including that the claim was not reported or filed on time or the injury did not happen at work. Does one anticipate an appeal?

Has the employee exhausted his FMLA? If the employee has used up his FMLA (and the employer should run FMLA leave concurrently with an absence due to WC), WC may not provide him with job protection.

Is the employee's condition temporary? Temporary conditions may entitle an employee to leave under the FMLA but not be considered a disability under the ADA. The employee, however, may be entitled to more leave time under the ADA if his injury qualifies as a disability.

If the employee qualifies as an individual with a disability, is there an accommodation that would allow the employee to perform the position? Would additional leave time – even if the employee has exhausted FMLA entitlement – allow the employee to return to full duty?

Throughout the process, encourage open communication between the employee and employer, rely on complete and sufficient medical documentation, maintain consistency in decision-making, and document the process. Although the interplay of the ADA, FMLA and WC can be challenging, conducting the analysis in a systematic and thoughtful way (along with consulting employment counsel to help one address complicated circumstances) helps to manage the process and lead to a decision that is legally compliant with all three.

11TH CIRCUIT REAFFIRMS THAT INDEFINITE LEAVES OF ABSENCE ARE NOT REASONABLE

The Eleventh Circuit affirmed a decision in favor of the employer in *Roderick Billups v. Emerald Coast Utilities Authority*, No. 17-10391, 2017 WL 4857430 (11th Cir. Oct. 26, 2017), continuing the trend of recent cases reaffirming that the ADA is not a leave statute. Among other things, the Eleventh Circuit held that an extended indefinite leave of absence with no clear time line of when an employee can return to work and perform the essential functions of his or her job is not a reasonable accommodation. This aligns with the 7th Circuit's recent holding that "a long-term leave of absence cannot be a reasonable accommodation" under the ADA.

In the case, the employee worked in a physically demanding position involving routine lifting and use of heavy weight tools. When he strained his shoulder, he took an extended six month leave per employer policy. When the six months was nearly up, the employer gave employee notice that he would be terminated because he was unable to perform the essential functions of his job six months after the date of the injury. The employer also had a predetermination hearing before the termination, where employee

confirmed that he could not return to work after the six month period with or without reasonable accommodation.

In its holding, the 11th Circuit focused on the fact that employee could not identify any reasonable accommodation that would have allowed him to perform the essential functions of his position. The employee could not point to any requested accommodation that would have allowed him to return “in the present or in the immediate future,” or that he would even be able to perform the essential functions of his position in the future. The court recognized that definite leaves of absence may be a reasonable accommodation in some cases, but employee’s open-ended request for a leave of absence was indefinite and unreasonable.

Employers should use these new decisions to refocus on their accommodation policies and procedures. Take the time to ensure employees are requesting leave accommodations when needed and that when leave accommodations are made, they are accompanied by appropriate and timely medical certification. The employer and employee should then engage in an interactive process to ensure that all accommodations are being considered.

LAWMAKERS TAKE ACTION TO CONTROL ADA ACCESS LAWSUITS

A California Assemblyman proposed an Assembly Bill this year to give the courts more leeway to bar “extremely high-frequency litigants” who file more than 15 disability access lawsuits within a year from proceeding with their claims, but it was stopped by the California Assembly Judiciary Committee in late March.

Last year, California enacted Senate Bill 269 which gives small businesses some time to fix certain minor or technical ADA violations, though it was not comprehensive and is not enough, by itself, to put a stop to predatory ADA lawsuits.

At the federal level, Republican Congressmen have bills that would provide businesses with a 120-day period to fix violations before a lawsuit could be filed.

With over 1,600 ADA Title III access suits filed in federal court in Florida in 2016 motivated Florida legislators to take action with House Bill 727 (“HB 727”) which went into effect on July 1, 2017. One of bill’s sponsors, claims that “[t]his law give the ADA back to the people for whom it was written, Americans with disabilities.”

Under the Florida statute, a business that hires a “qualified expert” to inspect its premises to either verify conformity with ADA facilities access requirements, or to develop a compliance plan, can have that information considered in a lawsuit filed in a court within the state of Florida, provided that the certificate of conformity or remediation plan has been filed with the Department of Business and Professional Regulation (the “DBPR”). The court “must consider” any such remediation plan or certificate of conformity “and determine[s] if the plaintiff’s complaint was filed in good faith and if the plaintiff is entitled to attorney fees and costs.”

What is the process? The owner of a place of public accommodation pays a “qualified expert” to inspect its premises. If the expert concludes that the facility complies with the ADA, the business can submit a “certificate of conformity” to the DBPR stating that the premises conforms to Title III. Certificates of conformity are valid for three years and must include: the date that the premises was inspected, the name of the “qualified expert,” proof of the expert’s qualifications, and a statement from the qualified expert attesting that the information contained in the certificate is complete and accurate.

Businesses whose facilities do not fully comply with the ADA can submit a remediation plan to the DBPR

indicating that the facility intends to conform with ADA requirements within a reasonable amount of time that does not exceed 10 years. In addition to the requirements applicable to the certificate of conformity, the remediation plan must include the specific remedial measures that the place of public accommodation will undertake, and the anticipated date of completion.

To be a “qualified expert,” one must be a building code inspector, architect, engineer, contractor, or “person who has prepared a remediation plan related to a claim under Title III ... that has been accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in Title III ... by a federal court.”

This means that an experienced defense attorney who has prepared a remediation plan for a court approved settlement could be considered a “qualified expert.”

This bill is not likely to have much impact on the number of ADA Title III lawsuits filed in Florida:

(1) The law will likely only apply to ADA lawsuits filed in state court, and most ADA Title III lawsuits are filed in federal court. This is because under the Supremacy Clause of the United States constitution, Florida state’s requirement that a court must consider remediation plans and certifications of conformity are likely preempted by the ADA, and will not be applied to a plaintiff’s federal lawsuit.

(2) The law does not explicitly render an access lawsuit moot just because there is a remediation plan or certificate of conformity on file, businesses will be reluctant to publicize access barriers in their facilities in a publicly-filed document, which plaintiffs can still use to sue them.

(3) A court having to consider the existence of a remediation plan or certificate of conformity in deciding whether to award a plaintiff attorneys’ fees is not likely to deter plaintiffs who know that defendant businesses will need to spend a lot of money litigating before a court ever considers either of these documents.

(4) The Florida law has nothing to address the explosion of website access litigation under the ADA in Florida which has been a key driver in the increased number of lawsuits in the past 12 months.

California similar legislation to Florida’s still had approximately 2,468 ADA Title III filings in federal court in 2016 and continues, along with Florida, to be a hotbed for ADA Title III litigation.

SENATE JUDICIARY HOLDS HEARING ON ABUSIVE LAWSUITS

The Senate Committee on the Judiciary recently held a hearing entitled “The Impact of Lawsuit Abuse on American Small Businesses and Job Creators.” Although the TCPA was not the sole focus of the hearing, concerns about abusive lawsuits are highly applicable in the TCPA context.

Chairman Chuck Grassley (R-IA) opened by noting that frivolous and abusive lawsuits can cause major heartburn for small businesses, which often are ill-equipped to finance protracted legal battles to vindicate their compliance practices. Former Sen. Al Franken (D-MN) also gave an opening statement, emphasizing that the Judiciary Committee should be looking for ways to empower consumers to hold corporations to account, rather than “closing the courthouse doors” on consumers. He also expressed frustration that, in his view, proposals to address frivolous lawsuits often serve only to make meritorious claims more expensive to litigate.

The witnesses at the hearing were the following: Elizabeth Milito, Senior Executive Counsel at National Federation Of Independent Business; Professor Myriam Gilles, Paul R. Verkuil Research Chair And Professor Of Law at Benjamin N. Cardozo School of Law; Mr. John H. Beisner, partner at Skadden, Arps, Slate, Meagher & Flom LLP on behalf of The U.S. Chamber Of Commerce Institute for Legal Reform.

Ms. Milito testified that abusive lawsuits can be particularly catastrophic for small businesses because many do not have in-house counsel and, as a result, sometimes make easy targets for “cookie cutter” lawsuits prepared en masse by entrepreneurial plaintiffs’ attorneys. Moreover, plaintiffs’ attorneys often will initiate claims with a demand letter, which in her view reveals an intent to extract a quick settlement rather than effect some serious change or end any allegedly abusive business practice. Because rational business owners are wary of the expense and uncertainty of litigation, they often opt to settle meritless claims — and may even pay these claims out of pocket to prevent increased insurance rates.

Professor Gilles, by contrast, argued that the problem in the civil justice system is not too many frivolous lawsuits, but rather too many meritorious ones being pursued in arbitration. She asked the committee to consider the Equifax breach, among other things, and urged it to explore ways to curb the use of arbitration.

