

**State of Illinois**  
Bruce Rauner, Governor  
**Department of Human Rights**  
**Department of Human Services**

ICED NEWS

## **State Interagency Committee on Employees with Disabilities**

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### **Committee Expands under new Legislation**

Governor Bruce Rauner signed S.B.0563 into law on August 7, 2015, expanding the Committee's membership to include the following individuals: the Lieutenant Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Director of the Council on Developmental Disabilities, and three state employees with disabilities appointed by the Governor. The expanded membership under P.A.99-0314 will allow employees across the Executive Branch to participate in Committee programs and benefit from ICED initiatives. The three new positions on the Committee for state employees with disabilities will bring employee representation on ICED to seven. A state employee with a disability interested in serving in these Gubernatorial-appointed positions can nominate him or herself for consideration on the webpage [Appointment Page](#).

### **Governor Rauner Presents ICED Awards**

In May 2015, Governor Bruce Rauner presented awards at the ICED ceremony to individuals, agencies, and organizations that expanded opportunities for people with disabilities in the State of Illinois (see photos at [ICED website](#)). Tommy Saunders, of the Department of Human Services, was named the Employee of the Year for his positive, enthusiastic, and expert job performance in that agency. Kris Smith, Director of the Division of Rehabilitation Services, was presented the Dan Dickerson Advocate of the Year Award, for introducing a number of improvements in the process of service provision to customers with disabilities. Lisa Williams, the EEO/AA Officer for The Tollway, accepted the State Agency of the Year award for her activities and on behalf of her agency, whose employment practices serve as a model for other state agencies.

State Senator Heather Steans, who represents Illinois Senate District 7, received the Carl Suter Legislator of the Year award for her work in Medicaid and nursing home reform. The Sickel Cell Association of Illinois won the Non-Profit of the Year award for its comprehensive services and educational programs. Autonomy Works received the Business of the Year award for its work in providing employment opportunities for people with disabilities.

The following ten state agencies were recognized for their participation in the Successful Disability Opportunities program, which is an affirmative action program for people with disabilities in state government: the Departments of Agriculture, Children and Family Services, Corrections, Healthcare and Family Services, Human Services, Natural Resources, Public Health, Revenue, Veterans' Affairs, and the Illinois State Police. The Committee thanked these agencies for expanding employment opportunities for people with disabilities.

### **October is National Disability Employment Awareness Month**

Agencies and employers can celebrate by posting information about the month's theme, My Disability is One Part of Who I am, available from [DOL Disability Employment](#) .

Other ways to promote the month are to hire people with disabilities-- Code state agencies can use the Successful Disability Opportunities program ([Successful Disability Opportunities](#)).

### **Disability Employment Cases Decided in the Courts**

The question about an employer's obligation to provide an effective accommodation versus a preferred accommodation was addressed in the Second Circuit recently, in *Noll v. International Business Machines Corporation*, 787 F.3d 89 (2<sup>nd</sup> Cir. 2015) . In this case, a software engineer who is deaf asked his employer to provide captioning or transcripts for all audio/video files on the company website. Although IBM provided sign language interpreters for the employee, Mr. Noll argued that this accommodation was not as effective as captioning would be. The Court ruled in favor of the employer, holding that while the use of an interpreter rather than captioning "was a disadvantage that likely tired or annoyed [the employee] this disadvantage does not render interpretive services ineffective [because] many accommodations of deafness – ASL interpretive services as well as captioning—will tax visual attention to some degree." The Court further held that the employer was not required to engage in an interactive process about the captioning request, because the company had already provided interpreters as an accommodation.

### **Full Sixth Circuit Reverses Telecommunication Case**

In 2014, the Sixth Circuit ruled that telecommuting can be a reasonable accommodation under the ADA (Americans with Disabilities Act), denying summary judgement for the employer in *Equal Employment Opportunity Commission v. Ford Motor Company*, 782 F.3d 753 (6<sup>th</sup> Cir. 2015). In that decision, the Court found the case should go to trial to determine whether telecommunicating was appropriate as an accommodation. The Court held that an employee's physical presence might not be an essential job function, because workplace technology has progressed to the point that many tasks can be performed outside of the workplace. Employees with disabilities viewed this opinion as broadening opportunity for those who couldn't work a regular 40-hour week in the office.

Many employers, however, saw the decision as contributing to more lawsuits being filed from employees who would rather work at home.

Ford Motor Company asked for a review of the original decision by the full Court, and in April 2015, the Court approved summary judgement for Ford, dismissing the case. The full court found that the ADA “does not endow all disabled persons with a job—or job schedule—of their choosing.” With “few exceptions” the Court held that regular and predictable attendance in the workplace was an essential function of most positions, including the employee in this case, a buyer at Ford who had severe irritable bowel syndrome. Because she was unable to meet the essential job duty of presence in the office five days a week, she was not a “qualified individual with a disability,” and Ford did not have an obligation to allow her to work from home. This case is important because it will now be more difficult for a person with a disability to prove he/she can telecommute as an accommodation.

