



UNITED STATES CODE SERVICE



Lawyers Edition

All federal laws of a general and permanent nature arranged in accordance with the section numbering of the United States Code and the supplements thereto.

42 USCS

Public Health and
Welfare

§§ 11601 – 12300

2003



LexisNexis™

TABLE OF CONTENTS

TITLE 42—PUBLIC HEALTH AND WELFARE

[Chapters 121 through 126 are contained in this volume.]

Chapter		Beginning Section
1.	The Public Health Service	1
1A.	The Public Health Service; Supplemental Provisions	71
2.	Sanitation and Quarantine	81
3.	Leprosy	121
3A.	Cancer	137
4.	Viruses, Serums, Toxins, Antitoxins, etc.	141
5.	Maternity and Infancy Welfare and Hygiene	161
6.	The Children's Bureau	191
6A.	The Public Health Service	201
7.	Social Security Act	301
7A.	Temporary Unemployment Compensation Program	1400
8.	Low-Income Housing	1401
8A.	Slum Clearance, Urban Renewal, and Farm Housing	1441
8B.	Public Works or Facilities [Omitted]	1491
8C.	Open-Space Land [Omitted or Repealed]	1500
9.	Housing of Persons Engaged in National Defense	1501
10.	Federal Security Agency [Transferred or Omitted]	1601
11.	Compensation for Disability or Death to Persons Employed at Military, Air, and Naval Bases outside the United States	1651
12.	Compensation for Injury, Death, or Detention of Employees of Contractors with the United States outside the United States	1701
13.	School Lunch Programs	1751
13A.	Child Nutrition	1771
14.	Development and Control of Atomic Energy [Transferred]	1801
15.	Disaster Relief [Repealed]	1851
15A.	Reciprocal Fire Protection Agreements	1856
15B.	Air Pollution Control [Transferred or Repealed]	1857
16.	National Science Foundation	1861
16A.	Grants for Support of Scientific Research [Repealed]	1891
16B.	Contracts for Scientific and Technological Research	1900
17.	Federal Employment Service [Transferred]	1901
18.	Youth Medals	1921
19.	Saline and Salt Waters [Repealed, Transferred, or Omitted]	1951
19A.	Water Resources Research Program [Repealed]	1961
19B.	Water Resources Planning	1962
20.	Elective Franchise	1971
20A.	Civil Rights Commission	1975

an and

ntal Law

ferenced
w and to
is avail-

TABLE OF CONTENTS

21.	Civil Rights	1981
21A.	Privacy Protection	2000aa
21B.	Religious Freedom Restoration	2000bb
21C.	Religious Land Use and Institutionalized Persons	2000cc
22.	Indian Hospitals and Health Facilities	2001
23.	Development and Control of Atomic Energy	2011
24.	Disposal of Atomic Energy Communities	2301
25.	Federal Flood Insurance	2401
26.	National Space Program	2451
26A.	National Space Grant College and Fellowship Program	2486
26B.	Biomedical Research in Space	2487
27.	Loan Service of Captioned Films and Educational Media for Handicapped	2491
28.	Area Redevelopment Program	2501
29.	Juvenile Delinquency and Youth Offenses Control	2541
30.	Manpower Development and Training Program	2571
31.	Public Works Acceleration Program	2641
32.	Third Party Liability for Hospital and Medical Care	2651
33.	Community Mental Health Centers [Omitted, Repealed, or Transferred]	2661
34.	Economic Opportunity Program	2701
35.	Programs for Older Americans	3001
35A.	Community Service Employment for Older Americans	3061
36.	Compensation of Condemnees in Development Programs	3071
37.	Community Facilities and Advance Land Acquisitions	3101
38.	Public Works and Economic Development	3121
39.	Solid Waste Disposal [Omitted or Repealed]	3251
40.	Soil Information Assistance for Community Planning and Resource Development	3271
41.	Demonstration Cities and Metropolitan Development Program	3301
42.	Narcotic Addict Rehabilitation	3401
43.	Department of Health and Human Services	3501
44.	Department of Housing and Urban Development	3531
45.	Fair Housing	3601
46.	Justice System Improvement	3701
47.	Juvenile Delinquency Prevention and Control [Omitted]	3801
48.	Guarantees for Financing New Community Land Development [Repealed and Omitted]	3901
49.	National Housing Partnerships	3931
50.	National Flood Insurance	4001
51.	Design and Construction of Public Buildings to Accommodate the Physically Handicapped	4151
52.	Intergovernmental Cooperation [Repealed]	4201
52A.	Joint Funding Simplification [Repealed]	4251
53.	Advisory Commission on Intergovernmental Relations	4271
54.	Cabinet Committee on Opportunities for Spanish-Speaking People [Terminated]	4301
55.	National Environmental Policy	4321
56.	Environmental Quality Improvement	4371

TABLE OF CONTENTS

1981	57.	Environmental Pollution Study	4391
2000aa	58.	Disaster Relief [Repealed or Transferred].	4401
2000bb	59.	National Urban Policy and New Community Development.	4501
2000cc	60.	Comprehensive Alcohol Abuse and Alcoholism Prevention, Treat- ment, and Rehabilitation Program	4541
2001	61.	Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs	4601
2011	62.	Intergovernmental Personnel Program	4701
2301	63.	Lead-Based Paint Poisoning Prevention	4801
2401	63A.	Residential Lead-Based Paint Hazard Reduction Act	4851
2451	64.	Public Service Employment Programs [Omitted]	4871
2486	65.	Noise Control	4901
2487	66.	Domestic Volunteer Services	4950
2491	67.	Child Abuse Prevention and Treatment and Adoption Reform	5101
2501	68.	Disaster Relief	5121
2541	69.	Community Development.	5301
2571	70.	Manufactured Home Construction and Safety Standards	5401
2641	71.	Solar Energy	5501
2651	72.	Juvenile Justice and Delinquency Prevention	5601
2661	73.	Development of Energy Sources	5801
2701	74.	Nonnuclear Energy Research and Development	5901
3001	75.	Programs for Persons with Developmental Disabilities	6000
3061	76.	Age Discrimination in Federally Assisted Programs	6101
3071	77.	Energy Policy and Conservation	6201
3101	78.	National Petroleum Reserve in Alaska	6501
3121	79.	Science and Technology Policy, Organization, and Priorities	6601
3251	80.	Public Works Employment.	6701
3271	81.	Energy Conservation and Resource Renewal	6801
3301	82.	Solid Waste Disposal	6901
3401	83.	Energy Extension Service [Repealed]	7001
3501	84.	Department of Energy	7101
3531	85.	Air Pollution Prevention and Control	7401
3601	86.	Earthquake Hazards Reduction	7701
3701	87.	Water Research and Development.	7801
3801	88.	Uranium Mill Tailings Radiation Control	7901
3901	89.	Congregate Housing Services	8001
3931	90.	Neighborhood and City Reinvestment, Self-Help and Revitalization	8101
4001	91.	National Energy Conservation Policy	8201
4151	92.	Powerplant and Industrial Fuel Use.	8301
4201	93.	Emergency Energy Conservation.	8501
4251	94.	Low-Income Energy Assistance.	8601
4271	95.	United States Synthetic Fuels Corporation	8701
4301	96.	Biomass Energy and Alcohol Fuels.	8801
4321	97.	Acid Precipitation Program and Carbon Dioxide Study.	8901
4371	98.	Ocean Thermal Energy Conversion Research and Development.	9001
	99.	Ocean Thermal Energy Conversion.	9101
	100.	Wind Energy Systems	9201
	101.	Magnetic Fusion Energy Engineering	9301