In his testimony, Mr. Beisner emphasized the deleterious effect of demand letters on small businesses, which often are unaware of their legal rights and in a poor position to evaluate the likelihood of success for threatened suits. He also argued that plaintiffs’ lawyers frequently abuse class action rules to extract settlements in which the lawyers get paid handsomely, but the plaintiffs themselves wind up with little to nothing to show for their trouble.

The witnesses’ prepared statements may be downloaded from the Senate Judiciary Committee’s hearing summary, available [here](#).

Although the hearing was mostly uneventful, at one point, Sen. John Cornyn (R-TX) pointedly took issue with Professor Gilles’ characterization of arbitration as “forced,” asserting that consumers always have the option to take their business elsewhere. Professor Gilles disagreed, contending that all major banks include such clauses in their consumer contracts.

At another point, former Sen. Franken argued that a key goal of the court system is to enable plaintiffs to alert others about bad actors in open court. Former Sen. Franken argued that this goal is subverted by the combination of arbitration and confidentiality clauses in employment agreements. He appeared to become agitated when Ms. Milito responded by emphasizing that arbitration has many legitimate uses and practical benefits to consumers and businesses alike.

Sen. Jeff Flake (R-AZ) seemed to take special interest in the problem of highly technical regulations that ratchet up the burden of compliance, noting that even businesses that make good-faith efforts to comply with the law can be tripped up by complex formalities developed by administrative agencies, with devastating consequences. Although these comments referenced the ADA rather than the TCPA, his concerns readily map onto the TCPA compliance landscape.

RETURN-TO-WORK POLICY COSTS EMPLOYER \$9.8M

American Airlines’ return-to-work policy has resulted in a \$9.8 million settlement with the Equal Employment Opportunity Commission (EEOC) after the agency challenged the airline’s policy of requiring workers to be at “100 percent” in order to return to work. In practice, the policy violated the ADA, the EEOC asserted, because it meant that employees were not allowed to return to work until they had no disability-related restrictions on their job duties. The charging parties in the case had disabilities ranging from lupus to cancer to asthma, but the employer refused to provide accommodations such as intermittent leave or a stool behind the ticket counter for a worker with a standing restriction, said the EEOC. In addition to monetary relief, the consent decree — in which the employer did not admit liability — requires the airline to conduct additional ADA training and avoid violations of the statute going forward.

More than a dozen employees of American Airlines and subsidiary Envoy Air, Inc., filed charges of discrimination with the EEOC alleging violations of the ADA. Specifically, the workers alleged that the airlines had a “100 percent” return-to-work policy that required employees to be able to work without any restrictions.

The EEOC filed suit after investigating, asserting that since at least Jan. 1, 2009, the employer engaged in a pattern or practice of violating the statute by refusing to accommodate employees with disabilities, terminating employees with disabilities and failing to rehire employees. The policy requires that employees who are no longer able to do their job without reasonable accommodation find other jobs, apply for other jobs or compete for other jobs, without regard to reassignment as a reasonable accommodation.

American did not provide intermittent leave as an accommodation, refused to provide a stool behind the ticket counter to accommodate an employee with a standing restriction, terminated several of the charging parties or placed them on unpaid leave, and told others they could not return to work until they had no restrictions related to their injuries and/or disabilities, according to the EEOC’s complaint.

To settle the charges — while still denying all of the allegations and maintaining they provide equal employment opportunities for all workers — the airlines entered a consent decree.

Pursuant to the agreement, the EEOC will hold an unsecured claim in American Airlines’ Fourth Amended Joint Chapter 11 Plan in the amount of \$9.8 million. The ultimate dollar value of the settlement will depend upon the trading price of the airline’s stock, the parties acknowledged, with the decree fully enforceable no matter the trading price. The airlines took responsibility for administration costs up to \$150,000.

Equitable relief was also provided by the defendants, with a promise to end the challenged return-to-work policy, refrain from taking part in any employment practices that discriminate or retaliate on the basis of disability, engage in the interactive process with employees who request a reasonable accommodation, and remove references to the litigation from the charging parties’ personnel files.

Additional training on the requirements of the ADA will be provided to all employees, with extra time allotted for human resources workers and ADA coordinators, a newly designated position with responsibilities to oversee the defendants’ compliance with the statute and the consent decree.

SECRETARY OF EDUCATION SPEAKS OUT

Secretary of Education Betsy DeVos says too many students with disabilities are caught in a cycle of low academic expectations and that the status quo of schools doing the minimum legally required to educate them must end.

“Too often, the families of disabled children have felt that their children are not being adequately challenged academically or given the support needed to grow and thrive,” she wrote in a commentary for Education Week.

“To these parents, it often seems as if the school district is content with simply passing their child along, rather than focusing on helping him or her progress and grow academically,” DeVos wrote. “They recognize that the de minimis standard isn’t working for their child, but, sadly, they often do not have the opportunity to access something better.”

In the commentary, the secretary focuses on the impact of a recent and unanimous U.S. Supreme Court decision, *Endrew F. v. Douglas County School District*, which held that a child with autism is entitled to an individual education program that requires more than the “de minimis,” or minimum, progress set by the school.

DENYING EMPLOYMENT BASED ON CARPAL TUNNEL SCREENING FOUND UNLAWFUL

A federal judge ruled in favor of the U.S. Equal Employment Opportunity Commission (EEOC) on November in its discrimination charge against Amsted Rail Co., Inc. The judge ruled that Amsted, a leading manufacturer of steel castings for the rail industry, violated federal disability law when it disqualified job applicants based on the results of a nerve conduction test for carpal tunnel syndrome rather than conducting an individualized assessment of each applicant's ability to do the job safely.

In *EEOC v. Amsted Rail Co.*, Amsted made conditional job offers to thirty-nine applicants (the “Claimants”) for chipper positions, but placed them on medical hold because of abnormal results from a nerve conduction test (“NCT”). The EEOC argued that Amsted violated the ADA by not hiring the Claimants on the basis of disability in regards to job application procedures and hiring. Amsted justified its refusal to hire the Claimants by asserting there was a higher risk of developing carpal tunnel syndrome (“CTS”) for those with abnormal NCT results. After both parties cross-moved for summary judgment, Judge J. Phil Gilbert of the U.S. District Court for the Southern District of Illinois granted in part the EEOC’s motion for partial summary judgment, holding that the NCT did not indicate the Claimants’ contemporaneous inability to perform the chipper job, but only a prospective, future threat to their health if they were to perform the job. (*EEOC v. Amsted Rail Co., No. 3:14-CV-1292, 2017 U.S. Dist. LEXIS 189713 (S.D. Ill. Nov. 16, 2017)*)

The ruling illustrates that employers must be careful not to make hiring decisions based on the potential of future medical injuries.

Amsted employs “chippers” to finish the surfaces of the steel side frames for railcar components. Chippers use pneumatically powered tools, such as 12-pound sledgehammers, to perform their jobs. The work requires intensive use of the hands and arms, and includes exposure to vibrations. In 2010 and 2011, during a hiring surge, Amsted offered employment to applicants who had the necessary skills and experience, but the offers were contingent on their passing a medical examination and other tests.

The medical examination aimed, in part, to determine applicants who were at higher risk of developing CTS, one of the risks of jobs that require intensive use of the hands and exposure to vibrations. Amsted contracted with an outside medical company to conduct on-site medical exams, which included a medical history questionnaire, measuring vital signs, vision and hearing assessments, a physical examination, and an NCT.

Applicants whose NCT was “abnormal” were put on “medical hold pending further data” regardless of any other information obtained in the examination. This was done because the medical testing company believed abnormal NCT tests indicated that an applicant was “right on the verge of” developing CTS and losing the use of his hand. Amsted was aware that applicants were being placed on hold because of an abnormal NCT result and authorized this use of the NCT results. Applicants who did not return with normal NCT results were not hired. Amsted did not hire any applicants who did not test normal on an NCT.

The EEOC alleged that Amsted violated the ADA when it denied the Claimants employment on the basis of their disability rather than an individualized assessment. The EEOC argued that an abnormal NCT result was an inappropriate basis for making employment decisions. It further alleged that Amsted was not concerned with worker safety, but rather with reducing workers’ compensation costs. Amsted challenged the EEOC’s ability to prove all elements of its ADA case, including that the Claimants were qualified because they did not pose a direct threat. As such, both parties cross-moved for summary judgment.

