

OPPOSE ANY AMENDMENT TO RESTRICT THE EMPLOYMENT OF PEOPLE WITH HIV INFECTION IN FOOD HANDLING AND HEALTH CARE POSITIONS

* An amendment may be offered to carve out an exception in the ADA that allows health care institutions and food establishments to deny job opportunities to people infected with HIV.

* This amendment fosters the same irrational discrimination that the ADA is intended to eliminate.

* There is no medical reason to bar people with HIV disease from working as food handlers or as health care providers. All biomedical research concludes that the virus cannot be spread through food, handshakes, coughing, sneezing or other daily contact. It can only be spread in very specific ways: through sexual activity, blood-to-blood contact or from mother to child in the womb.

* Employers in the food industry often argue that they themselves do not advocate discrimination. They simply fear that public misperceptions about the disease could cost them business.

* We cannot allow discrimination of people with AIDS because of public ignorance. President Bush in a recent speech to the Leadership Coalition on AIDS said, " Today I call on the House of Representatives to get on with the job of passing a law -- as embodied in the Americans with Disabilities Act -- that prohibits discrimination against those with HIV and AIDS. We're in a fight against a disease -- not a fight against people. And we won't tolerate discrimination.

* If Congress has general concerns about the spread of contagious diseases, like hepatitis in its infectious state, the bill already addresses this issue.

* The bill provides that a person with a contagious disease or infection is not covered if the person poses a "direct threat to the health or safety of other individuals in the workplace." This language protects people with contagious diseases from discrimination while, at the same time, protecting the public from individuals with airborne, communicable diseases.

OPPOSE THE CHAPMAN "FOOD-HANDLER" AIDS AMENDMENT

* Congressman Chapman will be offering an amendment that would allow food establishments to deny job opportunities to people infected with HIV. This amendment fosters the same type of irrational discrimination that the ADA is intended to eliminate.

* There is no medical reason to bar people with HIV disease from working as food handlers or as health care providers. All research concludes that the virus cannot be spread through food, handshakes, coughing, sneezing or other daily contact.

* Employers in the food industry publicly recognize that people with HIV cannot spread the virus through food-handling activities. But they argue that public misperceptions about the disease justifies allowing discrimination against people with AIDS.

* We cannot sanction discrimination against people with AIDS because of public ignorance. This type of exception goes against the very core of the ADA, which requires that employment decisions not be based on the basis of myths or stereotypes.

* The proposed amendment is also directly contrary to the stated position of the Bush Administration. In a recent speech before the National Leadership Coalition on AIDS, President Bush reaffirmed his strong support for including all people with AIDS in the ADA. No exceptions to this position, based on public ignorance, were countenanced by the President.

* A second degree to the Chapman amendment may be offered that would directly address any concerns about food handlers with contagious diseases. That amendment would provide that any person working in a food handling position, who would pose a public health threat as determined by official public health guidelines, could be reassigned to a different position.

Additional Conference Report Language

13. Health and Safety.

Consistent with this provision, the conferees intend that nothing in the Americans with Disability Act shall require an employer to assign, or to continue to assign to a job any employee with an infectious or communicable disease of public health significance who by reason of such disease poses a significant risk to the health or safety of others that cannot be eliminated by reasonable accomodation. Different types of contagious diseases pose different kinds of risks; some contagious diseases may pose a significant risk which cannot be eliminated by reasonable accomodation in certain job categories, such as food handling. The conferees do not intend to imply that a person with an infectious disease necessarily poses a health threat to others. Rather, the conferees intend for this policy to meet the legitimate concerns of employers that are based on established public health and safety principles. The determination whether a particular individual poses a significant risk of transmitting an infection to others must be based on the facts applicable to that individual and be based on current and objective public health standards.

Additional Conference Report Language

70 (b). Construction

The Senate recedes. In light of the concerns raised with regard to individuals with infectious or communicable diseases of public health significance who work in food handling jobs, the conferee wish to emphasize certain points with regard to this section. First, if a state or locality has a disease control law, or any other public health law, which places certain requirements on employees, employers, or businesses, but which does not discriminate against people with disabilities, such laws would not be affected or preempted in any way by the ADA. For example, if a state disease control law required certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA. In addition, if a state or locality has a disease control law, or any other public health law, which applies to certain people with disabilities (for example, if a state had a law which required people with certain contagious diseases, such as active tuberculosis, to take certain precautions), that law would also not be preempted by the ADA as long as the requirements of that state or local law were designed to protect against individuals who pose a direct threat to the health or safety of others. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in public accomodation (as "direct threat" is defined in section 101 (3)), a state public health law that similarly guarded against such threats would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

15. Food Handlers

The House Recedes with an amendment.

(d) INFECTIOUS OR COMMUNICABLE DISEASES.

(1) IN GENERAL. -- It shall not be a violation of this Act for an employer to refuse to assign or continue to assign, an individual with an infectious or communicable disease of public health significance to a job position.