TABLE OF CONTENTS

102.	Mental Health Systems	9401
103.	Comprehensive Environmental Response, Compensation, and Liability	9601
104.	Nuclear Safety Research, Development, and Demonstration	9701
105.	Community Services Programs	9801
106.	Community Services Block Grant Program	9901
107.	Consumer-Patient Radiation Health and Safety	10001
108.	Nuclear Waste Policy	10101
109.	Water Resources Research	10301
109A.	Membrane Processes Research	10341
110.	Family Violence Prevention and Services	10401
111.	Emergency Federal Law Enforcement Assistance	10501
112.	Victim Compensation and Assistance	10601
113.	State Justice Institute	10701
114.	Protection and Advocacy for Mentally Ill Individuals	10801
115.	Child Development Associate Scholarship Assistance Program	10901
116.	Emergency Planning and Community Right-to-Know	11001
117.	Encouraging Good Faith Professional Review Activities	11101
118.	Alzheimer's Disease and Related Dementias Research	11201
119.	Homeless Assistance	11301
120.	Enterprise Zone Development	11501
121.	International Child Abduction Remedies	11601
122.	Native Hawaiian Health Care	11701
123.	Drug Abuse Education and Prevention	11801
124.	Public and Assisted Housing Drug Elimination	11901
125.	Renewable Energy and Energy Efficiency Technology Competitiveness	12001
126.	Equal Opportunity for Individuals with Disabilities	12101
127.	Coordinated Services for Children, Youth, and Families	12301
128.	Hydrogen Research, Development, and Demonstration Program	12401
129.	National and Community Service	12501
130.	National Affordable Housing	12701
131.	Housing Opportunities for Persons with AIDS	12901
132.	Victims of Child Abuse	13001
133.	Pollution Prevention	13101
134.	Energy Policy	13201
135.	Residency and Service Requirements in Federally Assisted Housing	13601
136.	Violent Crime Control and Law Enforcement	13701
137.	Management of Rechargeable Batteries and Batteries Containing Mercury	14301
138.	Assisted Suicide Funding Restriction	14401
139.	Volunteer Protection	14501
140.	Criminal Justice Identification, Information, and Communication	14601
140A.	Jennifer's Law	14661
141.	Commercial Space Opportunities and Transportation	14701
142.	Poison Control Center Enhancement and Awareness	14801
143.	Intercountry Adoptions	14901

TABLE OF CONTENTS

d	9401	144. Developmental Disabilities Assistance and Bill of Rights	15001
	9601	145. Honoring Law Enforcement and Public Safety Officers	15201
	9701	146. Election Administration Improvement	15301
	9801		
	9901		
	10001		
	10101		
	10301		
	10341		
	10401		
	10501		
	10601		
	10701		
	10801		
	10901		
	11001		
	11101		
	11201		
	11301		
	11501		
	11601		
	11701		
	11801		
	11901		
zy	12001		
	12101		
	12301		
1	12401		
	12501		
	12701		
	12901		
	13001		
	13101		
	13201		
ed	13601		
	13701		
ng	14301		
	14401		
	14501		
on	14601		
	14661		
	14701		
	14801		
	14901		

CHAPTER 126. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

Section

- 12101. Congressional findings and purposes
 - (a) Findings.
 - (b) Purpose.
- 12102. Definitions

EMPLOYMENT

- 12111. Definitions
- 12112. Discrimination
 - (a) General rule.
 - (b) Construction.
 - (c) Covered entities in foreign countries.
 - (d) Medical examinations and inquiries.
- 12113. Defenses
 - (a) In general.
 - (b) Qualification standards.
 - (c) Religious entities.
 - (d) List of infectious and communicable diseases.
- 12114. Illegal use of drugs and alcohol
 - (a) Qualified individual with a disability.
 - (b) Rules of construction.
 - (c) Authority of covered entity.
 - (d) Drug testing.
 - (e) Transportation employees.
- 12115. Posting notices
- 12116. Regulations
- 12117. Enforcement
 - (a) Powers, remedies, and procedures.
 - (b) Coordination.

PUBLIC SERVICES

PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

- 12131. Definition
- 12132. Discrimination
- 12133. Enforcement
- 12134. Regulations
 - (a) In general.
 - (b) Relationship to other regulations.
 - (c) Standards.

ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

Public Transportation Other Than by Aircraft or Certain Rail Operations

- 12141. Definitions
- 12142. Public entities operating fixed route systems

OPPORTUNITIES FOR DISABLED

- (a) Purchase and lease of new vehicles.
- (b) Purchase and lease of used vehicles.
- (c) Remanufactured vehicles.
- 12143. Paratransit as a complement to fixed route service
 - (a) General rule.
 - (b) Issuance of regulations.
 - (c) Required contents of regulations.
 - (d) Review of plan.
 - (e) Discrimination defined.
 - (f) Statutory construction.
- 12144. Public entity operating a demand responsive system
- 12145. Temporary relief where lifts are unavailable
 - (a) Granting.
 - (b) Duration and notice to Congress.
 - (c) Fraudulent application.
- 12146. New facilities
- 12147. Alterations of existing facilities
 - (a) General rule.
 - (b) Special rule for stations.
- 12148. Public transportation programs and activities in existing facilities and one car per train rule
 - (a) Public transportation programs and activities in existing facilities.
 - (b) One car per train rule.
- 12149. Regulations
 - (a) In general.
 - (b) Standards.
- 12150. Interim accessibility requirements
 - Public Transportation by Intercity and Commuter Rail
- 12161. Definitions
- 12162. Intercity and commuter rail actions considered discriminatory
 - (a) Intercity rail transportation.
 - (b) Commuter rail transportation.
 - (c) Used rail cars.
 - (d) Remanufactured rail cars.
 - (e) Stations.
- 12163. Conformance of accessibility standards
- 12164. Regulations
- 12165. Interim accessibility requirements
 - (a) Stations.
 - (b) Rail passenger cars.

PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- 12181. Definitions
- 12182. Prohibition of discrimination by public accommodations
 - (a) General rule.
 - (b) Construction.
- 12183. New construction and alterations in public accommodations and commercial facilities
 - (a) Application of term.
 - (b) Elevator.

- 12184. Prohibition of discrimination in specified public transportation services provided by private entities
 - (a) General rule.
 - (b) Construction.
 - (c) Historical or antiquated cars.
- 12185. Study
 - (a) Purposes.
 - (b) Contents.
 - (c) Advisory committee.
 - (d) Deadline.
 - (e) Review.
- 12186. Regulations
 - (a) Transportation provisions.
 - (b) Other provisions.
 - (c) Consistency with ATBCB guidelines.
 - (d) Interim accessibility standards.
- 12187. Exemptions for private clubs and religious organizations
- 12188. Enforcement
 - (a) In general.
 - (b) Enforcement by the Attorney General.
- 12189. Examinations and courses

MISCELLANEOUS PROVISIONS

- 12201. Construction
 - (a) In general.
 - (b) Relationship to other laws.
 - (c) Insurance.
 - (d) Accommodations and services.
- 12202. State immunity.
- 12203. Prohibition against retaliation and coercion
 - (a) Retaliation.
 - (b) Interference, coercion, or intimidation.
 - (c) Remedies and procedures.
- 12204. Regulations by the Architectural and Transportation Barriers Compliance Board
 - (a) Issuance of guidelines.
 - (b) Contents of guidelines.
 - (c) Qualified historic properties.
- 12205. Attorney's fees
- 12206. Technical assistance
 - (a) Plan for assistance.
 - (b) Agency and public assistance.
 - (c) Implementation.
 - (d) Grants and contracts.
 - (e) Failure to receive assistance.
- 12207. Federal wilderness areas
 - (a) Study.
 - (b) Submission of report.
 - (c) Specific wilderness access.
- 12208. Transvestites
- 12209. Instrumentalities of the Congress

- 12210. Illegal use of drugs
 - (a) In general.
 - (b) Rules of construction.
 - (c) Health and other services.
 - (d) "Illegal use of drugs" defined.
- 12211. Definitions
 - (a) Homosexuality and bisexuality.
 - (b) Certain conditions.
- 12212. Alternative means of dispute resolution
- 12213. Severability

CROSS REFERENCES

This chapter is referred to in 2 USCS §§ 1302, 1331, 1371, 1434; 3 USCS §§ 402, 421; 16 USCS §§ 410aaa-41, 410aaa-52; 20 USCS §§ 1011, 1140c, 1415, 8507; 23 USCS § 133; 25 USCS § 2005; 26 USCS § 44; 29 USCS §§ 720, 721, 762, 764, 781, 793, 795, 3011; 42 USCS §§ 290bb-34, 608, 1760, 1786, 3796gg-7, 15007, 15024; 49 USCS §§ 5302, 5307, 5314, 5323, 5335, 47102.

§ 12101. Congressional findings and purposes

(a) Findings. The Congress finds that—

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have

been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

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

(b) Purpose. It is the purpose of this Act—

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

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

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

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

(July 26, 1990, P. L. 101-336, § 2, 104 Stat. 328.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

“This Act”, referred to in this section, is Act July 26, 1990, P. L. 101-336, 104 Stat. 327, popularly referred to as the Americans with Disabilities Act of 1990, which appears generally as 42 USCS §§ 12101 et seq. For full classification of such Act, consult USCS Tables volumes.

Short title:

Act July 26, 1990, P. L. 101-336, § 1(a), 104 Stat. 327, provides: “This Act [42 USCS §§ 12101 et seq. generally; for full classification, consult USCS Tables volumes] may be cited as the ‘Americans with Disabilities Act of 1990’.”

Other provisions:

GAO study of disability-related employment incentives. Act Dec. 17, 1999, P. L. 106-170, Title III, § 303(a), 113 Stat. 1903, provides:

“(1) Study. As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101

et seq.) and other Federal laws. In such study, the Comptroller General shall specifically address the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities.

“(2) Report. Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General’s study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.”.

CODE OF FEDERAL REGULATIONS

Office of Thrift Supervision, Department of the Treasury—Contracting outreach programs, 12 CFR Part 517.

Office of the Secretary of Transportation—Transportation services for individuals with disabilities (ADA), 49 CFR Part 37.

Office of the Secretary of Transportation—Americans with Disabilities Act (ADA) accessibility specifications for transportation vehicles, 49 CFR Part 38.

RESEARCH GUIDE

Federal Procedure:

8 Moore’s Federal Practice (Matthew Bender 3d ed.), Jury Trial of Right § 38.33.

10 Moore’s Federal Practice (Matthew Bender 3d ed.), Judgments; Costs § 54.171.

19 Moore’s Federal Practice (Matthew Bender 3d ed.), Reviewability of Issues § 205.07.

Am Jur:

14 Am Jur 2d, Carriers § 813.

42 Am Jur 2d, Injunctions § 75.

45A Am Jur 2d, Job Discrimination §§ 16–21, 27–35, 40–104.

45B Am Jur 2d, Job Discrimination §§ 782, 797, 803, 828, 862.

45C Am Jur 2d, Job Discrimination §§ 2539–2541, 2543, 2544, 2654, 2657, 2661, 2664, 2699, 2717, 2733, 2798.

61A Am Jur 2d, Pleading § 182.

79 Am Jur 2d, Welfare § 18.

82 Am Jur 2d, Workers’ Compensation §§ 368, 606, 611.

Am Jur 2d, New Topic Service, Americans with Disabilities Act §§ 1–3, 20, 311, 314, 321, 322, 359, 489, 609, 615–619, 659, 670, 681.