The Court granted in part the EEOC’s motion for partial summary judgment. With the exception of one Claimant, Amsted did not challenge whether the EEOC had sufficient evidence to prove the Claimants were disabled. The Court rejected Amsted’s challenge relative to the lone Claimant, noting that because Amsted

conceded it refused to hire the Claimant because it feared he posed a safety risk in light of his prior CTS diagnosis and corrective surgery, no reasonable jury could fail to find that it regarded him as disabled. Regarding the element that the Claimants be qualified, the Court opined that the relevant case law established that the qualification question focuses on the individual's condition at the time of the defendant's employment decision, regardless of what may happen to the individual in the future.

In addition, the Court addressed the adverse employment action element. Amsted argued that the Claimants were not subject to an adverse employment action because they were not rejected for employment but were simply put on medical hold pending receipt of further medical information. The EEOC argued that Amsted's placement of Claimants on medical hold was an adverse employment action because it effectively foreclosed future employment as a chipper. Agreeing with the EEOC, the Court held that "[t]he evidence show[ed] that the Claimants' placement on medical hold due to an abnormal NCT result was an adverse employment action because it effectively precluded them from being hired."

Finally, the Court explained that the EEOC must show but-for causation in order to prevail. Amsted argued that the EEOC could not establish a discriminatory intent because the company relied in good faith on medical judgments that the Claimants were unable to safely perform the essential functions of the chipper job or had certain medical restrictions. The Court rejected this argument, holding that Amsted took the Claimants out of the applicant pool because of its perception that they were disabled. Accordingly, the Court granted in part the EEOC's motion for partial summary judgment.

In its Strategic Enforcement Plan for Fiscal Years 2017-2021, the EEOC identified eliminating barriers in recruitment and hiring as one of its six enforcement priorities. For employers in industries where an applicant's medical background may be important, it is crucial for those employers to keep the EEOC's strategic priorities in mind. When employers make hiring decisions based on the potential for future injuries, such as the employer here, they significantly increase their likelihood of facing EEOC-initiated ADA litigation. As such, employers should be exercise caution when implementing medical testing procedures for applicants, and ensure such procedures are lawfully conducted.

***Spring ADA Conference, April 16-19, 2018, Tampa, Florida
to cover these and numerous other important ADA issues.***

***THE ADA ARTICLES OF INTEREST
(Articles for information purposes only and are not to be considered as legal advice)***

“FILLING THE GAP: Sound Information from Reliable Sources”

Some Federal agencies are pulling their guidance documents from their websites. Other Federal agencies have put off new ADA rulemaking indefinitely. No new guidance documents from Federal agencies are on the horizon. But ADA Coordinators need to have ready access to usable, understandable, accurate information on what the ADA requires and on “best practices” to open programs, services, and activities to persons with disabilities.

The National Association of ADA Coordinators stands ready to fill the gap.

We have once again assembled a formidable team of outstanding ADA experts. For four days in April we will provide reliable, practical information on how to comply with the ADA; we’ll answer your questions; and we’ll give you usable documents to take home. So come to Tampa, Florida in April 2018, and you will find that NAADAC’s Spring Conference is “FILLING THE GAP with Sound Information from Reliable Sources.”

John Wodatch, J.D.
Association President

SPECIAL CONFERENCE SOCIAL EVENTS

Association President’s Networking Reception

Tuesday, April 17, 2018, 4:45 PM – 6:00 PM

Hotel Pool (weather permitting)

Meet and network with other ADA professionals and our conference faculty

“Association’s Got Talent”

Our Semi-Annual Karaoke Get-Together

Wednesday, April 18, 2018, 7:30 PM

All are welcome - “singers” (single and/or groups) and voting audience members. Donated prizes each for the three most entertaining single, duo, and/or group.

Meet your fellow conference participants and faculty in a very relaxed setting.

Complimentary Refreshments at Both Traditional Events

“FILLING THE GAP: Sound Information from Reliable Sources”

Day One - Monday, April 16, 2018 - Morning General Sessions Conference Program - Page 1

7:45a - 9:25a	Continental Breakfast and Registration
8:00a - 9:15a	<p><i>PRE-CONFERENCE SESSION: INTRODUCTION TO THE ADA</i> (For Anyone Wishing a Review of ADA Basics)</p> <p>This workshop will acquaint the new or returning ADA Coordinator with a firm foundation in ADA basics, giving conference participants a solid, primary knowledge base.</p> <p><i>Irene Bowen, John Wodatch, Brian Nelson, Melissa Frost</i></p>
9:30a - 9:50a	<p><i>WELCOME and ANNOUNCEMENTS</i></p> <p><i>Phong Nguyen, M.D., P.A. - Association Chairman and Conference Coordinator</i> <i>State of Florida Representative – Dean Perkins</i> <i>John Wodatch, J.D., P.A. - Association President</i> <i>Paul Hagle, P.A., Association Executive Director</i></p>
9:50a - 10:50a (1 PA CEU)	<p><i>DOJ KEYNOTE</i></p> <p>DOJ covers recent and important emerging ADA case law, issues and the work of DOJ with U.S. Attorneys offices throughout the U.S.</p> <p>With the goal of avoiding litigation while assuring your ADA policies and decisions are up-to-date, we open the floor to your questions relating to best practices and how we can help you be your most effective in meeting your responsibilities.</p> <p><i>Rebecca B. Bond, J.D. (Invited)</i> <i>Acting Deputy Assistant Attorney General for Civil Rights,</i> <i>U.S. Department of Justice, Washington, D.C.</i></p>
11:00a - 12:00p (1 PA CEU)	<p><i>EEOC KEYNOTE</i></p> <p>This interactive general session will focus on new, significant legal decisions pertaining to the ADA and will address relevant case law and implications in the workplace.</p> <p><i>Christopher Kuczynski, J.D., LL.M., P.A.</i> <i>Assistant Legal Counsel & ADA/GINA Policy Director, Office of Legal Counsel,</i> <i>U.S. E.E.O.C., Washington, DC.</i></p>
12:00p - 1:00p	<i>Luncheon – Host: National Institute On Employment Issues</i>

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

Day One - Monday, April 16, 2018 - General Sessions AFTERNOON Workshops
Conference Program – Page Two

Time Periods		Workshop Synopsis
1:00p - 2:00p and 2:15p - 3:15p (2 PA CEU)	EMPLOYMENT	<p align="center"><u>CASE LAW UPDATE & THE CHALLENGES</u></p> <p>During this 2-part session, more recent legal decisions will be presented. There will be a discussion covering three of the most common and challenging accommodation requests - leave, telework, and reassignment. In the second hour we will continue to explore the challenges, solutions and good practices.</p> <p align="center"><i>Christopher Kuczynski, J.D., LL.M.</i> <i>Assistant Legal Counsel, ADA/GINA Policy Director, Office of Legal Counsel, U.S. E.E.O.C., Washington, D.C.</i></p>
2:15p - 3:15p (1 PA CEU)	ACCESS, SERVICES, & DESIGN <u>AND</u> HIGHER EDUCATION	<p align="center"><u>JOINT SESSION: ACCESS AND HIGHER EDUCATION</u> <u>STRENGTHENING YOUR ADA FOUNDATION</u></p> <p>You're a new ADA Coordinator: where do you begin? Or you've been on the job for some time, and you're not sure your ADA essentials are working as you'd like. This session provides the information you need to move forward. It's a look at ADA fundamentals, including providing notice, establishing and maintaining a grievance procedure, writing and updating basic policies, and training.</p> <p align="center"><i>Jim Bostrom, Irene Bowen, Melissa Frost, Jim Long, Howard Kallem</i></p>
3:30p - 4:30p (1 PA CEU)	ALL TRACKS	<p align="center"><u>SERVICE AND ASSISTANCE ANIMALS:</u> <u>WHAT YOU NEED TO KNOW</u></p> <p>Learn to distinguish service animals from assistance or comfort animals. Find out what you can ask a person with a disability with an accompanying animal and when the interactive process is appropriate to consider a request for an assistance animal as an accommodation.</p> <p align="center"><i>Irene Bowen, Melissa Frost, Jim Long, Howard Kallem, John Wodatch</i></p>
4:30p - 5:00p	ALL TRACKS	<p align="center"><u>CORADA: A QUICK REFRESHER</u> <u>(OPEN TO ALL TRACKS - OPTIONAL)</u></p> <p>A quick review of how to make the most of this ADA information resource to get you the knowledge you need quickly.</p> <p align="center"><i>Jim Terry</i></p>

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

Day Two - Tuesday, April 17, 2018 - Concurrent MORNING Workshops
Conference Program – Page 3