### **NYPD No Longer Bars Police Officers from wearing Hearing Aids**

The New York Police Department settled a lawsuit earlier this year to change a six-year standing policy to prohibit police officers who need hearing aids to wear them and maintain their jobs. Under the agreement, officers who use hearing aids will have the opportunity to meet the Police Department’s hearing standards while wearing their hearing aids.

### **Large Increase Seen in Public Accommodations ADA Lawsuits Filed**

Public accommodations lawsuits under the Americans with Disabilities Act increased 63% from 2013 to 2014. Over 4,400 such suits were filed in 2014, with almost 80% of the cases filed in two states – California and Florida. Many of the cases concerned physical barriers at hotels, stores, and restaurants; some concerned the lack of accessible parking, others the lack of pool lifts, and a few concerning inaccessible electronic devices.

### **U.S. Labor Department Supports State Disability Employment Initiatives**

Six states, Alaska, Georgia, Hawaii, Iowa, New York and Washington, will share \$15 million in federal grants to expand employment opportunities for people with disabilities. The funds will be used to improve job training, school-to-work transitioning services, and customized programs for people with significant needs. According to U.S. Secretary of Labor Thomas Perez, “The grants we are awarding ... will increase employment opportunities for people with disabilities by connecting them to job-driven training programs that provide them with the skills to compete for high-demand industry jobs.” Grant requirements include collaboration with disability service providers, educational institutions and businesses. Since 2010, the U.S. Labor Department has allocated over \$95 million through its Disability Employment Initiative to fund 43 projects in 27 states.

### **Assistance for Caregivers Considered by Legislators**

It's estimated that 42 million Americans provide care for family members at any given time. Traditionally, that meant helping with bathing, dressing, and eating, but now half of caregivers administer drugs, provide wound care, and use monitors or specialized medical equipment. This can pose a problem without specialized instructions or training. The nonprofit organization AARP believes the lack of instruction in these cases adds to the burden of caregivers and makes it more likely the patient will be admitted to a hospital. Some states have introduced laws to require: a) a medical facility to record the name of a family caregiver when a person is admitted; b) the notification of the caregiver that a patient is going to be released or transferred to another facility; and c) provision of information and instruction on how the caregiver will manage medical and physical tasks, such as injections and use of medical devices. The sponsor of one of these bills said care-giving can be an amazing amount of work and family members deserve support for their efforts.

### **Minnesota Considers Centralized Reasonable Accommodation Fund**

The State of Minnesota, in an effort to become a model employer of people with disabilities, established a goal of 7% for employees with disabilities in state government and is now considering the development of a centralized fund for reasonable accommodation, according to a report entitled *Centralized Accommodation Fund Study 2015*. A centralized reasonable accommodation fund is a single source of money from a common pool to assist agencies in providing and paying for accommodations, so that accommodation costs do not pose a burden to an organizational unit's budget within an agency. The Minnesota study finds that only a few federal and state entities have implemented a centralized funding model for reasonable accommodation. The federal government's central accommodation fund, operated out of the Department of Defense, has \$9 million budget and twenty-eight staff members to provide reasonable accommodation to federal employees and applicants (readers should note that the budget is so large, because the federal government is the largest employer in the U.S.).

The advantages of the centralized fund model are to ensure that employees have what they need to perform the essential functions of their jobs and that accommodations are not delayed due to funding problems. It is also thought that barriers to hiring people with disabilities would be reduced through the centralized model of accommodation funding. The Minnesota study quotes the U.S. Equal Employment Opportunity Commission (whose duty it is to enforce the Americans with Disabilities Act), in noting that while the "ADA does not require a statewide source for funding reasonable accommodations, a centralized funding source may promote the hiring of people with disabilities by removing disincentives that result from the concerns of the cost of accommodations on individual division budgets."

## **States move to provide Competitive and Integrated Employment**

Across the nation, the federal government, states, and advocacy groups are supporting efforts to move people with disabilities from sub-minimum wage, segregated settings (sometimes called sheltered workshops) into competitive, integrated employment placements. The movement is called "Employment First," and the principle is that all people, regardless of disability, should be considered for employment in the community at minimum wage (or above) among people with and without disabilities. In Illinois, an Employment First group is preparing a plan with recommendations to the Governor to be submitted by the end of the calendar year.

### **Your ICED Members**

Rocco J. Claps, Director, Department of Human Rights, ICED Co-Chair

James Dimas, Acting Secretary, Department of Human Services, ICED Co-Chair

Lieutenant Governor Evelyn Sanguinetti

Attorney General Lisa Madigan

Secretary of State Jesse White

Comptroller Leslie Geissler Munger

Treasurer Michael W. Frerichs

Erica Jeffries, Director, Department of Veterans' Affairs

Tom Tyrrell, Director, Department of Central Management Services

Fredrick Bates, Chair, Civil Service Commission

Sheila Romano, Director, Council on Developmental Disabilities

Deborah Johnson-Small, Employee Member, Department of Human Services

Karl Moulton, Employee Member, Department of Employment Security

Catherine Collier, Department of Children and Family Services

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