Am Jur Trials:

63 Am Jur Trials, Efficiently and Effectively Defending Employment Discrimination Cases, p. 127.

74 Am Jur Trials, Disability Discrimination Based on Dyslexia in Employment Actions Under the Americans with Disabilities Act, p. 255.

79 Am Jur Trials, Obtaining Workers’ Compensation for Back Injuries, p. 231.

Am Jur Proof of Facts:

- 26 Am Jur Proof of Facts 3d, Proof of Discriminatory Termination of HIV-Positive Employee, p. 341.
33 Am Jur Proof of Facts 3d, Proof of "Disability" Under the Americans With Disabilities Act, p. 1.
42 Am Jur Proof of Facts 3d, Employer's Defense Under Americans With Disabilities Act, p. 1.
48 Am Jur Proof of Facts 3d, Employment Discrimination on The Basis of Mental Disability Under the Americans With Disabilities Act, p. 1.
49 Am Jur Proof of Facts 3d, Discrimination in Provision of Medical Services on Basis of Disability, p. 1.
62 Am Jur Proof of Facts 3d, Proof of Incompetency, p. 197.

Forms:

- 5 Fed Procedural Forms L Ed, Civil Rights §§ 10:220-222, 232, 243, 244.
12 Fed Procedural Forms L Ed, Job Discrimination § 45:293.
11B Am Jur Legal Forms 2d, Leases of Real Property §§ 161:971-981.
20A Am Jur Legal Forms 2d, Wharves and Port Facilities § 265:12.

Annotations:

Who is qualified individual with disability, for purposes of Americans with Disabilities Act of 1990, as amended (ADA) (42 USCS §§ 12101 et seq.)—Supreme Court cases. 143 L Ed 2d 1133.

The Propriety, Under ERISA (29 USCS §§ 1001 et seq.) and the Americans With Disabilities Act (42 USCS §§ 12101 et seq.) of Capping Health Insurance Coverage for HIV-Related Claims. 131 ALR Fed 191.

Remedies Available under Americans with Disabilities Act (42 USCS §§ 12101 et seq.). 136 ALR Fed 63.

Construction and application of § 102(d) of Americans with Disabilities Act (42 U.S.C.A. § 12112(d) [42 USCS § 12112(d)]) pertaining to medical examinations and inquires. 159 ALR Fed 89.

Rights of prisoners under Americans with Disabilities Act and Rehabilitation Act. 163 ALR Fed 285.

Actions Brought Under Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. [42 USCS §§ 12101 et seq.]—Supreme Court Cases. 173 ALR Fed 639.

What Constitutes "Constructive Discharge" Under Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 [42 USCS § 12101]). 182 ALR Fed 609.

Individual Liability of Supervisors, Managers, Officers or Co-employees for Discriminatory Actions under State Civil Rights Act. 83 ALR5th 1.

Judicial Estoppel in Civil Action Arising from Representation or Conduct in Prior Administrative Proceeding. 99 ALR5th 65.

What Constitutes Substantial Limitation on Major Life Activity of Working for Purposes of State Civil Rights Acts. 102 ALR5th 1.

Law Review Articles:

Floyd. Americans with Disabilities Act: impact upon workers' compensation—friend or foe? A primer for the corporate insurance department and outside counsel. 17 Am J Trial Advoc 637, Spring, 1994.

Stein. A new 'bill of rights' for millions: the Americans with Disabilities Act of 1990. 46 Arb J 6, June 1991.

V-
ins
ith
of
er-
14.
ith
—
ns
n-
CS
ct
al
a-
A.
73
is-
R
or
ct
k-
a-
nd
es

Davidson. The Civil Rights Act of 1991. 1992 Army Law 3, March 1992.

Hennessy. The ADA and employee health plans—an overview. 5 Benefits LJ 367, Autumn 1992.

Rogers, Bell, and Levin. ADA and benefit plans: a civil rights law perspective. 5 Benefits LJ 377, Autumn 1992.

Drake. The ADA and risk classification in benefit plans. 5 Benefits LJ 393, Autumn 1992.

Walworth; Strange. Regulations at odds: the ADA and state family and medical leave acts face off. 5 Benefits LJ 557, Winter 1992/1993.

Rottenberg. The Americans with Disabilities Act: erosion of collective rights? 14 Berkeley J Employment & Lab L 179, 1993.

Murphy. Disabilities discrimination under the Americans with Disabilities Act. 36 Cath Law 13, 1995.

Americans with Disabilities Act of 1990: social integration through employment. 40 Cath U L Rev 189, Fall 1990.

Gottlich; Talbert. Future issues under the Americans with Disabilities Act. 26 Clearinghouse Rev 613, October 1992.

Linton; Minberg. The Civil Rights Act of 1991: a section-by-section analysis. 26 Clearinghouse Rev 1317, February 1993.

Hamilton. New protections for persons with mental illness in the workplace under the Americans with Disabilities Act of 1990 40 Clev St L Rev 63, 1992.

Rubinstein. Walking the line: integrating the requirements of OSHA's bloodborne pathogen regulation and the mandates of the ADA 66 Conn BJ 451, December 1992.

Smith; Alpert. Law enforcement: the police and the Americans with Disabilities Act—who is being discriminated against? 29 Crim L Bull 516, November/December 1993.

Gerson. Abandoning congressional intent: modern-day applications of the ADA, 1997 Det C L Mich St U L Rev 805, Fall 1998.

Daly-Rooney. Reconciling conflicts between the Americans with Disabilities Act and the National Labor Relations Act to accommodate people with disabilities. 6 DePaul Bus L J 387, Spring/Summer 1994.

Hood. Age Discrimination in Employment and the Americans with Disabilities Act: "a second bite at the apple", 6 Elder L J 1, 1998.

Mahoney. The end(s) of disparate impact: doctrinal reconstruction, fair housing and lending law, and the antidiscrimination principle, 47 Emory L J 409, Spring 1998.

Susser. The ADA: dramatically expanded federal rights for disabled Americans. 16 Empl Rel L J 157, Autumn 1990.

Shaller. "Reasonable accommodation" under the Americans with Disabilities Act—what does it mean? 16 Empl Rel L J 431, Spring 1991.