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		Continental Breakfast and Registration
(3 PA CEU ea ADVANCED) 9:00a - 10:20a (1 PA CEU ea BASIC)		FOR PAs and PA Candidates only who have completed all three of the PA ADA basic sessions: These advanced sessions offer the PA an opportunity to ask questions of the conference faculty. The object is to develop suggestions to solve difficult issue demonstrating best practices. There are two consecutive sessions for PAs for the Access, Services, & Design; Employment; and Higher Education tracks.
	ACCESS, SERVICES, & DESIGN	ADA BASICS: ACCESSIBLE PROGRAMS, SERVICES, AND ACTIVITIES You need to know basic ADA concepts to tackle any ADA issues that come your way. Learn the ADA principles underlie the ADA: equal opportunity, broad coverage of persons with disabilities, reasonable modifications, effective communication, integration, accessible new construction and alterations, program accessibility, and effective enforcements and remedies. John Wodatch with Dean Perkins <i>(Irene Bowen, Jim Bostrom, Jim Terry - to lead Advanced P.A. Access sessions)</i>
	EMPLOYMENT	THE WHAT AND THE WHY This Session will provide a fundamental overview of the ADA Amendments Act and the EEOC regulations that affect both employers and employees. Case studies will be presented and discussed . Brian Nelson with Allison Nichol, Mary Jo O'Neill, Michael Sullivan <i>(Chris Kuczynski and Paul Hagle lead Advanced P.A. Employment sessions)</i>
	HIGHER EDUCATION	THE BARRE FIRST POSITION: FUNDAMENTALS FOR THE CAMPUS ADA COORDINATOR Learn the basic equal opportunity requirements to comply with the broad coverage of the DOJ Title II and Title III and Section 504 regulations from notice of non-discrimination and publication of a Title II/Section 504 Coordinator to accessibility policy and practice for reasonable modifications, effective communication, integration, and program accessibility. Melissa Frost, Shelly Ducatt, Howard Kallem <i>(Jim Long. Leads the Advanced P.A. Higher Education sessions)</i>
10:40a - 12 Noon (2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	ADA BASICS: MAKING BUILDINGS AND FACILITIES ACCESSIBLE Learn what the 2010 ADA Standards require for making new and altered facilities accessible. Includes an overview of the ADA Standards and how to apply them to buildings and facilities, as well as how to apply the path of travel requirements and the safe harbor provisions of the ADA Title II regulation. Jim Bostrom, Jim Terry, Dean Perkins (John Wodatch, Irene Bowen will lead the 2nd Advanced P.A. Access sessions)
	EMPLOYMENT	IF IT HURTS, DON'T DO IT We will closely examine and discuss when, how, and why an employer may undertake health-related inquiries of employees without violating the ADA and GINA.. Mary Jo O'Neill with Brian Nelson, Allison Nichol, Michael Sullivan
	HIGHER EDUCATION	THE BARRE SECOND POSITION: DOCUMENTATION AND THE INTERACTIVE PROCESS Learn how to communicate with healthcare professionals to request the specifics you need to implement effective academic adjustments, how to evaluate medical documentation received in light of DOJ regulations including high stakes tests, cyclic disabilities including mental health, and how to accommodate temporary conditions such as concussions and pregnancy. Melissa Frost, Shelly Ducatt, Howard Kallem
12:00 - 1:00p		Lunch - National Association of ADA Coordinators

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

Day Two - Tuesday, April 17, 2018 - Concurrent AFTERNOON Workshops
Conference Program – Page 4

Time Periods	Track	Workshop Synopsis
1:00p - 2:00p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p align="center">COMPLIANCE IN ABSENCE OF STANDARDS</p> <p>We now know that the Federal government will not be issuing new regulations to provide guidance to public rights of way, website accessibility, and medical equipment. Yet the ADA still applies to these programs and enforcement actions, by both the Federal government and private advocates continues. Learn what the Courts and Federal enforcement actions mean and how to navigate this complex arena. <i>Irene Bowen, Jim Bostrom, Dean Perkins, John Wodatch</i></p>
	EMPLOYMENT	<p align="center">TO BE OR NOT TO BE</p> <p>Do you know whether your employee qualification standards and essential functions are defensible or illusory? Demonstrative case studies and case law will be presented and discussed to underscore the importance of these key principles.. <i>Brian Nelson with Chris Kuczynski, Mary Jo O'Neill, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p align="center">SO YOU THINK YOU CAN DANCE: FUNDAMENTAL ELEMENTS IN ACADEMIC PROGRAMS AND COURSES</p> <p>This scenario-based session will explain how to determine the fundamental academic and technical elements of a program or course necessary for deference and how to recognize when an accommodation request for course substitution or waiver constitutes a request for a fundamental alteration that is not required. Best practice examples of faculty help and support to implement accommodations will also be discussed. <i>Shelley Ducatt, Melissa Frost, Jim Long, Howard Kallem</i></p>
2:15p - 3:15p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p align="center">PUBLIC RIGHTS OF WAY: COMPLIANCE UNDER THE ADA AND SECTION 504</p> <p>Title II of the ADA applies to the full gamut of the public right of way, including public sidewalks, bus stops and shelters, on-street parking, wall-mounted and overhead objects, signs, and pedestrian facilities along public roadways. Learn how the Federal Highway Administration views your compliance obligations and hear possible strategies to achieve compliance. <i>Jim Esselman (invited), Jim Bostrom, Dean Perkins</i></p>
	EMPLOYMENT	<p align="center">REASONABLE IS AS REASONABLE DOES - PART ONE</p> <p>Using realistic scenarios, this two-part interactive workshop will focus on the challenges and opportunities inherent in conducting successful interactive processes and effecting reasonable accommodations. Practical accommodation approaches, solutions, and undue hardship principles will be explored and discussed. <i>Chris Kuczynski with Brian Nelson, Mary Jo O'Neill, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p align="center">PRACTICE MAKES PERFECT: EFFECTIVE ACADEMIC ADJUSTMENTS IN FIELD WORK</p> <p>This discussion will present best practice for effective accommodations outside the classroom in fieldwork. The discussion will highlight academic and technical standards for fine arts, earth sciences and clinical settings. <i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>
3:30p - 4:30p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p align="center">REASONABLE MODIFICATIONS OF POLICIES AND PROCEDURES</p> <p>After a quick overview of the “black Letter” law, we’ll explore several scenarios together and in groups. The goal is to understand how to approach requests for modifications and how to work with the person making the request and your entity’s managers and staff in deciding the ‘correct’ approach. <i>Irene Bowen, John Wodatch</i></p>
	EMPLOYMENT	<p align="center">REASONABLE IS AS REASONABLE DOES - PART TWO</p> <p>This session is a continuation of Part One, described above. <i>Christopher Kuczynski with Brian Nelson, Mary Jo O'Neill, Allison Nicholson, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p align="center">BALLROOM DANCE: CHALLENGING ACCOMMODATION REQUESTS</p> <p>Effective academic adjustments are often the crucial difference between success and failure for a student. This scenario-based session focusing on mental health issues will outline important practice for your campus including: flexible attendance, extended time on tests, quizzes and assignments, post hoc accommodation requests, and the side effects of medication. <i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>

4:45p - 6:00p - Association President’s Networking Reception (hotel pool; food and beverages)

Day Three - Wednesday, April 18, 2018 - Concurrent MORNING Workshops
Conference Program – Page 5

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		Continental Breakfast and Registration
9:00a - 10:20a (2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	<p><i>SELF-EVALUATION AND TRANSITION PLANNING</i></p> <p>After an overview of the requirements of the ADA and Section 504 regulations for self-evaluations and transition plans, the session will focus on how these efforts relate to program accessibility. In the last 20 minutes, we'll introduce a scenario to be explored in the next session.</p> <p><i>Irene Bowen, Jim Terry, Jim Bostrom, Dean Perkins</i></p>
	EMPLOYMENT	<p><i>SOMETIMES THE PLOT JUST THICKENS</i></p> <p>In this interactive session we will focus on the stuff that keeps us awake at night: emotional support animals, multiple chemical sensitivities, bossectomies, extended leave, collective bargaining agreements, etc. Case studies will be presented and discussed.</p> <p><i>Brian Nelson with Mary Jo O'Neill, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p><i>LINE DANCING: ANNUAL CASE REVIEW</i></p> <p>A review of recent, relevant Court decisions will outline important legal requirements and highlight best practices to comply with ADA-AA and the DOJ Title II and Title III regulations.</p> <p><i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>
10:40a - 12 Noon (2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	<p><i>SELF-EVALUATION AND TRANSITION PLANS: APPLIED CASE STUDIES</i></p> <p>(NOTE: While not a prerequisite, attending Part One - the 9:00 am Access session - will help you prepare for this session. Materials will be available at the registration table.)</p> <p>Working in groups, we'll examine a set of facts of the sort that a public entity may face, then tease out the issues and come up with possible approaches and resolutions. For example: when must facilities be altered and when can operational means of providing access be effective?</p> <p><i>Irene Bowen, Jim Bostrom, Jim Terry, Dean Perkins, John Wodatch</i></p>
	EMPLOYMENT	<p><i>AN APPLE A DAY KEEPS THE DOCTOR AWAY? REALLY?</i></p> <p>In this session, we will present and discuss the challenges of conflicting medical opinions and the collision of inconsistent employee health complaints. Fitness for duty evaluations will be a significant component of this session..</p> <p><i>Phong Nguyen with Brian Nelson, Mary Jo O'Neill, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p><i>ALL THAT JAZZ: NON-DISCRIMINATORY APPLICATION IN DISCIPLINE AND DISMISSAL</i></p> <p>This scenario-based session will provide best practice to distinguish between academic and disciplinary actions and the important factors to consider in threat to others and threat to self. We will also discuss establishing readmission criteria and the grievance process to ensure the prompt, equitable resolution of ADA complaints.</p> <p><i>Melissa Frost, Howard Kallem, Jim Long, Shelley Ducatt</i></p>
12:00p-1:00pBB		Hosted by - National Association of ADA Coordinators

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

THE ASSOCIATION'S GOT TALENT!

