**State of Illinois**
Pat Quinn, Governor
**Department of Human Rights**
**Department of Human Services**

ICED NEWS

**State Interagency Committee on Employees with Disabilities**

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## ICED 2014 Awards Program

ICED hosted a successful Awards Program on May 20, 2014 in Springfield, at which a variety of individuals and organizations were honored for making a difference in the lives of people with disabilities. Honorees included:

- the Chicago Zoological Society, for the Brookfield Zoo,
- the Cochlear Implant Awareness Foundation,
- Addie Maggard and Alex Bardesi, students at Willowbrook High School for a production of 'High School Musical Junior' with a cast of students with disabilities,
- the Tollway (State Agency of the Year),
- David Dailey, of the Department of Transportation (State Employee of the Year),
- Dan Dickerson (Posthumous award) for advocacy efforts, and
- Representative Esther Golar (Legislator of the Year).

In addition the following agencies were honored for their participation in the Successful Disability Opportunities program, through which applicants with disabilities are hired in state agencies:

- Illinois Gaming Board
- Department of healthcare and Family Services
- Department of Human Services
- Department of Natural Resources
- Department of Public Health
- Illinois State Police
- Department of Revenue, and
- Department of Veterans' Affairs.

The Awards Ceremony featured the creations of a catering business whose owner is a person with a disability, and a panel discussion examined state programs for businesses owned by people with disabilities.

## Former ICED Intern Appointed to National Council on Disability

Benro Ogunyipe, of the Department of Human Services (DHS), was recently appointed by President Obama to a prestigious federal entity, the National Council on Disability (NCD). Mr. Ogunyipe started his state career as an ICED intern, later hired by DHS, and served as a Commissioner on the Deaf and Hard of Hearing Commission. NCD began as a small advisory Council within the Department of Education in 1978. It was transformed into an independent agency in 1984, which was responsible for reviewing all federal disability programs and policies. The Council recently celebrated its 30th anniversary. You can learn more about NCD's work on its website, ncd website, and in Mr. Ogunyipe's presentation to ICED posted on the Committee's website, iced website. More good news is that Mr. Ogunyipe agreed to take any disability concern raised by ICED to NCD.

## National Disability Employment Awareness Month

The U.S. Department of Labor's Office Disability Employment Policy announced this year's theme of "Expect, Employ, Empower" for this year's National Disability Employment Awareness Month (NDEAM) celebration in October 2014. According to the DOL website, national disability employment website, NDEAM's roots go back to 1945, when Congress enacted a law declaring the first week in October each year "National Employ the Physically Handicapped Week." In 1962, the word "physically" was removed to acknowledge the employment needs and contributions of individuals with all types of disabilities. In 1988, Congress expanded the week to a month and changed the name to "National Disability Employment Awareness Month." Upon its establishment in 2001, ODEP assumed responsibility for NDEAM and has worked to expand its reach and scope ever since. Visit the DOL website for suggestions in celebrating the month and order free posters.

## Legal Corner

In *Kroll v. White Lake Ambulance Authority*, the Sixth Circuit U.S. Court of Appeals denied a summary judgment dismissal of a case involving an employer that required one of its employees, an EMT, to seek counseling. When she refused, the employer fired her. The counseling requirement followed what was described as the messy emotional aftermath of an affair with a coworker. The 6th Circuit Court of Appeals first determined that counseling was a medical exam under the ADA, and as such, the employer's demand that the employee seek counseling had to be "job-related and consistent with business necessity." The case will proceed to trial, where the employer will have to show that the employee's ability to perform the essential functions of her job were impaired by her emotional condition or that she posed a direct threat to herself or others.

In a related case, *Kao v. University of San Francisco,* the California appellate court upheld a jury's verdict that the University of San Francisco lawfully terminated a professor who refused to undergo a mental fitness for duty examination. Professor Kao started to display intimidating behavior, clenching fists, wild laughter, and hitting colleagues. After conducting an investigation, the University asked a psychologist to perform an examination to establish the professor's fitness for duty. When Professor Kao refused, the University fired him. The Appellate Court, saying a fitness for duty examination was job related and consistent with business necessity, upheld a jury's decision in favor of the University.