(2) DEFINITION. -- An "individual with an infectious or communicable disease of public health significance" means an individual who poses a significant risk of transmitting the infection to others in the job position described in paragraph (1) which cannot be eliminated by reasonable accomodation.

(a) The determination as to whether an individual poses a significant risk of transmitting the infection to others shall be based on current, established public health guidelines.

Direct threat

The Senate recesses.

The Senate agrees with the definition of "direct threat," added by the House amendment, which clearly sets forth the specific standard that must be met before an individual can be excluded as posing a "direct threat." Because this requirement of not posing a direct threat has always applied to individuals with all types of disabilities, the Senate recesses to the House amendment which applies this requirement to any individual with a disability. However, in light of the concerns raised by some members of Congress with regard to individuals with contagious diseases of public health significance who work in food-handling jobs, the Conference wishes to emphasize that this "direct threat" provision applies to such individuals as well. Thus, if an individual with a contagious disease would, based on established public health guidelines, pose a direct threat to the health or safety of others through the handling of food, then that individual can, for example, be reassigned by the covered entity to another job where the individual would not pose such a threat.

Section 501(b)

The Senate recesses.

In light of the concerns raised by some members of Congress with regard to individuals with contagious diseases of public health significance who work in food-handling jobs, the Conference wishes to emphasize certain points with regard to this section. First, if a state or locality has a disease control law, or any other public health law, which places certain requirements on employees, employers or businesses, but which does not discriminate against people with disabilities, such laws would not be affected by or preempted in any way by the ADA. For example, if a state disease control law required certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA. In addition, if a state or locality has a disease control law, or any other public health law, which applies to certain people with disabilities (for example, if a state had a law which required people with certain contagious diseases, such as tuberculosis, to take certain precautions), that law would also not be preempted by the ADA as long as the requirements of that state or local law were designed to protect against individuals who pose a direct threat to the health or safety of others. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in a public accommodation (as "direct threat" is defined in the statute), a state public health law that similarly guarded against such threats would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

ADA AND STATE DISEASE CONTROL LAWS

Some members of Congress have raised concerns regarding the effect that the ADA would have on state disease control laws and other state public health laws. These concerns have arisen in the context of individuals with contagious diseases of public health significance who work in food-handling jobs.

The ADA would not have any adverse ramifications for legitimate state or local public health laws. Indeed, there is an explicit anti-preemption provision in the ADA, section 501(b), which would ensure that such laws would remain in place.

First, as an initial matter, if a state or locality has a disease control law, or any other public health law, which places certain requirements on employees, employers or businesses, but which does not discriminate against people with disabilities, such laws would not be affected by or preempted in any way by the ADA. For example, if a state disease control law required certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA.

Second, if a state or locality has a disease control law, or any other public health law, which applies only to certain people with disabilities (for example, if a state has a law which requires people with certain contagious diseases, such as tuberculosis, to take certain precautions), that law -- on its face -- would seem to "discriminate" against people with disabilities. However, that law would also not be preempted by the ADA.

As long as the requirements of a state or local law are designed to protect against individuals who pose a direct threat to the health or safety of others, that law remains valid under the ADA. A legitimate state or local public health law, even if it might appear to "discriminate" against people with certain disabilities, does so because the requirements of the law are necessary to protect the health or safety of the general public. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in a public accommodation (as "direct threat" is defined in the statute), a state or local public health law that similarly guards against such threats would be a law providing protection equal to that provided by the ADA and hence, under section 501(b) of the ADA, would not be preempted by the ADA.

Report Language to New Section 103(d) -- Infectious or Communicable Diseases.

The House recedes with an amendment. The amendment specifies that it shall not be a violation of the Act for an employer to refuse to assign, or continue to assign, to a particular employment position "an individual with an infectious or communicable disease of public health significance." An individual with an infectious or communicable disease of public health significance is defined as "an individual who is shown to pose a significant risk of transmitting the infection to others in the particular employment position described in paragraph (1) which cannot be eliminated by reasonable accommodation." The amendment further provides that the determination as to whether an individual is shown to pose a significant risk of transmitting the infection to others shall be based on current, medically-accepted guidelines issued by public health agencies.

The Senate bill had specified that a qualification standard for people with contagious diseases or infections was that such individuals could not pose a direct threat to the health or safety of others. The House amendment applied that requirement to people with all disabilities and that modification has been accepted by the Senate. (See above.) However, in order to address concerns raised by some regarding individuals with contagious diseases, the Conferees have explicated this provision with regard to individuals with communicable diseases. Thus, if an individual is shown to pose a significant risk of transmitting an infection to others in a particular employment position, which cannot be eliminated by reasonable accommodation, such individual may be reassigned from that particular employment position without any violation of this Act. This is consistent with the rights of employers that already exist in this Act but states that right clearly with regard to individuals with communicable diseases.