Semi-annual Karaoke Challenge and Get Together

7:30 PM - Refreshments for all – Donated PRIZES for the audience winners.

For those of you who don't want to sing - come and enjoy the entertainment provided by those who will make you cheer and applaud for your favorites. Maybe you will hear the next "Voice".

Day Three - Wednesday, April 18, 2018 - Concurrent AFTERNOON Workshops -- Page 6

Time Periods	Track	Workshop Synopsis
1:00p - 2:00p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p style="text-align: center;">WEB ACCESS</p> <p>One of the most important issues facing public entities in the coming years is ensuring that their web presence is accessible to and useable by a wide range of persons with disabilities who use assistive technology. This session will focus on how persons with disabilities use assistive technology and what you can do to ensure that your website is accessible to them.</p> <p style="text-align: right;"><i>Joe Dolson with Jim Bostrom</i></p>
	EMPLOYMENT	<p style="text-align: center;">WHAT DO I DO NOW - PART ONE</p> <p>This session will address the challenging nuances associated with employee performance, conduct, and reasonable accommodations. Employee drug and alcohol use will also be presented and discussed via case studies and case law.</p> <p style="text-align: right;"><i>Mary Jo O'Neill with Brian Nelson, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p style="text-align: center;">TWO TO TANGO: WHEN ADA MEETS TITLE IX</p> <p>Focus in this session includes issues related to the Title IX regulations concerning pregnancy and the longer term effects of sexual assault, and their intersection with disability requirements.</p> <p style="text-align: right;"><i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>
2:15p - 3:15p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p style="text-align: center;">OTHER COMMUNICATIONS REQUIREMENTS</p> <p>The ADA requires effective communication with persons with disabilities. After a brief overview of the law's requirements, we'll examine scenarios so you will know which auxiliary aids to use in different circumstances. Areas covered may include courtroom settings, town council meetings, police arrests, doctors' office visits, communications with or by companions, and the usual alphabet soup (VRI, TRS, TTY).</p> <p style="text-align: right;"><i>John Wodatch, Irene Bowen, Rachel Weisberg</i></p>
	EMPLOYMENT	<p style="text-align: center;">WHAT DO I DO NOW - PART TWO</p> <p>This session is a continuation of Part One, described above.</p> <p style="text-align: right;"><i>Mary Jo O'Neill with Brian Nelson, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p style="text-align: center;">DANCING WITH THE STARS: RESPONDING TO A CHARGE OF DISCRIMINATION</p> <p>In this session, learn how to effectively respond to OCR after a charge of discrimination using the new case processing manual.</p> <p style="text-align: right;"><i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>
3:30p - 4:30p (1 PA CEU ea)	ACCESS, SERVICES, & DESIGN	<p style="text-align: center;">TITLE II: THE YEAR IN REVIEW</p> <p>An ADA Coordinator needs to be kept up-to-date on recent and significant legal developments in the field. This session will review cases brought, settled, or decided in the past year. The focus will be on Title II, but will also include those Title III cases that may have an impact on how Title II is applied.</p> <p style="text-align: right;"><i>Rachel Weisberg</i></p>
	EMPLOYMENT	<p style="text-align: center;">THE BIGGER PICTURE</p> <p>In this session we will cover employer liability exposures, such as disability-related harassment, retaliation, confidentiality, and associational discrimination and how to prevent them.</p> <p style="text-align: right;"><i>Mary Jo O'Neill with Brian Nelson, Allison Nichol, Michael Sullivan</i></p>
	HIGHER EDUCATION	<p style="text-align: center;">INSTANT REPLAY: YOUR QUESTIONS ANSWERED</p> <p>This interactive session is designed to answer your challenging questions.</p> <p style="text-align: right;"><i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

THE ASSOCIATION'S GOT TALENT - Maybe you will hear the next "Voice"

7:30 PM - Semi Annual Karaoke Contest - Refreshments for all – Donated PRIZES for the audience winners.
For those of you who don't want to sing - come and enjoy the fun and entertainment provided by those who will make you cheer. Your cheers and applause will choose the prize winners.

Day Four - Thursday, April 19, 2018 - Concurrent MORNING Designated Sessions
Conference Programs – Page 7

Time Periods	Track	Workshop Synopsis
8:15a - 9:00a		Continental Breakfast and Registration
9:00a - 10:20a (2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN	<p align="center"><i>LAW ENFORCEMENT</i></p> <p>This session will review significant cases, settlement agreements, and other actions that have an impact on law enforcement, jail and prison operations, the use of sign language interpreters, and disability-based behavior confused with criminal acts.</p> <p align="right"><i>Michael Sullivan</i></p>
	EMPLOYMENT	<p align="center"><i>DOES YOUR HAIR HURT, TOO?</i></p> <p>In this interactive session we will present and discuss nuances, common challenges, and good practices inherent in coordinating FMLA, ADA, workers' compensation, and other disability benefits.</p> <p align="right"><i>Brian Nelson with Mary Jo O'Neill, Allison Nichol</i></p>
	HIGHER EDUCATION	<p align="center"><i>CHOREOGRAPHY: TROUBLESHOOTING CAMPUS ACCESSIBILITY</i></p> <p>Learn the necessary components to meet campus physical access requirements including: accessible buildings, accessible routes, and access to transportation. Working in groups we will use scenarios to discuss approaches and solutions for some of the most frequent accessibility issues found on campus.</p> <p align="right"><i>Melissa Frost, Shelley Ducatt, Jim Long, Howard Kallem</i></p>
10:40a - 12 Noon (2 PA CEU's ea)	ACCESS, SERVICES, & DESIGN <u>and</u> HIGHER EDUCATION	<p align="center"><i>JOINT SESSION OF ACCESS AND HIGHER ED HOUSING: WHAT APPLIES WHEN</i></p> <p>Did you know that the housing programs of public entities, including colleges and universities, are covered by the ADA, Section 504, and the Fair Housing Act? This session will explore which laws apply when and how to navigate the different requirements of each of these Federal mandates.</p> <p align="right"><i>Melissa Frost, Jim Long, Howard Kallem Irene Bowen, John Wodatch</i></p>
	EMPLOYMENT	<p align="center"><i>YOU CAN'T MAKE THIS STUFF UP</i></p> <p>This session will cover some of the more incredible blunders employers have made from actual decisions. You really can't make this stuff up.</p> <p align="right"><i>Brian Nelson with Mary Jo O'Neill, Allison Nichol, Michael Sullivan</i></p>
12:00p-1:00p		Luncheon - Medical Education and International Consulting

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

DAY FOUR - THURSDAY, April 19, 2018 - AFTERNOON General Sessions
Conference Program – Page 8

