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Large award chills restaurant serving hot coffee

In a verdict many regarded as shocking and outrageous, a New Mexico jury awarded \$2.9 million to an 81-year-old woman scalded by McDonald's coffee Aug. 18, 1994. New Mexico State District Court Judge Robert Scott lowered the verdict to \$480,000 on Sept. 14. The lesser amount was appropriate, said Scott. The parties settled for an undisclosed amount on Dec. 2, according to news reports.

The accident occurred two years ago, when Stella Liebeck purchased a 49-cent cup of coffee at the drive-thru window of a McDonald's restaurant in Albuquerque, N.M. As she placed the cup between her legs to remove the lid to add cream and sugar, she spilled the coffee, causing third-degree burns.

Liebeck spent seven days in the hospital and required skin grafts, according to trial testimony. Eventually, Liebeck approached McDonald's for compensation for pain and medical bills. McDonald's offered Liebeck \$800.

McDonald's had been aware of many such injuries, according to documents introduced at trial. During the past decade, at least 700 coffee burns, ranging from mild to third degree, were reported to McDonald's. Furthermore, McDonald's had settled claims arising from coffee burns totaling more than \$500,000, the documents revealed.

Liebeck filed suit in state court alleging that McDonald's coffee was "defective" because it was so hot. McDonald's did not settle with Liebeck, despite her being a sympathetic and articulate plaintiff who had testified that she had never filed suit before. In a court-ordered mediation session days before the trial, the mediator, a retired judge, recommended that McDonald's settle for \$225,000. McDonald's refused. At one point Liebeck was willing to settle for \$150,000, according to Liebeck's attorney, Reed Morgan.

As part of trial preparation, McDonald's local counsel hired a law student to conduct a survey of coffee temperatures at various restaurants. The law student found that none of the restaurants served coffee that came within 20 degrees of McDonald's coffee, which he found to be served at 180 degrees. In fact, according to the McDonald's operations and training manual, coffee is required to be brewed at 195 to 205 degrees and served at 180 to 190 degrees for optimal taste. Unfortunately, that temperature also ensured optimal scalding.

McDonald's denied any liability for Liebeck's injuries and argued that Liebeck contributed to her injuries by holding the cup of coffee between her legs. Furthermore, they argued that the 81-year-old Liebeck should have removed the wet clothing immediately after spilling the coffee. McDonald's also suggested that Liebeck's age "may have caused her injuries to be worse

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Disabilities Act now affects more companies

The Americans with Disabilities Act's prohibitions against discrimination in hiring and promoting practices against people with disabilities expanded to cover 400,000 additional businesses when it took full effect this summer. Previously, the ADA had covered only companies of 25 or more employees. After July 26, 1994, the ADA covered businesses employing 15 or more workers.

The ADA is a comprehensive federal statute designed to protect people with disabilities from employment discrimination. An estimated 48 million Americans are afflicted with one or more mental or physical disabilities. In 1992, approximately 14.3 million disabled people were employed. As employers and disabled

employees become familiar with the requirements of the ADA, more people with disabilities are expected to enter the workforce, according to estimates by the President's Committee on Employment of People with Disabilities.

There are still misconceptions about disabled people and their abilities, says National Easter Seal Society President James E. Williams, Jr. "There are a lot of qualified individuals out there ready and willing to work," Williams points out. In addition, most of those people usually require "very modest accommodation."

Congress modeled the ADA after the Rehabilitation Act of 1973; however, unlike the Rehabilitation Act, which applies only to employers who receive federal funds, the ADA applies to private employers as well. The

ADA also provides more remedies for violations than the Rehabilitation Act. Remedies under the ADA include back pay, legal costs, compensatory damages including future monetary and non-monetary loss, punitive damages, and reinstatement. When court-ordered reinstatement would not be a practical solution following litigation, the ADA also provides for "front pay," allowing a court to award the amount of salary the employee would be expected to earn if she were to work for the employer until the age of retirement.

While several key terms of the ADA's language appear vague, "the law is clear," said Chicago Mayor's Office for People with Disabilities Director Larry Gorski. "You can't discriminate against somebody on the basis of a disability or the perception of a disability. The hardest thing is getting people to change their attitudes," Gorski added.

Some small-business owners worry about how the ADA affects their business and whether a potential or present employee could sue. There are several ways a small-business owner can make sure she is in compli-

ance with the ADA, according to Wendy Lechner, a legislative representative for the National Federation of Independent Business, the nation's largest trade organization representing small and medium-size businesses. Lechner suggests reviewing hiring processes and making sure the language of job application forms does not discriminate by asking about any disabilities. In addition, employers should be prepared to explain to job applicants exactly what specific job requirements are required for each position. Groups and agencies that work on behalf of people with disabilities can offer advice and assistance.

"There's a lot of technical assistance and financial assistance that's available to business to help them implement the ADA," notes Audrey McCrimon, head of the Department of Rehabilitation Services.