Coil; Rice. The tip of the iceberg: early trends in ADA enforcement. 19 Empl Rel L J 485, Spring 1994.

Edwards. The ADA and the employment of individuals with mental disabilities. 18 Empl Rel LJ 347, Winter 1992/1993.

Piskorski; Ross. Private arbitration as the exclusive means of resolving employment-related disputes. 19 Empl Rel LJ 205, Autumn 1993.

Walworth; Damon; Wilder. Walking a fine line: managing the conflicting

- obligations of the Americans with Disabilities Act and workers' compensation laws. 19 Empl Rel LJ 221, Autumn 1993.
- Mook. Expanding ADA Coverage to Employee Benefit Plans: Recent Judicial and Administrative Developments. 20 Empl Rel LJ 571, Spring 1995.
- Burgdorf. The Americans With Disabilities Act: analysis and implications of a second-generation civil rights statute. 26 Harv C R-C L L Rev 413, Summer 1991.
- The Civil Rights Act of 1991 and less discriminatory alternatives in disparate impact litigation. 106 Harv L Rev 1621, May 1993.
- Murphy. The employment provisions of the Americans with Disabilities Act. 81 Ill BJ 236, May 1993.
- Slavitt; Pugh. Sticks and bricks, dollars and sense: the ADA and nonresidential real estate. 81 Ill BJ 314, June 1993.
- Laarman. The effect of the Americans with Disabilities Act on health and other employee benefit plans. 50 Inst on Fed Tax'n 1.1, 1992.
- ADA study and commentary. 79 Iowa L Rev 853, May 1994.
- Blanck. Employment integration, economic opportunity, and the Americans with Disabilities Act: empirical study from 1990-1993. 79 Iowa L Rev 853, May 1994.
- Crossley. Infants with anencephaly, the ADA, and the Child Abuse Amendments. 11 Issues L & Med 379, Spring 1996.
- Church; Neumeister. University control of student-athletes with disabilities under the Americans with Disabilities Act and the Rehabilitation Act, 25 J C & U L 105, Summer 1998.
- Ryan. Americans with disabilities: the legal revolution. 60 J Kan B A 13, November 1991.
- Mahoney; Gibofsky. The Americans with Disabilities Act of 1990. 13 J Legal Med 51, March 1992.
- Carlson. Tuberculosis control. Will our legal system guard our health and will the ADA hamper our control efforts? 13 J Legal Med 563, December 1992.
- Rischitelli. Avoiding discriminatory drug testing practices under the Americans with Disabilities Act. 14 J Legal Med 597, December 1993.
- DeSario; Slack. The Americans with Disabilities Act and refusals to provide medical care to persons with HIV/AIDS. 27 J Marshall L Rev 347, Winter 1994.
- Anderson; Roth. Deciphering the Americans with Disabilities Act. 51 J Mo B 142, May/June 1995.
- Hill. Americans with Disabilities Act of 1990: significant overlap with section 504 for colleges and universities. 18 JC & UL 389, Winter 1992.
- O'Melveny. The Americans with Disabilities Act and collective bargaining agreements: reasonable accommodations or irreconcilable conflicts? 82 Ky L J 219, Fall 1993/1994.
- Clegg. Introduction: a brief legislative history of the Civil Rights Act of 1991. 54 La L Rev 1459, July 1994.
- Broas; Nager. Enforcement issues: a practical overview. 54 La L Rev 1473, July 1994.
- Gray. Disparate impact: history and consequences. 54 La L Rev 1487, July 1994.

Thornburgh. The Americans with Disabilities Act: what it means to all Americans. 41 Lab L J 803, December 1990.

Americans with Disabilities Act of 1990. 7 Lab Law 1, Winter 1991.

Mayerson. The Americans With Disabilities Act—an historic overview. 7 Lab Law 1, Winter 1991.

Stahlhut. Playing the trump card: may an employer refuse to reasonably accommodate under the ADA by claiming a collective bargaining obligation? 9 Lab Law 71, Winter 1993.

Snyder. Qualified individuals with disabilities: defining the ADA's protected class. 44 Lab LJ 101, February 1993.

Fram. Examining the relationship between employers and health professionals under ADA. 44 Lab LJ 307, May 1993.

Krugel. AIDS and the ADA: maneuvering through a legal minefield. 44 Lab LJ 408, July 1993.

Allison; Stahlhut. DOT, ADA, and FMLA: overlap, similarities, and differences with respect to the new alcohol and drug testing rules. 46 Lab LJ 153, March 1995.

Mullen. The Americans with Disabilities Act: an introduction for lawyers and judges. 29 Land & Water L Rev 175, 1994.

Davis. Why is the PGA teed off at Casey Martin? An example of how the Americans With Disabilities Act (ADA) has changed sports law. 9 Marq Sports L J 1, Fall 1998.

Foreman. ADA's restrictions on employer interviewing and selection. 26 Md BJ 28, March, April 1993.

Hernicz. The Civil Rights Act of 1991: from conciliation to litigation—how Congress delegates lawmaking to the courts. 141 Mil L Rev 1, Summer 1993.

Steiner. The Americans with Disabilities Act of 1990 and workers' compensation: the employees' perspective. 62 Miss LJ 631, Spring 1993.

Hunter. Potential conflicts between obligations imposed on employers and unions by the National Labor Relations Act and the Americans with Disabilities Act. 13 N Ill U L Rev 207, Spring 1993.

Greenberger. A productivity approach to disparate impact and the Civil Rights Act of 1991. 72 Or L Rev 253, Summer 1993.

Murray; Lewis. The Americans with Disabilities Act and reasonable accommodation: are employers required to reassign disabled individuals who can no longer perform their jobs?, 69 Pa B A Q 139, October 1998.

Maatman. An overview of the Americans with Disabilities Act. 38 Prac Law 21, October 1992.

Geslewitz. Understanding the 1991 Civil Rights Act. 38 Prac Law 57, March 1992.

Pinney; Caplan. How the Americans with Disabilities Act affects leases. 9 Prac Real Est Law 37, January 1993.

Battaglia. How the ADA affects historic buildings. 9 Prac Real Est Law 65, July 1993.

Ransom. How the Americans with Disabilities Act affects residential community associations. 9 Prac Real Est Law 552, May 1993.

Jones. Commercial leases under the Americans with Disabilities Act. 22 Real Est L J 185, Winter 1994.

