

# **Taking ADA Compliance into Consideration for Workplace Designs**

written by Nancy Brent | May 26, 2016

## **Avoiding Liability Bulletin - February 1, 2016**

If you are lucky enough to be a CNO whose units in your hospital are undergoing a “revamp,” you can make your design ideas become a reality. You must also factor in those employees whom you hire or with whom you work if they have a disability that qualifies as such under the Americans With Disabilities Act (ADA). In short, the physical workplace should be “disability friendly”.

Tammy Binford writes in her article, “Moving Toward the Latest Trend In Office Design? Don’t Forget Legal Concerns”(HR Hero Line), that re-designers must take into account furniture, seats and desks that can be used by both those with and those without disabilities. She points out that standing desks, high counters or portable computers on stands may be fine for those who can be on their feet and remain in one place for long periods of time, but they will not work for those employees or office staff who cannot do so.

Likewise, due to a covered disability, some staff may not be able to sit for long periods of time. Providing a mix of options for sitting and standing while doing required work is a good way to avoid potential ADA problems, according to Binford.

Binford also includes a discussion with Jonathan Mook, an attorney who handles employment discrimination cases, about the Ekstrand v. School District of Somerset<sup>1</sup> case. In this case, a school teacher who suffered from seasonal affective disorder asked the school district many times to move her to a classroom with natural light.

Although the school district worked with the teacher in changing classrooms, it never moved her to a classroom with windows. Her condition became worse, including an inability to concentrate, uncontrollable crying, and not eating.<sup>1</sup> She took a medical leave but was unable to return to work at the school.

She did not work for 2 years until she was able to take a position at another school. The teacher then filed her case against the school district.

Initially, the trial court granted summary judgment motion for the school district on the failure to accommodate her disability and the teacher appealed that decision. The appellate court reversed that portion of the verdict, holding that there were material issues of fact that needed to be resolved, including whether the ADA applied to the teacher’s seasonal affective disorder, and the case went back

to the federal trial court<sup>1</sup>.

The school district filed a second summary judgment motion on the same grounds, but the federal district trial court denied that motion as well, citing the federal appellate court's decision<sup>2</sup>. Three months later, the parties apparently agreed to settle the case and the trial court entered an order awarding the teacher back pay and benefits in the amount of \$26,828.59<sup>3</sup>.

The bottom line for those of you who are in a position with the authority to design your unit or office space is fairly simple: do so with an eye toward avoiding ADA claims. This perspective can result in fairly simple resolutions as the Ekstrand case illustrates.

Additional "disability friendly" features, such as providing a small refrigerator nearby if the employee is required to store medications or needed food, providing larger computer screens for those employees who have vision disabilities, and providing adequate space for those who are in wheelchairs (such as the receptionist or unit clerk), are other possible design plans that can alleviate discrimination allegations.

Recently, a new approach in design, called "universal design", focuses on designing any product and all environments to be usable by everyone, to the fullest extent possible, regardless of age, ability or situation. You can read more about universal design at [www.disabled-world.com/assistivedevices/design/](http://www.disabled-world.com/assistivedevices/design/) . This design approach would also be one to consider in alleviating potential ADA claims.

With foresight and good design ideas, then, your goal of an updated unit or office can easily be blended with the needs of *all* staff.

## **FOOTNOTES**

1. 583 F. 3d 972 (2009).

2. 08-cv-193-bbc, U.S. District Ct., W.D. Wisconsin (August 2010).

3. 08-cv-193-bbc, U.S. District Ct., W.D. Wisconsin (October 2010).

## **NOTE:**

The Americans with Disabilities Act (ADA) applies to employers with 15 or more employees and prohibits discrimination against those with disabilities in terms of hiring, firing, and promotion. If such a decision is adverse to the employee, it cannot be solely based on the existence of an employee's disability. Rather, the individual must be evaluated on whether the employee can perform the essential functions of the job with or without reasonable accommodation.

If an accommodation is required when the employee informs an employer that one is needed, then, if

reasonable, it must be instituted.

THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR ANY OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK ADVICE FROM A COMPETENT PROFESSIONAL.