Designated General Sessions - All Participants	
1:00p - 2:00p (1 PA CEU)	<p align="center"><i>RAISING UP THE RIGHT TO BE RESCUED</i></p> <p align="center"><i>WHEN THE REAL EMERGENCY STRIKES – EMERGENCY PREPAREDNESS - PART ONE</i></p> <p>As our society confronts more emergencies that test the limits of our capabilities, tough decisions will lie ahead. Although popular accounts sometimes state that the tenet of natural disasters is that they choose their victims capriciously and without remorse, the truth is far more disturbing—we choose the victims by failing to accommodate their needs. Challenging ourselves to remember that all members of society should have access to opportunities regardless of the impairments they may face may be the most difficult in moments of crisis; it is also no less important then. All too often, litigation serves to drive home lessons a willing listener could have learned long ago, litigation could have been avoided, and the parties could have gotten down to the business of crafting solutions much sooner.</p> <p align="right"><i>Michael Smith with Phong Nguyen.</i></p>
2:15p - 3:15p (1 PA CEU)	<p align="center"><i>EMERGENCY PREPAREDNESS:</i></p> <p align="center"><i>SHELTERING AND COMMUNICATION ISSUES - Part Two</i></p> <p>Emergencies and disasters often strike quickly and with little warning forcing people to leave their homes quickly and find emergency relief centers. For persons with disabilities, emergencies from fires, floods, hurricanes, and acts of terrorism present a difficult challenge. In the past 15 years a considerable body of expertise has been developed on how to address effectively the needs of persons with disabilities dislocated by such emergencies. This session will address successful strategies for emergency planners.</p> <p align="right"><i>Irene Bowen, John Wodatch, Jim Terry, Jim Bostrom, Dean Perkins</i></p>
3:30p - 4:30p (1 PA CEU)	<p align="center"><i>ADA COORDINATORS</i></p> <p align="center"><i>MAKING THE MOST OF YOUR BUREACRATIC ENVIRONMENT</i></p> <p>To be successful, an ADA Coordinator needs to function well in a bureaucratic environment. This session will provide tips on how you can work within your organization to ensure you have the knowledge, funding, and buy-in to succeed. Also this session will provide the opportunity for you to get answers to any questions that have not yet been addressed. Come prepared with your thorniest issues.</p> <p align="right"><i>Jim Bostrom, Jim Terry, Irene Bowen, Melissa Frost, Brian Nelson, Jim Long, Dean Perkins, Phong Nguyen, John Wodatch</i></p>

Conference sessions and faculty subject to change without notice due to unforeseen circumstances.

***Now is the time to plan for the Association's
Fall 2018 National ADA Conference
San Diego, California, October 22 - 25, 2018***

Spring National Conference Information & Registration (includes Early Bird Info) - April 16-19, 2018 - Tampa, FL

Must Pre-Register

NO Registrations Accepted at the Door

Conference information includes Early Bird Discount

EARLY BIRD, full conference, registration fee (* see below) available if registration and payment, **by credit card or check only**, is received by the Association, **no later than February 22, 2018. (No exceptions)**

If three or more participants from the same entity wish to register and pay in full at the same time, please call for special registration rates.

To RESERVE your space, please **FAX** this completed registration form to: **(877) 480-7858, OR scanned PDF copy to NIEIEMAIL@aol.com**

Regular registrations **must be paid in full and received no later than March 24, 2018**, or space/materials will be not reserved.

For information, please call **888-679-7227** and leave message with your contact number and best time to contact you.

Mail registrations and make payments to: National Association of ADA Coordinators, P.O. Box 958, Rancho Mirage, CA 92270

CONFERENCE AND HOTEL INFORMATION

The conference is being held at the **Hilton Tampa Airport Westshore, 2225 North Lois Ave., Tampa, FL 33607**. Complimentary shuttle provided from/to Tampa International Airport. Hotel self-parking and guestroom Internet are complimentary. **Participant is responsible for making own lodging reservation. Credit card guarantee is required.**

The Association has negotiated a special conference rate from three days before/after the conference at a per room rate of \$132.00 per night, plus taxes (single/double) if reserved by **3/20/2018**, provided room block has not been sold out. To make lodging reservations **call Hilton reservations at 800-445-8667, or the hotel at 813-877-6688**; and mention you are attending the National Association of ADA Coordinators conference.

Persons with disabilities: Please make requests for any sleeping room accommodations at the time you reserve room.

In order to participate in the training, I have need of:

(The Association must know of accommodations required for training **no later than 3/11/2018**. If an assistant attends, the person must register, attend same conference workshop sessions as person requiring the accommodation, and pay \$350 per day to cover costs of food and materials..)

CONFERENCE REGISTRATION

Rate includes hosted continental breakfast(s), breaks, & luncheon(s) for Mon thru Thurs.

(Federal Tax Number is 33-0595554, nonprofit 501(c)(3) corporation)

Conference Dates ASSOCIATE - Daily Only Rates - NON-ASSOCIATE

Mon. 4/16/18 [] \$595 [] \$695

Tue. 4/17/18 [] \$595 [] \$695

Wed. 4/18/18 [] \$595 [] \$695

Thur. 4/19/18 [] \$595 [] \$695

All Four Days of the Conference

ASSOCIATE - Full Conference After 2/22/2018 [] \$2,165

*** ASSOCIATE - Early Bird by 2/22/2018 [] \$1,995**

NON-ASSOCIATE - Full conference after 2/22/2018 [] \$2,795

*** NON-ASSOCIATE - Early Bird by 2/22/2018 [] \$2,495**

You must be either a current, up-to-date Associate or join to register at the Associate rate. **ANY CANCELLATION must be** in writing to us no later than 04/2/2018 (**no exceptions**) and is subject to a processing fee of \$600. Remaining balance, after processing fee is deducted for any cancellation on or after 4/2/2018, can only be applied to the Association's Fall 2018 or Spring 2019 conferences.

There are no refunds or credits for any no-shows on or after 4/6/2018.

JOIN or RENEW YOUR ASSOCIATE STATUS

The Association offers many benefits including reduced rates for workshops/conferences, a bi-monthly newsletter, an annual Associates' Directory for networking purposes, and a lapel pin. To join, complete contact information, check appropriate associate box below and include your fee. **If you join or renew and pay the first year dues at the time of registration, you can attend the conference at the Associate's rate.**

[] Individual Associate - \$195;

[] Organization Associate - \$345

See our web site (www.askJAN.org/NAADAC) for updated information on the **Professional Associates (PA) Program**: You must include a completed copy of the PA application form found on the web site and include an additional one-time [] **\$125 application fee per application**, to become a participant in the Association's Professional Associate program.

TOTAL AMOUNT and METHOD OF PAYMENT

[] Visa/MasterCard [] Amex [] Check

Cardholder: _____

Card number: _____

Expiration: _____ Total Amount: \$ _____

(Credit cards processed for the Association by conference planner will show the words National Institute on Employment Issues - NIEI on your statement)

A copy of a fully **approved** purchase order by your organization **must be** received with registration form(s) **no later than 3/24/2018, and be accepted and invoiced by the National Association of ADA Coordinators** or space will not reserved. Any P.O. must be paid within ten days after the conference or an additional charge of \$100 may be applied.

PARTICIPANT/ASSOCIATE INFORMATION

Name: _____ Title: _____

PLEASE CIRCLE: Conference track of greatest interest to you: Higher Education Employment Access **(If not circled, ACCESS Track entered)**

Organization: _____

Address: _____ City: _____ State: _____ Zip: _____

Phone:(_____) FAX:(_____) Email: _____

May we list your email in the conference participant list for networking purposes? Please circle: **Yes No**

Signature Required: _____ Date Approved: _____ (WEB1217)

Spring 2018 - Conference Keynotes and Faculty

ADA TITLE I AND GINA

Assistant Legal Counsel, and Director, ADA/GINA Policy Division

U.S. E.E.O.C., Washington, D.C.

Christopher Kuczynski, J.D., LL.M., P.A.

Mr. Kuczynski joined the Commission in February 1997 as Assistant Legal Counsel and Director of the ADA Policy Division (now the ADA/GINA Policy Division). Chris supervises the development of regulations, policy guidance, and technical assistance publications on Title I of the Americans with Disabilities Act (ADA) and Title II of the Genetic Information Nondiscrimination Act (GINA), and regularly advises EEOC field and headquarters offices, including the offices of the Chair and Commissioners, on complex ADA and GINA issues. His leadership was critical in the issuance of final regulations implementing GINA (published in November 2010) and the ADA Amendments Act (published in March 2011).

Chris has made 35 presentations on the ADA, and more recently on GINA, to our Association's national conference audiences, including human resources and EEO professionals, supervisors and managers in the public and private sectors, medical professionals, and plaintiff and defence counsels. He has been interviewed on the ADA and GINA by numerous media outlets including The New York Times, USA Today, The Wall Street Journal, and The Washington Post. He has done radio or television interviews for ABC News, the CBS Morning News, and MSNBC, and has been a guest on C-SPAN's Washington Journal.

From January to October 2003, Chris was a Special Assistant to former EEOC Chair Cari Dominguez, and from October 2003 through April 2004, he was Associate Director of the White House Domestic Policy Council. Chris was a trial attorney in the Disability Rights Section of the U.S. Department of Justice from July 1993 until February 1997, and was a litigation associate for three years with a major Philadelphia law firm.