In general, the ADA requires employers to provide reasonable accommodations to otherwise qualified individual with a disability, provided that there is no undue burden on the employer. Under the ADA, the legal

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New cigarette lighter regulations protect children

All disposable and novelty lighters manufactured or imported into the U.S. must meet new mandatory regulations for child resistance as of July 12, 1994. The new safety standard, as announced by the Consumer Product Safety Commission (CPSC), aims to reduce the 150 deaths, 1,000 injuries, and more than 5,000 residential fires caused each year by children under five years old playing with lighters.

"The commission worked very hard to implement a regulation that would help prevent young children from starting fires with lighters," said CPSC Chair Ann Brown. "While this child-resistant feature is only a second line of defense, it will go a long way in reducing the 13 fires and two to three injuries a day associated with young children

playing with lighters," Brown explained.

The new standard applies only to disposable butane lighters, inexpensive refillable lighters and certain novelty lighters. Novelty lighters are included because certain novelty lighters that play music, flash lights, or resemble toys, may be attractive to children. Approximately 600 million lighters are purchased each year in the United States, said CPSC Chicago Branch Director Joyce Slatton.

The mandatory safety regulation requires a second step, requiring reasoning or cognitive skills to operate, to ignite a lighter in what has been a single step process in the past. Most children under 5 years old do not have the skills necessary to ignite lighters with a two-step process. Most children who start

fires with lighters are 3 and 4 years old, reports the CPSC.

Manufacturers may choose a variety of methods to comply with the mandate, says CPSC Spokesperson Erick Ault. Lighters will now require depressing a small button or lifting a simple tab before lighting the flame. Lighters can still be operated with one hand. The new standard will add less than 20 cents to the cost of a disposable lighter and up to \$1 for a novelty lighter, the CPSC estimates.

Retail stores are still allowed to sell previously manufactured or imported lighters that do not satisfy the new requirement. However, the CPSC expects the supply of old lighters, and the risk they represent, to be exhausted within approximately six months.

ADA rules reach more businesses

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definition of "disability" is very broad and includes not only people with an impairment, but also people with a record of such impairment, and people regarded or perceived as having such an impairment. The ADA broadly defines an impairment as any physiological disorder or condition which substantially limits a major life activity. This includes caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The ADA also provides protection to people perceived as having such an impairment; therefore, the ADA protects someone who does not have a disability, but is discriminated against on the basis of an employer's erroneous perception.

If an employee has a disability, under the ADA that employee can request "reasonable accommodations" in order to perform the essential job functions. The ADA requires employers to provide reasonable accommodations, such as making facilities readily accessible,

restructuring the job and modifying work schedules, reassigning the employee to a vacant position, adapting equipment, providing readers or interpreters, and appropriately modifying examinations, materials, or policies.

The ADA encourages the employer and employee to work together in determining what accommodations, if any, are required. While the employee's preference should be considered, the ADA does not require the employer to provide the best possible choice. The ADA merely requires the employer to offer a reasonable accommodation which the employee can reject. The employer does not violate the ADA if the employee rejects the reasonable accommodation offered.

In deciding what a reasonable accommodation is, the ADA protects employers from "undue hardship." The ADA defines undue hardship as an action which would require significant difficulty or expense. To determine undue hardship, the ADA lists several factors that are to be considered by the courts, including the nature and cost of the accommodation, the overall financial resources of the facility, the overall

number of employees, and the type of operation. While financial burden to the employer is important, it is only one of many factors according to the ADA. Thus, under the ADA, it may be an undue hardship for a small business to modify existing telephone equipment to accommodate a person with a hearing disability, but it may not be an undue hardship for a large company to provide a similar accommodation.

Scalding coffee burns McDonald's

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than they might have been in a younger individual," since older skin is more vulnerable to injury.

The trial lasted seven days. A McDonald's executive joined a scientist, a doctor, and a human-factors engineer as experts testifying at the trial. Whether the injuries could have been prevented or the severity lessened if the coffee had been served at a cooler temperature was a key issue.

Ultimately, the jury found that McDonald's had engaged in willful, reckless, malicious or wanton conduct. They awarded punitive damages of \$2.7 million, the estimated equivalent of two days of companywide coffee sales. In addition, the jury awarded Liebeck \$160,000 in compensatory damages. They reduced the total amount of damages of \$200,000 after determining that 20% of the fault belonged to Liebeck for spilling the coffee.

For more information...

People who have questions about the ADA can consult the Great Lakes Disability and Business Technical Assistance Center at 1-800-949-4ADA; the Job Accommodation Network at 1-800-526-7234; Jim Watkins, ADA liaison for the Illinois Department of Rehabilitation Services at 217-785-0234; Access Living of Metro Chicago at 312-226-5900; and the Coalition of Citizens with Disabilities in Illinois at 217-522-7016.