In *Gienapp v. Harbor Crest*, the U.S. Court of Appeals for the Seventh Circuit reversed a decision for summary judgment made by a lower federal court under the FMLA. The lower court determined that the employee gave up her right to leave under the Family and Medical Leave Act ("FMLA") by not providing a definite return to work date, in providing care for a daughter who was over 18, and in taking leave to assist with care for her grandchildren (the daughter's children). The Appeals Court found that that the FMLA's use of the term "unforeseeable" need for leave might apply here. Further, the employee's daughter was incapable of self-care due to her disability, which brought her under the statute's definition. Finally, the Court said that in caring for her grandchildren, it is conceivable that the employee assisted in the care for her ill daughter (the children's mother). The case is important because summary judgment wasn't allowed, and it will proceed to trial to determine the issues raised.

In September, the Sixth Circuit granted an *en banc* hearing of *EEOC v. Ford Motor Company,* a case that supported the use of telecommuting for employees with disabilities. The Court issued an Order vacating its prior opinion pending rehearing. An *en banc* hearing means a case is heard before all the judges of a court rather than by a panel selected from them. The approval of the *en banc* request might mean the Court will look at this case in a different way.

## Access Living Offers Work Program for People with Disabilities

Although individuals with disabilities want to enter the workforce, opportunities for jobs and paid internships are often in short supply. To increase employment opportunities available to those with disabilities, Access Living of Chicago is offering individuals with disabilities an opportunity to gain experience, a paycheck, and hopefully future employment opportunities through a transitional employment program with funding made possible by the Illinois Department of Human Services. Program coordinator Carrie Kaufman states, "When we got some extra money from the state from the stimulus initiative, it was like reinvestment funds to kind of have more staff associates be on site…It's a bit of combination between job training and getting work experience, then we work on connecting people with employers." The program runs year-long,

where staff associates work 19 hours a week. To be eligible for the program, individuals must have an active case with the Illinois Department of Human Services, Division of Rehabilitation Services. Some current employers that have hired participants of the program include the Illinois Tollway and Access Living, itself. (This and similar actions taken by the Tollway were the basis for the agency's receipt of the ICED 2013 and 2014 Agency of the Year awards.) Read more about the Access Living program from the following news article, Chicago ABC story

## How will a Changing Workforce Affect State Employees with Disabilities?

A Congressional research service report found that nearly half of state workers nationwide are between 45 and 64 years old, and many of them are ready to retire. The Center for State and Local Government Excellence recently reported that nearly half of state and local government survey respondents saw an increase in retirements last year over 2012. "We're seeing an uptick in retirements after a period when you were seeing people staying (in their jobs)," according to Joshua Franzel, vice-president of research for the center, whose mission is to ensuring that state and local governments attract and retain talented public servants. Generally speaking, retiring employees are older than employees entering the workforce, and older employees are more likely to have disabilities. Ten percent of people age 18-64 have disabilities, while 36% of people over 65 have disabilities. This means younger workers, who are less likely to have disabilities, are replacing older workers, who are more likely to have disabilities. Unless recruitment of people with disabilities is targeted, the percentage of state employees with disabilities could decrease.

## Minnesota Sets Goal for Hiring Workers with Disabilities

Minnesota Governor Mark Dayton directed state agencies to increase the number of employees with disabilities. The state experienced a dramatic drop in the percentage of workers with disabilities, down from 10% of the workforce in 1999 to 3% in 2013. The goal is to increase the percentage of state workers with disabilities to 7 percent of the workforce by August 2018.

In the executive order (PDF), Governor Dayton calls for the development of recruitment and hiring strategies to increase employment of people with disabilities, including training programs for hiring managers and human resources personnel, along with clear benchmarks to ensure implementation of this order. The governor said each executive branch agency must develop a "plan for promoting employment opportunities for individuals with disabilities. The plans are to include specific recruitment and training programs for employment."

The State of Illinois practices affirmative action in employing people with disabilities, and the Department of Human Rights, with enforcement authority for these programs, set a

goal of 5% for this group. The goal is based on availability of people with disabilities in the Illinois labor force. State agencies not meeting the 5% threshold are required to set goals to hire people with disabilities. Those goals can include use of the Department of Central Management Services' Successful Disability Opportunities program.

## Panel Being Formed to Expand Disability Employment

The U.S. Department of Labor is soliciting nominations for individuals to serve on the National Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Nominations for the advisory committee, which will include leaders from various government agencies as well as members of the public, are being accepted through Oct. 14. The purpose of the advisory committee is to improve employment opportunities for people with intellectual disabilities. The committee will make recommendations to Secretary of Labor Thomas Perez.

Your ICED Members

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

Michelle R.B. Saddler, Secretary, Department of Human Services, ICED Co-Chair

Rodrigo Garcia, Acting Director, Department of Veterans' Affairs

Simone McNeil, Acting Director, Department of Central Management Services

Garrett FitzGerald, Chair, Civil Service Commission

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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