He has a B.A. in English from Villanova University, where he was a member of Phi Beta Kappa and from which he received the School of Liberal Arts and Sciences 2007 Alumni Medallion; a J.D. from Temple Law School; and an LL.M. from Yale Law School.

ADA TITLE II and III

Chief, Disability Rights Section, Civil Rights Division

U.S. Department of Justice, Washington, D.C.

Rebecca Bond, J.D. (invited)

Rebecca Bond is the Chief of the Justice Department's Disability Rights Section. In that capacity, Ms. Bond oversees the Section's management team, develops and supervises investigations and litigation affecting all aspects of the Section's enforcement program, and leads the development and implementation of the Section's strategic vision, guidance, regulations, and policies. Rebecca is an experienced and dedicated civil rights advocate with a deep personal commitment to disability rights. She previously served as a Trial Attorney and a Deputy Chief of DOJ's Housing and Civil Enforcement Section, taking on Fair Housing Act, sexual harassment, race discrimination, and disability cases. She also handled cases under the Americans with Disabilities Act, Religious Land Use and Institutionalized Persons Act, and Title II of the Civil Rights Act of 1964. She became a Deputy Chief of the Housing and Civil Enforcement Section in 2006, where, in addition to supervising litigation, she was the Section's Legal and Policy Counsel, oversaw the Fair Housing Testing Program, and chaired the Section's professional development committee. Rebecca is a 1997 graduate of Harvard Law School and a 1993 graduate of Yale University. She joined the Division in 2000 after clerking and practising law in Puerto Rico and California.

ADA Enforcing Agency Faculty

**Senior Attorney Advisor, Office of the Chief Counsel
Federal Highway Administration, Washington, D.C.**

Jim Esselman, J.D. (invited)

Mr. Esselman has served as the Civil Rights Team Leader since 2012, providing guidance and advice on the application of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 in the public right-of-way. In addition, Jim has provided guidance on the U.S. Department of Transportation's Disadvantaged Business Enterprise Program and Title VI of the Civil Rights Act of 1964. He also served as Special Counsel to the Chief Counsel at FHWA from 2011 through 2013. Prior to joining FHWA, Jim was in private practice for over ten years at Beveridge & Diamond law firm in Washington, D.C., with a focus on environmental litigation. Jim obtained his law degree from the University of Virginia School of Law.

Regional Attorney, U.S. Equal Employment Opportunity Commission, Phoenix, AZ

Mary Jo O'Neill, J.D.

Ms. O'Neill began her work at the E.E.O.C. as a trial attorney, then as a supervisory trial attorney, until she was selected as the Regional Attorney in 2002. Mary Jo manages the legal staff, litigates employment discrimination cases in federal court in five states, advises her enforcement colleagues, and is a frequent national trainer/speaker for the E.E.O.C. This will be Mary Jo's 15th time she has participated in our ADA Conferences.

ADA Enforcing Agency Faculty (Ret.)

**Deputy Chief (ret.), Disability Rights Section, Civil Rights Division
U. S. Department of Justice, Washington, D.C.**

Jim Bostrom, P.A.

Mr. Bostrom has worked in the area of accessibility and accessible design for more than 42 years. He recently retired from DOJ with over 22 years of service including more than 12 years as deputy chief. The ADA Design Unit that Jim managed was comprised of architects, code specialists, and professional staff. An experienced presenter and instructor, Mr. Bostrom developed technical assistance materials and has provided numerous training sessions that explained to both general and technical audiences the various aspects of accessible design and ADA requirements. Mr. Bostrom created the ADA web site, **ADA.gov**, which has become the federal government's leading online source of ADA information, and continued to be responsible for its operation until he retired. He was a principle at Barrier Free Environments, Inc. and a co-founder of the Center for Accessible Housing at North Carolina State University. Jim has a B.Arch and M.Arch from Virginia Tech. **Jim is a member of the Association's Board of Directors.**

**Deputy Chief (ret.), Disability Rights Section, U.S. Department of Justice, Washington, D.C.
President, ADA One, LLC, Silver Spring, MD**

Irene Bowen, J.D., P.A.

Ms. Bowen is a nationally recognized ADA consultant, trainer, and speaker. Before starting her firm in 2009, she was Deputy Chief of the Disability Rights Section at DOJ, where she oversaw enforcement of the ADA and was actively involved in the development of the ADA accessibility guidelines as well as DOJ's Title II and Title III regulations. Irene's clients include local governments, colleges and universities, public accommodations, a large school system, the State of Texas, and a Federal agency. She teams with architectural firms and others in assisting entities with self-evaluations and transition plans, and development of cost-effective approaches to compliance. Since 2011, Ms. Bowen has presented internationally, assisted in self-evaluations of Fulton County, GA, the City of Chicago, IL, the City of Seattle, several universities, and health-care providers; and authored or co-authored six ADA guides including an ADA guide for nonprofits; a resource for accommodating students who are deaf or

hard of hearing at the post-secondary level from pepnet 2; a facilities guide for the state of Georgia and a guide for court officials). **Irene is a member of the Association's Board of Directors.**

***Senior Attorney (ret.), Office for Civil Rights, U.S. Department of Education,
Denver Enforcement Office, Denver, CO***

Senior Consultant, Employment Matters, LLC/Flynn Investigations Group, Denver, CO

James D. Long, Jr., J.D., P.A.

Jim Long is a former Senior Attorney with the Office for Civil Rights, U.S. Department of Education, in the Denver Regional Office. He is the principal in Educational Rights Consulting, providing a broad range of consulting services to school districts, colleges and universities, and parents on a spectrum of civil rights issues. Jim is also a Senior Consultant with Employment Matters, LLC—Flynn Investigation Group (EMFIG). He conducts Title IX and other civil rights complaint investigations for schools and conducts expert reviews for litigation. Jim is also on the Board of Directors of the Zen Center of Denver. He has an undergraduate degree from Creighton University and went to the University of Texas School Of Law. **Jim is a member of the Association's Board of Directors.**

Chief (ret.), Disability Rights Section, U.S. Department of Justice, Washington, D.C.

Allison Nichol, J.D.

Allison J. Nichol had the privilege of serving the Department of Justice (DOJ) for more than twenty years as both Deputy Chief and then Chief of the Disability Rights Section of the Civil Rights Division which enforces the ADA. Most recently, she was Special Counsel on Disability Employment to the Deputy Associate Attorney General (AG) for Diversity and Inclusion, Office of the AG. She served as a member of the Executive Staff of the AG's Diversity Management Advisory Council and liaison to the AG's Committee on the Employment of Persons with Disabilities. In 2012, she was a member of the group that received the AG's Award for EEO, the DOJ's highest award for performance in support of the DoJ's EEO program. In 2016, Allison was privileged to be awarded the Alexander D. Forger Award for achievement on behalf of the HIV communities by the American Bar Association's AIDS Coordinating Committee. She is Counsel for Law and Policy to the Sero Project. She received a B.A. from the University of Indiana, and a J.D. from Valparaiso University.

***Deputy Assistant Attorney General (ret.), DRS
U.S. Department of Justice, Washington, D.C.***

John Wodatch, J.D., P.A.

John Wodatch is a disability rights attorney who retired after 42 years of Federal government service. He authored the Federal government's first comprehensive disability rights regulations, the regulations implementing section 504 of the Rehabilitation Act. He is one of the drafters of the Americans with Disabilities Act as he served as the Department of Justice's chief technical expert during the writing and passage of the ADA. He was the chief author of the Department of Justice's 1991 ADA regulations, created DOJ's initial ADA technical assistance programs, and assembled the Department's ADA enforcement staff. From 1990 until 2011 he served as the Director and Section Chief overseeing all interpretation, technical assistance, and enforcement of the ADA at the Department of Justice. Just before he retired, he was responsible for the first major revision of the Department's ADA regulations, including the 2010 Standards for Accessible Design. In 2010 he was honored with the Presidential Distinguished Rank Award for exceptional achievement in his career. He is now serving clients as an expert in the application of the ADA's requirements for accessible design and program accessibility for State and local governments and private businesses. On the international level, John is continuing his work seeking U.S. ratification of the United Nations Convention on the Rights of Persons with Disabilities. He received a B.A. from Trinity College, an M.P.A. from Harvard University, and a J.D. from the Georgetown University Law School. **John is the President of the Association and is a member of the Association's Board of Directors.**

Featured Senior ADA Professional Faculty Members

Accessibility Web Developer and Consultant, Accessible Web Design, St. Paul, MN

Joseph C. Dolson

Mr. Dolson is an internationally recognized writer and educator in web accessibility. He writes a regular column on web accessibility for Practical eCommerce magazine. He works with the team that helps make the WordPress content management system to ensure great accessibility in that system. He helps people understand what makes the web work for people with disabilities. In addition to consulting and teaching, Joe provides web development and consulting services to clients throughout the United States, helping them towards more accessible web services for their customers and users. Joe is a graduate of Macalester College.