- Lofton; Judice; Cook. Generating significant tax savings for complying with Title III of the Americans with Disabilities Act. 22 Real Est LJ 94, Fall 1993.
- Ebert; Perkins, Jr. New era of employment litigation: overview of Americans With Disabilities Act. 34 Res Gestae 318, January 1991.
- Lopez-Aguado. The Americans with Disabilities Act: the undue hardship defense and insurance costs. 12 Rev Litig 249, Fall 1992.
- Blumrosen. Society in transition IV: affirmation of affirmative action under the Civil Rights Act of 1991. 45 Rutgers L Rev 903, Summer 1993.
- Jones; Leibold; Sola. Civil Rights Act of 1991: race to the finish—civil rights, quotas, and disparate impact in 1991. 45 Rutgers L Rev 1043, Summer 1993.
- Sarno. The Americans with Disabilities Act: federal mandate to create an integrated society. 17 Seton Hall Legis J 401, 1993.
- Mello. Limitations of the Americans with Disabilities Act in protecting individuals with HIV from employment discrimination. 19 Seton Hall Legis J 73, 1994.
- Calloway. Dealing with diversity: changing theories of discrimination. 10 St John's J Legal Comment 481, Summer 1995.
- Stabile. AIDS, insurance and the ADA. 10 St John's J Legal Comment 533, Summer 1995.
- Peplow. Uncharted ground: the extent of insurance coverage under the Americans with Disabilities Act. 10 St John's J Legal Comment 551, Summer 1995.
- Silberman. The interaction of the Americans with Disabilities Act and alternative dispute resolution within the EEOC. 10 St John's J Legal Comment 573, Summer 1995.
- Spencer. Clearing the docket: alternative dispute resolution under the Americans with Disabilities. 10 St John's J Legal Comment 589, Summer 1995.
- Outten. Alternative dispute resolution and the Americans with Disabilities Act. 10 St John's J Legal Comment 597, Summer 1995.
- Adler. Arbitration and the Americans with Disabilities Act. 37 St Louis U LJ 1005, Summer 1993.
- Zaken. The confusion created by the Carparts [Carparts Distribution Center, Inc. v. Automotive Wholesaler's Association, 37 F.3d 12 (1st Cir. 1994)] decision. 10 St. John's J Legal Comment 543, Summer 1995.
- Hanssens. Healthcare insurance, AIDS and the ADA. 10 St. John's J Legal Comment 567, Summer 1995.
- Neal. Proper standard for risk of future injury under the Americans with Disabilities Act: risk to self or risk to others. 46 SMU L Rev 483, Fall 1992.
- Thornburgh. The Americans With Disabilities Act: what it means to all Americans. 64 Temp L Rev 375, Summer 1991.
- Weicker. Historical background of the Americans with Disabilities Act. 64 Temp L Rev 387, Summer 1991.
- Jones. Overview and essential requirements of the Americans With Disabilities Act. 64 Temp L Rev 471, Summer 1991.
- Harkin. Our newest civil rights law: the Americans with Disabilities Act. 26 Trial 56, December 1990.

WELFARE
with
Fall
eri-
hip
der
ivil
im-
an
ing
gis
10
33,
the
im-
and
om-
the
ner
ties
s U
ter,
4)]
gal
with
Fall
all
64
dis-
Act.

Dryovage. Your office and the ADA. 30 Trial 36, January 1994.
Crespi. Efficiency rejected: evaluating "undue hardship" claims under the Americans with Disabilities Act. 26 Tulsa L J 1, Fall 1990.
Rabaut. The Americans with Disabilities Act and the duty of reasonable accommodation. 70 U Det Mercy L Rev 721, Spring 1993.
Hodges. The Americans with Disabilities Act in the unionized workplace. 48 U Miami L Rev 567, January 1994.
Clark. Protection from protection: Section 1983 and the ADA's implications for devising a race-conscious police misconduct statute. 150 U Pa L Rev 1585, May 2002.
Addiction as disability: the protection of alcoholics and drug addicts under the Americans with Disabilities Act of 1990. 44 Vand L Rev 713, April 1991.
Buchanan. A dramatic expansion of rights and remedies: the Americans With Disabilities Act. 64 Wis Law 16, Nov 1991.
Storch. The standard of employer liability under the Americans with Disabilities Act of 1990, 66 3 U Cin L Rev 931, Spring 1998.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Constitutionality
3. Purposes
4. Relation to other laws
5. —State laws
6. Applicability
7. Effect of arbitration clause or agreement
8. Prima facie case and sufficiency of evidence
9. —Consideration of corrective or mitigative measures
10. —Nature or extent of impairment
11. Immunity from suit
12. Other procedural matters
13. Miscellaneous

1. Generally
ADA (42 USCS §§ 12101 et seq.) prohibits only discrimination between disabled and nondisabled, but does not mandate equality between individuals with different disabilities. Parker v Metropolitan Life Ins. Co. (1997, CA6 Tenn) 121 F3d 1006, 24 ADD 174, 6 AD Cas 1865, 21 EBC 1369, 1997 FED App 230P, cert den (1998) 522 US 1084, 139 L Ed 2d 768, 118 S Ct 871, 8 AD Cas 224 and (criticized in Boots v Northwestern Mut. Life Ins. Co. (1999, DC NH) 77 F Supp 2d 211).
Plaintiff may maintain claim against employer under Americans with Disabilities Act of 1990, 42 USCS §§ 12101 et seq., of being perceived as disabled without proof of actually being disabled. Williams v Motorola, Inc. (2002, CA11 Fla) 303 F3d 1284, 13 AD Cas 997, 89 BNA FEP Cas 1464, 15 FLW Fed C 953.

