May 2008

CLIENT ALERTS

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D.C. Circuit Court of Appeals Decision Raises Questions About The Duty Of Public Accommodations And Entities Receiving Federal Funds To Accommodate Persons With Disabilities

The United States Court of Appeals for the D.C. Circuit held, on May 20, 2008, in *American Council of the Blind v. Paulson*, No. 07-5063, that the Treasury Department's failure to design and issue paper currency denominations that are readily distinguishable by the visually impaired violates Section 504 of the Rehabilitation Act (the "Rehab Act"). The Rehab Act is a federal law that prohibits discrimination against persons with disabilities by any program or activity that receives federal funding and Executive Branch agencies. Because the legal obligations set forth under Section 504 of the Rehab Act are comparable to those under Title III of the ADA, the court's analysis and interpretation of the Rehab Act's non-discrimination mandate will likely impact future decisions under Title III of the ADA as well. Title III of the ADA covers public accommodations (e.g., lodging providers, health care providers, restaurants, retailers, recreational facilities and entertainment venues) regardless of whether they receive any federal funding.

The Rehab Act prohibits qualified individuals with a disability from being excluded from, denied the benefits of, or subjected to discrimination by a program or activity that receives federal funding and requires such an entity conducting such programs or activities to make accommodations to allow a person with a disability to have meaningful access to the program or benefit in question. Covered entities do not have to provide any accommodations that would pose an "undue burden." Title III of the ADA has a similar framework. The statute requires public accommodations to provide auxiliary aids and services if they are necessary to make their goods and services accessible to persons with disabilities unless doing so would constitute an "undue burden." In addition, Title III of the ADA also requires public accommodations to make reasonable modifications in their policies, practices, and procedures to ensure that persons with disabilities have access to their goods and services, unless doing so would fundamentally alter the nature of the goods and services being provided.

The plaintiffs argued that the Treasury Department has denied them meaningful access to U.S. paper currency because the bills are not designed in a way that allows them to distinguish among the different denominations. They also argued that the Treasury Department had failed to show that their proposed accommodations (*e.g.*, incorporating tactile features into the notes or varying the size of notes based on their denomination) would impose an undue burden. For public accommodations and entities receiving federal funds, the D.C. Circuit's agreement with the plaintiffs is particularly noteworthy for two reasons.

First, the Treasury Department had argued that it had not denied the plaintiffs meaningful access to paper money because the individuals had adopted coping mechanisms to distinguish among the denominations. These coping mechanisms included reliance on the assistance of sighted third parties, purchasing computer equipment to read the bills, folding the corners of the currency in different ways to distinguish different bill denominations, and the use of credit cards. The court dismissed this argument, stating that it was "analogous to contending that merely because the mobility impaired may be able to either rely on the assistance of strangers or to crawl on all fours in navigating architectural obstacles. . . they are not denied meaningful access to public buildings."

Second, in holding that the Treasury Department had not shown that all of the proposed accommodations would be an undue burden, the court stated that the design modifications would cost a "small fraction" of the Treasury Department's overall annual expenditures, and that other countries had already made such modifications.

Significance and Impact on Places of Public Accommodation

The court's conclusion that the plaintiffs had been denied meaningful access to paper money even though they had developed coping mechanisms to allow them to use such currency calls into question whether such mechanisms may ever be considered in determining whether a plaintiff has actually been denied meaningful access to a benefit, good or service. What if, for example, a coping mechanism required minimal effort on a plaintiff' s part and resulted in the plaintiff's full access to the benefit in question? Would the court still have found that there had been a denial of meaningful access?

The court's focus on how much the redesign of currency would cost relative to the total annual expenditures of the Treasury Department – as opposed to the annual expenditures of the unit responsible for printing currency – in conducting its undue burden analysis is also troubling for large companies that are covered under Title III of the ADA or the Rehab Act. Would a court, in considering whether an individual accommodation is an undue burden for a national retailer, look at the company's entire total annual expenditures? (In the ADA Title I context, the Equal Employment Opportunity Commission's regulations for determining whether a proposed accommodation imposes an undue hardship on employers also consider the budget of the local facility/unit that will actually be making the accommodation.) If courts limit their analysis to a company's entire operating budget, it will be difficult for large companies to claim that making an accommodation is an "undue burden."

This case serves as a reminder to public accommodations and entities receiving federal funds that making accommodations to ensure that people with disabilities can enjoy their goods and services is required in many instances, and that it is extremely important for businesses to have written policies in place to ensure compliance with the law. Training employees on how to accommodate customers with disabilities is also critical, as many lawsuits have resulted from employees not knowing how to provide assistance to customers with disabilities. Failure to comply with the Rehab Act and the ADA could result in expensive private lawsuits, federal enforcement actions involving civil penalties, and even a possible loss of federal funding.

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