ADA Coordinator for Students, Florida State University (FSU), Tallahassee, FL

Shelley Ducatt, Ph.D., P.A.

Ms. Ducatt currently serves as the Associate Dean of Students & Director of the Student Disability Resource Center at Florida State University. Prior to working at FSU Shelley was the Associate Director for Student Disability Services at Texas Tech University. Shelley has worked in higher education for over 23 years and has specialized in the area of disability services for the past 12 years. In her current role as Associate Dean/Director Shelley also serves as the ADA Coordinator for students at FSU.

Director Equal Opportunity & Affirmative Action, Title IX Coordinator, Equity Officer

Utah Valley University, Orem, UT

Melissa L. Frost, J.D., P.A.

Melissa has a history of public service that includes: Executive Director of Provo School District, State of Utah as the ADA Coordinator, Workers' Compensation Administrator, and a Loss Control Consultant advising all state agencies, school districts and post-secondary institutions regarding Family Medical Leave, ADA, Title VII discrimination, PDA, Title IX and other campus/student issues. She has also served the state as a Liability Prevention Specialist for the Developmental Center and as an Administrative Law Judge for the Department of Workforce Services. Prior to state service, Melissa worked fourteen years in healthcare management and administration in both California and Washington D.C. Melissa received her B.A. in Government and Politics from the University of Maryland and her J.D. from the J. Reuben Clark Law School at Brigham Young University. **Melissa is a member of the Association's Board of Directors.**

Executive Director, National Association of ADA Coordinators, Rancho Mirage, CA

Managing Director, National Institute on Employment Issues, Rancho Mirage, CA

Paul D. Hagle, P.A.

Mr. Hagle has been associated with the ADA since its passage in 1990. He is recognized for his seminars on ADA Title I throughout the United States. He serves as an expert witness for major hospitals on effective communications, and ADA Title I for a major airport, automobile company, airline, and a major fast food chain. He developed and presented one of the first programs dealing with ADA/Workers' Compensation/FMLA interface, the importance of disability awareness perception, and legal issues of Title I of the ADA since 1992. He was on the original Board of Directors and appointed the Association's Executive Director in 1992. He serves as Chair, Parks, Recreation and Trails Commission; and works with the City Council on ADA issues for the City of Rancho Mirage, CA. He received his B.A. from the University of Michigan and did graduate work at the University of California, Los Angeles. **Paul is a member of the Association's Board of Directors.**

Director of Title IX Compliance at Duke University, Durham, NC

Howard Kallem, J.D.

Howard Kallem previously had been with the Office for Civil Rights, U.S. Department of Education, serving for the last 15 years as the Chief Regional Attorney for the Washington, DC regional office and for five years before that in its policy office. He took a year off during his time with OCR to work as a Senior Equal Opportunity Specialist with the Office of Equity and Diversity Services at George Mason University in Virginia. Prior to that, he was with the U.S. Equal Employment Opportunity Commission for 14 years.

Director, State of Utah Risk Management, Salt Lake City, UT

Brian Nelson, J.D., P.A.

Mr. Nelson directs a team of loss control professionals, who are charged with recognizing and avoiding physical and nonphysical losses among all state agencies, public schools, and institutions of higher education. Previously, Brian served as ADA/504 Coordinator advising and directing all public state institutions to effect compliance with the ADA. He received his J.D. from Brigham Young University. **Brian is a member of the Association's Board of Directors.**

Medical Director, Redlands Yucaipa Medical Group, Past Chief of Staff for Redlands Community Hospital, Adjunct Professor for University of California Medical School, Riverside

Phong Nguyen, M.D., P.A.

Dr. Nguyen is Medical Director for a large medical group. Phong is a member of the Interdisciplinary Committee; Medical Director of the Redlands, Rialto, Loma Linda, and San Manuel Fire Departments; Medical Director for the Paramedic Program at Crafton Hills College; Medical Director for Aeromedics, and ACLS Course Director/ Instructor. **Phong is the Chairman of the Board, Vice President of the Association, and is the Conference Coordinator**

ADA Coordinator, Florida Department of Transportation, Tallahassee, FL

Dean Perkins, R.A., P.A.

An architect since 1984, Dean Perkins joined the Florida Department of Transportation in 1988 to manage rest area design and production projects. He was appointed as the FDOT's statewide ADA Coordinator in January 1992. In this position, Dean is principal in initiating Department policies, developing procedures and managing practices related to accessibility for persons with disabilities for agency services and facilities along the state highway system and for buildings owned and operated by the Department. He has served as an expert witness in ADA matters. Dean designs and conducts training in ADA compliance around Florida and at national conferences. He provides technical support on accessible design and construction for city and county engineering and public works staff. He has a Master of Architecture from Florida A&M University. **Dean is the Secretary of the Association and a member of the Association's Board of Directors.**

Fire Chief and Commissioner and Vice Chair of the Department of Safety and Health Services, San Manuel Band of Missions Indians, San Bernardino County, CA

Michael J. Smith, M.S.

Chief Smith is responsible for the supervision of all emergency activities and operations. He established a 33-member fire department which serves the region under the California mutual aid system as well as a community preparedness, mitigation, response, and recovery nexus. In 2012, Michael was honored at the White House by the President as a "Champion of Change" for emergency preparedness. He was a principal in the development of San Bernardino County's Mutual Aid plan in which two or more jurisdictions furnish resources, facilities and services to each to prevent and to combat all emergencies. He was deployed to aid in the recovery from the "9-11-01" attacks as well as gulf-coast hurricanes, including Katrina. Mike is a graduate of the National Fire Academy, has a B.S. from the University of Redlands, an M.S. in Fire Service Leadership, & M.S. in Public Administration.

***ADA Consultant for Law Enforcement Issues, Michael Sullivan ADA Consulting, Petaluma, CA
ADA Coordinator (ret.), San Francisco Police Department, San Francisco, CA***

Michael J. Sullivan, B.A., P.A.

Mr. Sullivan is a nationally known and award-winning consultant specializing in ADA law enforcement issues. Michael also advises on both program and physical accessibility issues and has served as an expert witness in several cases. He has extensive expertise in developing reasonable accommodations and implementing training for peace officers regarding the ADA requirements and responsibilities. Michael retired after 32 years as a police Sergeant with the San Francisco Police Department. During that time he was ADA Coordinator and Disability Community Liaison for 17 years. He was honored for his work by the City of San Francisco, the California State Legislature, U.S. Congress, and numerous community groups and non-profits. Michael was a member of the Executive Board of the President's Committee on the Employment of People with Disabilities from 1999 through 2001 and currently is on the advisory board of the ARC's, National Center on Criminal Justice & Disability. . Michael has a B.A. in Health Science with emphasis in Community Health Education from San Francisco State University. **Michael is an emeritus member of the Association's Board of Directors.**

Chief Executive Officer, Evan Terry Associates and Corada.com, Birmingham, AL

James Terry, AIA, CASp, P.A.

Mr. Terry is a licensed architect in eight states with extensive access training and consulting experience in corporate, governmental, healthcare, schools, universities, libraries, retail, and recreational facilities. Under his leadership, ETA assists organizations in understanding their access requirements, cataloging barriers, and managing the implementation of their ADA and local access compliance plans. ETA developed **Corada** as a comprehensive online resource providing extremely fast and focused access to the regulations and standards, technical assistance, product information, just-in-time training, and other resources for ADA Coordinators. **Jim is a member of the Association's Board of Directors.**

Staff Attorney / Employment Rights Helpline Manager, Equip for Equality (EFE), Chicago, IL

Rachel M. Weisberg, J.D.

Rachel Weisberg represents clients in a wide range of disability discrimination cases, including cases under Titles I, II and III of the ADA, and analogous state and local laws. Rachel also manages EFE's Employment Rights Helpline, which aims to expand employment opportunities by providing legal and practical advice to applicants and individuals with disabilities. Rachel is a frequent trainer on the ADA and speaks regularly at national conferences and webinars. Prior to Equip for Equality, Rachel worked as a labor and employment associate at Sidley Austin LLP, and as a law clerk for a federal judge. Before law school, Rachel worked as an ADA technical assistance specialist at the Mid-Atlantic ADA Center, and during law school interned with EFE and the Disability Rights Section of the U.S. Department of Justice. Rachel earned her undergraduate degree from the University of Michigan and her law degree from Northwestern University.

Faculty confirmed at time of publication.

Conference announcements, agendas and faculty subject to change without notice
due to unforeseen circumstances.