2. Constitutionality
ADA (42 USCS §§ 12101 et seq.) represents ap-

propriate congressional exercise of its enforcement power under Fourteenth Amendment. *Autio v AF-SCME, Local 3139* (1998, CA8 Minn) 140 F3d 802, 7 AD Cas 1706, vacated without op, reh, en banc, gr (1998, CA8 Minn) 8 AD Cas 436.
Congress acted constitutionally and did not exceed its authority when it enacted ADA (42 USCS §§ 12101 et seq.) pursuant to its enforcement powers under § 5 of Fourteenth Amendment, with intent that statute apply to disabled prisoners in state prisons. *Amos v Maryland Dep't of Pub. Safety & Corr. Servs.* (1999, CA4 Md) 178 F3d 212, 9 AD Cas 769 (criticized in *Bradley ex rel. Bradley v Arkansas Dep't of Educ.* (1999, CA8 Ark) 189 F3d 745) and reh, en banc, gr, vacated on other grounds (Dec 28, 1999) and dismd (2000, CA4) 205 F3d 687, 10 AD Cas 575 and (criticized in *Parker v Mich. Dep't of Corr.* (2001, WD Mich) 2001 US Dist LEXIS 18931).
Congress' enactment of ADA (42 USCS §§ 12101 et seq.) was valid exercise of its power under § 5 of Fourteenth Amendment to abrogate states' Eleventh Amendment immunity from suit. *Dare v California* (1999, CA9 Cal) 191 F3d 1167, 99 CDOS 7656, 99 Daily Journal DAR 9683, 9 AD Cas 1239, cert den (2001) 531 US 1190, 149 L Ed 2d 103, 121 S Ct 1187, 11 AD Cas 832 and (criticized in *Doe v Div. of Youth & Family Servs.* (2001, DC NJ) 148 F Supp 2d 462, 12 AD Cas 465) and (criticized in *Parker v Mich. Dep't of Corr.* (2001, WD Mich) 2001 US Dist LEXIS 18931) and (criticized in *Kiman v N.H. Dep't of Corr.* (2002, CA1 NH) 301 F3d 13, 13 AD Cas 783).
ADA (42 USCS §§ 12101 et seq.) was valid exercise of congressional power under section 8 of Fourteenth Amendment, and therefore, it is unneces-

sary to decide whether Congress properly invoked its Commerce Clause power in enacting ADA. *Botosan v Paul McNally Realty* (2000, CA9 Cal) 216 F3d 827, 2000 CDOS 4918, 2000 Daily Journal DAR 6599, 10 AD Cas 1185.

42 USCS §§ 12101 et seq. was not valid abrogation of states' Eleventh Amendment immunity under enforcement clause of Fourteenth Amendment, despite clear statement of Congress's intent in ADA to hold states liable for violations of Act, and, thus, state could not be held liable for Title II violation absent congressional identification of history and pattern of unconstitutional discrimination by states against disabled. *Jones v Pa. Dep't of Welfare Bureau of Blindness & Visual Servs.* (2001, ED Pa) 164 F Supp 2d 490, 12 AD Cas 1725.

3. Purposes

Americans with Disabilities Act (42 USCS §§ 12101 et seq.) seeks to eliminate unwanted discrimination against individuals with disabilities in order both to guarantee those individuals equal opportunity and to provide nation with benefit of their increased productivity. *Cleveland v Policy Mgmt. Sys. Corp.* (1999) 526 US 795, 143 L Ed 2d 966, 119 S Ct 1597, 61 Soc Sec Rep Serv 196, 99 CDOS 3843, 99 Daily Journal DAR 4927, 9 AD Cas 491, 1999 Colo J C A R 2966, 12 FLW Fed S 271, on remand, remanded (1999, CA5 Tex) 195 F3d 803, 9 AD Cas 1696.

It is not mission of Americans with Disabilities Act of 1990 (42 USCS §§ 12101 et seq.) to drive states to move institutionalized patients with mental disabilities into inappropriate setting such as homeless shelters. *Olmstead v L. C. by Zimring* (1999) 527 US 581, 144 L Ed 2d 540, 119 S Ct 2176, 99 CDOS 4859, 99 Daily Journal DAR 6263, 9 AD Cas 705, 1999 Colo J C A R 3627, 12 FLW Fed S 424, on remand, remanded (1999, CA11 Ga) 198 F3d 1259, 13 FLW Fed C 352.

University's policy of excluding disabled students from roommate assignment program violated stated purpose of 42 USCS § 12101(b)(1), where university denied disabled student who used wheelchair and required attendant care opportunity to be placed in assignment pool for roommates and assigned her to block of single rooms set aside for students with similar disabilities, contending that policy was adopted as accommodation to both disabled and nondisabled students, because policy of statute is "to provide clear and comprehensive national mandate for elimination of discrimination against individuals with disabilities." *Coleman v Zatechka* (1993, DC Neb) 824 F Supp 1360, 2 ADD 1280, 2 AD Cas 1374.

Express purpose of enactment of ADA (42 USCS §§ 12101 et seq.) was to guarantee individuals with disabilities baseline level of protection through establishment and enforcement of federal standards; thus it is clear that Congress did not intend for ADA

to defer to any state statute, not even state workers' compensation statute which contains provision purporting to establish that statute as exclusive remedy for injured workers. *Wood v County of Alameda* (1995, ND Cal) 875 F Supp 659, 60 Cal Comp Cas 71, 8 ADD 875, 4 AD Cas 43, summary judgment den, injunction gr (1995, ND Cal) 13 ADD 908, 5 AD Cas 173.

ADA (42 USCS §§ 12101 et seq.) was not intended to compensate disabled individuals for work not performed because disability rendered individual incapable of doing work. *Anderson v United Airlines* (1996, ED La) 15 ADD 93, 5 AD Cas 898.

4. Relation to other laws

Under Americans with Disabilities Act (42 USCS §§ 12101 et seq.)—which includes provisions that (1) no covered employer shall discriminate against "qualified employee with disability" (42 USCS § 12112(a)), and (2) "qualified employee with disability" is individual with disability who, with or without reasonable accommodation, can perform essential functions of employment position that such individual holds or desires (42 USCS § 12111(8))—employer who requires, as job qualification, that employee meet otherwise applicable federal safety regulation that tends to exclude persons with disabilities does not have to justify enforcing regulation solely because standard may be waived experimentally in individual cases. *Albertson's, Inc. v Kirkingburg* (1999) 527 US 555, 144 L Ed 2d 518, 119 S Ct 2162, 99 CDOS 4846, 99 Daily Journal DAR 6243, 9 AD Cas 694, 1999 Colo J C A R 3740, 12 FLW Fed S 443.

Court need only review city ordinance's preference for handicapped business owners under rational basis test; application of heightened scrutiny to preference for handicapped business owners would run counter to Americans with Disabilities Act, which Congress enacted to reduce discrimination. *Contractors Ass'n v City of Philadelphia* (1993, CA3 Pa) 6 F3d 990, 3 ADD 1117, 3 AD Cas 167, 62 CCH EPD ¶ 42579, findings of fact/conclusions of law, on remand (1995, ED Pa) 893 F Supp 419, affd (1996, CA3 Pa) 91 F3d 586, reh, en banc, den (1996, CA3 Pa) 1996 US App LEXIS 23415 and cert den (1997) 519 US 1113, 136 L Ed 2d 840, 117 S Ct 953 and (criticized in *West Tenn. Chapter of Associated Builders & Contrs., Inc. v Board of Educ.* (1999, WD Tenn) 64 F Supp 2d 714).

