



Table of Contents

Picciano v. Clark County – 4 Years of Litigation..... 1

Unlocking Potential: Exploring Telework as an ADA Accommodation . 2

SSI Policy Update: Enhancing Equity and Administrative Efficiency 3

The Right to a Restroom: “Ally” and Access 4

Accessible and Inclusive Playgrounds 5

Picciano v. Clark County – 4 Years of Litigation

In 2020, WACDA, and our co-counsel Stein & Vargas, LLP and The Law Offices of Charles Weiner, undertook one of our most ambitious and complex cases to date.

Our client, Gaven Picciano, is diagnosed with and lives with Celiac disease. Celiac disease is a long-term autoimmune disorder, primarily affecting the small intestine, where there is an immune reaction when individuals with celiac disease consume gluten. Gaven was held before trial at Clark

County Jail for 22 days in January 2020. Upon his arrival, he immediately alerted jail staff to his condition so that he could safely eat, yet no substantive action was taken to provide him with safe meals. During his stay, despite frequent and unambiguous requests for safe food, he was denied access to gluten-free meals by Clark County Jail and its healthcare providers, Wellpath and NaphCare. Both the jail and the medical providers told him to “pick and choose” what he could eat by visuals alone and did not act with the urgency a lack of safe food for a pretrial detainee should elicit. Gaven experienced completely unjustified pain and distress during those 22 days in jail. Malnutrition and gluten exposure led to Gaven losing a significant amount of weight in under three weeks. He grew progressively more ill during his stay, and suffered a traumatic episode in which he lost consciousness and had to be hospitalized. At the time, Gaven feared he would die as a result of not having safe meals and his traumatizing experience stays with him even now.

Now, even four years since the initial filing, the defendants in this case continue to deny any wrongdoing. Together with the Washington, D.C. firm Stein & Vargas, WACDA has persisted in its fight for justice for Gaven. We have defeated (on multiple occasions) the defendants’ motions for dismissal and are now working to defeat their motions for summary judgment. We are confident that we will prevail in this

case, and it is our hope that this case serves as a strong signal that discrimination against incarcerated individuals with disabilities—even those with disabilities you can't see—will not be tolerated in Washington or elsewhere.



Unlocking Potential: Exploring Telework as an ADA Accommodation

Telework, or remote work, has become increasingly prevalent in the post-pandemic era, offering flexibility and accessibility to numerous employees. However, its significance extends beyond convenience, particularly in the realm of disability rights. The Americans with Disabilities Act (ADA) mandates that employers provide reasonable accommodations to qualified individuals with disabilities to ensure equal employment opportunities but does not provide explicit guidelines regarding teleworking. In recent years, teleworking has emerged as a critical, and reasonable, accommodation option under the ADA, revolutionizing the workplace dynamic.

Contemporary court judgments concerning telework accommodations for employees

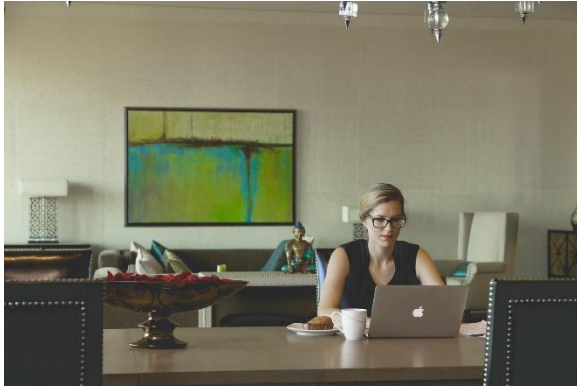
with disabilities under the ADA focus on crucial considerations. Courts will assess if telework fundamentally alters the specific job functions of the employee and will weigh factors like work nature and technological feasibility. For instance, in cases such as *EEOC v. Ford Motor Company*, the required telework accommodation was denied when on-site attendance for the employee was deemed essential to the role.

Courts have also recognized that revoking reasonable accommodations, like telework, can constitute retaliation. In *Woodruff v. Peters*, the court deemed the revocation of a telecommuting accommodation after it had already been granted, was an adverse action in the retaliation claim the employee subsequently brought.

Moreover, recent cases like *Peeples v. Clinical Support Options, Inc.*, illustrate a shifting landscape. Courts granted preliminary injunctions of employees seeking remote work, deeming them as reasonable accommodations and emphasizing the necessity of the interactive process and the reasonableness of requests supported by medical documentation.

Granting telework as an accommodation under the Americans with Disabilities Act (ADA) offers practical benefits for employers and employees alike. Telework eliminates commuting and physical accessibility barriers, which can not only enable greater productivity and harmony in the workplace but can also allow workers who may not be able to commute daily to an office to more fully participate in their work. Eliminating barriers promotes inclusivity, job satisfaction, and productivity while fostering flexibility and work-life balance. Additionally, telework saves money for both

parties by reducing overhead and commuting expenses, so it really is a win-win for both the employer and the employee.



SSI Policy Update: Enhancing Equity and Administrative Efficiency

Supplemental Security Income (SSI) is a monthly Social Security benefit provided by the Social Security Administration (SSA) for people with low or no income, have limited or no resources, and who are blind or disabled, and over 64. How much an individual receives for their monthly Supplemental payment is dependent on their income, living situation and additional factors.

Effective September 30, 2024, the SSA will enact a policy change to simplify SSI regulations. [The final rule](#) excludes food expenses from In-Kind Support and Maintenance (ISM) calculations. Originally, ISM was food, shelter, or both that somebody else provides. This was formerly counted as income when determining the amount an SSI recipient would receive. Now, the SSA is updating income definitions to enhance clarity and fairness within the SSI program. Under the new rule,

food expenses will no longer be considered and only shelter expenses such as rent, utilities, and property taxes will factor into ISM calculations.

However, the Value of the One-Third Reduction (VTR) and Presumed Maximum Value (PMV) rules will still be used to determine ISM value. The VTR rule allows the SSA to reduce Social Security Disability beneficiary's applicable federal benefit by one-third in certain situations. The PMV rule is the maximum amount of ISM that the SSA can deduct from the SSI federal benefit. This can include requiring recipients to pay back money already received. An SSI claimant can show that the actual amount someone else pays for their food or shelter or that the current market value of any food or shelter they received is less than the PMV to have that charge reduced. Now these rules will still apply but only to shelter costs.

This rule is beneficial to those who qualify for SSI because the monthly payment received will not be deducted by the estimated value of food provided through additional resources. The policy helps to ensure equitable treatment for all applicants and recipients. This change aims to address the food insecurity barriers faced by disabled individuals and standardize food support treatment regardless of its source. The old rule penalizes recipients with a deduction for receiving informal food assistance from friends, family and community networks, whereas the new update to this rule encourages this community support. By removing these barriers, the revised policy provides increased financial security to affected beneficiaries, ensures consistent treatment of food support regardless of its source, and reduces reporting requirements, ultimately enhancing food security among certain beneficiaries.

Moreover, the implementation of this rule is anticipated to generate \$26 million in administrative savings over a 10-year period. These savings stem from reduced processing time and simplified policies, benefiting both the SSA and SSI applicants and recipients. Beyond financial savings, simplifying the policy and streamlining the SSI claims process will make it easier for applicants and recipients to navigate. This not only benefits the public by reducing the time and effort required to understand and comply with program requirements, but also saves time for SSI applicants and recipients, who will no longer need to report as much information related to their food expenses.



The Right to a Restroom: “Ally” and Access

In 2009, Washington passed the Washington State Restroom Access Act. The law originates in Illinois and is also known by the name “Ally’s Law” due to Ally Bain, a young woman who has Crohn's disease, a type of inflammatory bowel disease.

When Ally was 14 years old and shopping with her mother in a large retail store, she experienced a Crohn’s disease flare, which included a sudden need to use the restroom. There were no public restrooms, so she

asked to use the employee restroom. The manager denied Ally access, and as a result of this denial, Ally was forced to experience an involuntary accident in the store. Vowing that such a horrible experience would never happen to anyone else, Ally and her mother met with Illinois state representative Kathy Ryg to draft a bill that would allow people to use an employee restroom if they have a medical condition and are in urgent need. The bill became law in Illinois in August 2005. Since then, several other states have passed the Restroom Access Act, including Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Ohio, Oregon, Tennessee, Texas, Wisconsin and our own Washington.