As result of overlap between Americans with Disabilities Act (42 USCS §§ 12101 et seq.) and Rehabilitation Act (29 USCS §§ 701 et seq.), their substantive standards for determining liability are same. *Bravin v Mount Sinai Med. Ctr.* (1999, SD NY) 186 FRD 293, reconsideration gr, in part, reconsideration den, in part, vacated in part on other grounds (1999, SD NY) 58 F Supp 2d 269.

5. —State laws

Massachusetts statute, ALM GL c 123 § 18A,

requiring patients in state mental health facilities to contribute to cost of representation, when representative is appointed by court, violates due process clause of Fourteenth Amendment and Americans with Disabilities Act, 42 USCS §§ 12101 et seq. T.P. v DuBois (1993, DC Mass) 843 F Supp 775, 5 ADD 764, 3 AD Cas 288.

Express purpose of enactment of ADA (42 USCS §§ 12101 et seq.) was to guarantee individuals with disabilities baseline level of protection through establishment and enforcement of federal standards; thus it is clear that Congress did not intend for ADA to defer to any state statute, not even state workers' compensation statute which contains provision purporting to establish that statute as exclusive remedy for injured workers. Wood v County of Alameda (1995, ND Cal) 875 F Supp 659, 60 Cal Comp Cas 71, 8 ADD 875, 4 AD Cas 43, summary judgment, injunction gr (1995, ND Cal) 13 ADD 908, 5 AD Cas 173.

In action alleging that provision of Georgia's Medicaid plan, by providing reimbursement for necessary liquid diet only to individuals in nursing homes, has tendency to isolate and segregate individuals with disabilities in contravention of intent of 42 USCS § 12101 to end such segregation, section cited by plaintiff does not itself provide cause of action to him. Hodges v Smith (1995, ND Ga) 910 F Supp 646, 49 Soc Sec Rep Serv 866, 13 ADD 1100, 5 AD Cas 229.

6. Applicability

Although units of local governments, such as cities and counties, are "state actors" for purposes of Federal Constitution's Fourteenth Amendment, Constitution's Eleventh Amendment does not extend its state immunity from suit by private individuals in federal court to units of local government; these entities are subject to private claims for damages under Americans with Disabilities Act (42 USCS §§ 12101 et seq.) without Congress' ever having to rely on § 5 of the Fourteenth Amendment to render them so. Board of Trustees v Garrett (2001) 531 US 356, 148 L Ed 2d 866, 121 S Ct 955, 2001 CDOS 1471, 2001 Daily Journal DAR 1857, 11 AD Cas 737, 2001 Colo J C A R 968, 14 FLW Fed S 92 (criticized in Adam v Auditor of Ohio (2002, ND Ohio) 2002 US Dist LEXIS 20187).

Disabled employee's motion to amend complaint to add count under Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq., is denied, where alleged discrimination took place in 1987, employee filed original state-law action in 1988, and attempted to add ADA count in 1992, because ADA, which took effect in employment discrimination matters in 1992, provides new substantive rights and obligations, and may not be applied retroactively. Raya v Maryatt Indus. (1993, ND Cal) 829 F Supp 1169, 2 ADD 616, 2 AD Cas 1368, 63 CCH EPD ¶ 42705.

City transit authority employee's claims were not

covered by ADA (42 USCS §§ 12101 et seq.) where employer's alleged discriminatory actions occurred prior to effective date of Act. Julian v New York City Transit Auth. (1994, ED NY) 857 F Supp 242, 6 ADD 350, 3 AD Cas 791, affd without op (1995, CA2 NY) 52 F3d 312, 5 AD Cas 864.

ADA (42 USCS §§ 12101 et seq.) does not apply to domestic disputes between private individuals; thus woman's complaint against her husband and his attorneys, alleging that her rights under ADA were violated by failure of courts to accommodate her multiple chemical sensitivity disorder in context of divorce and related proceedings, failed to state claim on which relief could be granted. Kapner v Kapner (1996, ED Pa) 17 ADD 166.

Disability discrimination claim of First Sergeant in Illinois Army National Guard must be dismissed, even though he alleges continuing pattern of discriminatory treatment and claims violation of Americans with Disabilities Act (ADA) (42 USCS §§ 12101 et seq.), given rarity of judiciary's intervention in military affairs and Congress's silence on whether military is covered entity, because court holds that ADA does not cover actions taken by state National Guard. Gordon v Illinois Nat'l Guard (1999, CD Ill) 46 F Supp 2d 817, affd (2000, CA7 Ill) 215 F3d 1329, reported in full (2000, CA7 Ill) 2000 US App LEXIS 4068.

ADA (42 USCS §§ 12101 et seq.) does not in any way apply to execution of will, as (1) person with disability, like anyone else, has absolute right to execute will and dispose of his or her property as he or she sees fit, provided that they have requisite mental capacity to understand nature of act of executing will and to understand its contents, (2) primary purpose of ADA is to prevent discrimination against persons with disabilities, and (3) no parallels can be drawn between intent of ADA and execution of will; thus, judgment of state chancery court—invalidating will allegedly executed under suspicious circumstances by woman who had broken hip and breast cancer, was legally blind, and was described as "hard of hearing," on ground that proponent of will bore, and had not sustained, burden of proving that testatrix had fully understood and freely assented to terms of will—will be affirmed, as there is no merit to proponent's question whether burden of proof was correctly assigned in light of policy expressed by ADA. Parks v Parks (In re Estate of Luetgens) (1994, Tenn App) 5 ADD 515, 3 AD Cas 1340.

7. Effect of arbitration clause or agreement

Arbitration clause in collective bargaining agreement did not require employee to use arbitration procedure for alleged violation of Americans with Disabilities Act (ADA) (42 USCS §§ 12101 et seq.), where (1) cause of action asserted by employee was not subject to presumption of arbitrability, as claim (a) did not arise out of contract, (b) arose out of and concerned meaning of ADA, and (c) was distinct