In Washington, people with eligible medical conditions are to be provided access to restrooms in retail establishments, or businesses that provide goods and/or services to the public, that would typically require a purchase before use. Additionally, the law permits eligible individuals to even use bathrooms that are strictly employee-only bathrooms. Eligible medical conditions include Crohn’s disease, ulcerative colitis, or any other inflammatory bowel disease; irritable bowel syndrome; any condition requiring use of an ostomy device; or any permanent or temporary medical condition that requires immediate access to a restroom.

If you or someone you know is an individual with one of these conditions and you or they would like to know how to access retail establishment bathrooms in the event of an urgent situation situations there are two ways to establish eligibility/inform the business of your need. The first is to present a form signed by a healthcare provider describing your need. This healthcare

provider can include an advanced registered nurse practitioner, osteopathic physician or surgeon, osteopathic physician assistant, physician or surgeon, or a physician assistant. Alternatively, an individual could present an approved identification card issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition. A .pdf copy of the form and more information about the Washington law is available on the [Washington Department of Health](#) website.

There are some circumstances in which presenting the form or identification card may still not permit access. This would be if the employee-only restroom is in an area that could create health or safety risks to the individual, employees, or the business, such as filling stations, service stations, or restaurants of 800 square feet or less that have an employee restroom located within the structure. The full text of our Washington statute is [here](#).



Accessible *and* Inclusive Playgrounds

With the increasing presence of accessible and inclusive playgrounds, more youths with disabilities can play at and enjoy a playground for the first time in their lives. Playgrounds provide children with enormous benefits, including enhancing

social skills, stimulating emotional development, promoting creativity and imagination, and encouraging physical activity. However, many playgrounds are either inaccessible or not inclusive towards children with disabilities.

Playgrounds are accessible when they can be entered or reached without any hardship and physical barriers. This means that Children in wheelchairs can easily maneuver around the equipment and move along the surface with little to no physical effort. A physical barrier or inaccessible surface prevents youths with disabilities from engaging in play and physical activity. Areas with loose gravel or sand require significant physical effort to move around while using a wheelchair. While Engineered Wood Fiber (EWF) complies with the Americans with Disabilities Act (ADA), many individuals who use wheelchairs prefer unitary surfacing, such as poured rubber or turf.

Playgrounds are inclusive when children of all backgrounds and abilities can engage and interact with the equipment. Playgrounds should seek to enrich the experiences of children of all abilities by providing a variety of sensory experiences. For example, playgrounds without swings or seats designed for children with disabilities exclude children requiring mobility aids. Instead, the inclusion of molded bucket swings with their high back support and a secure seat can accommodate children with physical disabilities. Unlike a traditional teeter-totter, a teeter-totter that provides a wider platform or a space to accommodate a wheelchair enables children in wheelchairs to also participate in the play. these wheelchair-accessible teeter-totters may also have higher sides or barriers around the platform to prevent the wheelchair from

rolling off. Wheelchair-accessible spinners provide a wider platform that children with wheelchairs can access using ramps so they too can play with the other children. Additionally, the speed or resistance of these spinners may be modified to allow customization depending on a child's preferences and abilities. Areas dedicated as quiet spaces can allow children with autism a break from the noise.



Here is a list of are some accessible and inclusive playgrounds in and around Seattle where children, regardless of physical ability, can enjoy themselves: Artists at Play is located between the Museum of Pop Culture (MoPOP) and Seattle Center Armory. It provides molded bucket and basket swings, a wheelchair-accessible spinner, music sensory elements, and turf hills for strength training. Baker Park located in Crown Hill (Seattle) has turf surfacing and provides basket swing and ground-level sensory panels. Forest Park located in Everett has turf surfacing. It provides a wheelchair-accessible spinner and teeter-totter, molded bucket and basket swings, a quiet space, and a variety of musical and interactive sensory panels. Inspiration Playground located in Bellevue has poured rubber surfacing. It provides molded bucket and basket swings, wheelchair-accessible spinner and teeter-totter, variety of sensory panels, and ramps. Juanita Beach Park is in Kirkland next to Juanita Bay and has turf surfacing. It provides molded bucket and friendship swing, variety of sensory panels, musical elements, and obstacles that children with wheelchairs can navigate around.

Check to see if the playground near you is both accessible and inclusive and have fun out there!