

Headquarters U.S. Air Force

Integrity - Service - Excellence

Reasonable Accommodation

Legal Overview of Section 501 of the Rehabilitation Act



U.S. AIR FORCE

***Ms. Kendra Duckworth
Disability Program Manager
Air Force Equal Opportunity Office
HQ USAF/A1Q***

Outline

- I. Legal Overview
- II. Affirmative Hiring
- III. Definitions
- IV. Reasonable Accommodation Obligation
- V. Resources

REHABILITATION ACT

The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by the federal government, federal contractors and by recipients of federal Financial assistance.



- Protects persons with disabilities against discrimination;
- Requires that employers provide reasonable accommodation(s) to qualified applicants and employees with disabilities, where needed;

REHABILITATION ACT

- Requires federal agencies to establish “*affirmative action*” programs for the hiring, advancement and retention of persons with disabilities;
- Prohibits employers from making improper disability-related inquiries or requiring improper medical examinations;
- Requires that employers keep the medical information of all employees confidential;
- Requires that employers comply with anti-harassment standards; and
- Prohibits retaliation by employers.



Rehabilitation Act & ADA

- The Rehabilitation Act of 1973 was the first “civil rights” legislation to prohibit discrimination against persons with disabilities.
- Pursuant to the Rehabilitation Act Amendment of 1992, the ADA's employment standards apply to all non affirmative action employment discrimination claims of individuals with disabilities who are federal employees or applicants for federal employment. 29 U.S.C. §791(g)(1994).



AFFIRMATIVE HIRING

It is legal for federal agencies to give an advantage to individuals with disabilities in hiring, promotion, or other employment decisions.

- An agency is allowed to indicate in a job announcement that it is seeking to recruit or hire individuals with disabilities who are qualified.
- Agencies should affirmatively recruit individuals with disabilities to apply for vacancies, to increase the number of individuals with disabilities in agency applicant pools.



Executive Order 13548

Increasing Federal Employment of Individuals With Disabilities, July 26, 2010

- Reaffirmed Executive Order 13163
 - Federal government to hire 100,000 IWD over five years
- Requires agencies:
 - To develop hiring, retention, and training plans
 - Establish goals for IWD and sub-goals individuals with targeted disabilities
 - Training – emphasis on supervisors and HR professionals
 - To increase use of Schedule A appointing authority
 - To improve return to work outcomes/retention
 - To ensure accessibility of virtual and physical workspaces
 - To evaluate their reasonable accommodation procedures
 - To designate a senior level official responsible for implementation (accountability)
- Agency performance to be made available (transparency)

Reasonable Accommodation Obligation

- **Reasonable Accommodation (RA)** - Any modification or adjustment to a job, an employment practice, or the work environment that enables a qualified individual with a disability to enjoy equal employment opportunities.
- Disability Accommodation is a case-specific and fact-specific process.



Reasonable Accommodation Obligation

- An employer shall hold employees with disabilities to the same standards of performance and conduct as other similarly situated employees without disabilities.
 - An employee with a disability must meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job.
 - Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation.



Definitions

- **Individual with a Disability (IWD)** - A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having an impairment (regardless of whether or not it limits or is perceived to limit a major life activity).
- **Qualified Individual with a Disability** - An individual with a disability, who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.



Definitions

- **Interactive Process** - An interactive communication process with an employee who has requested an accommodation (or otherwise indicated a need) in order to clarify the specific nature of the disability and identify the appropriate reasonable accommodation. This may include asking relevant questions that will enable the supervisor or management official to make an informed decision regarding Air Force's accommodation responsibilities in a specific situation.



Undue Hardship

- Employers do not have to provide RA that would pose undue hardship on the operation of the agency
 - Consider resources and circumstances of the employer in relationship to the cost or difficulty of providing a specific accommodation
 - Unduly extensive, substantial, or disruptive, or would fundamentally alter the nature or operation of the business.
- Budget of the entire agency, i.e., the Air Force as a whole, must be taken into account.

Reasonable Accommodation

- In accordance with the Rehabilitation Act, reasonable accommodations must be made available for:
 - The application process,
 - Performing essential functions of the job,
 - Benefits and privileges of employment.



Reasonable Accommodation

- Benefits and privileges of employment include, but are not limited to, employer-sponsored:
 - Training,
 - Services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and
 - Parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).
- It's about equal access.
 - All federal agency programs, training, events, and any other activities must be fully accessible to all employees and any guests.

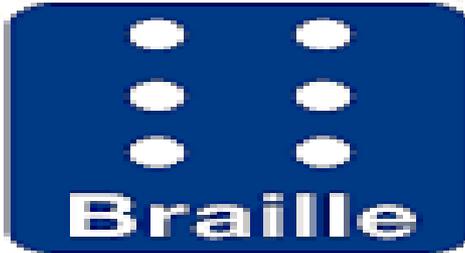
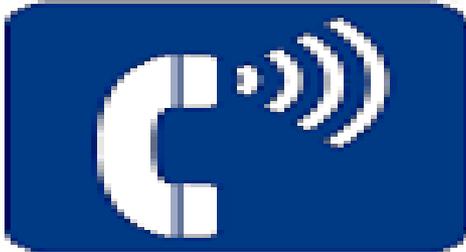
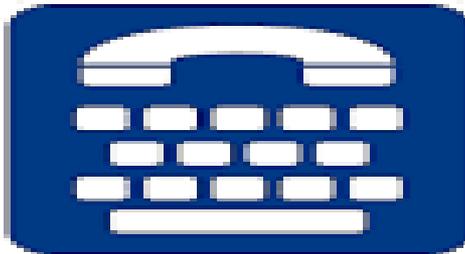


Reasonable Accommodation

- An agency is required to make a reasonable accommodation of a known mental or physical limitation of an individual with a disability who is qualified unless to do so would cause an *undue hardship*.
 - Undue hardship means significant difficulty or expense;
 - Determined based on overall resources of the agency and workplace operations;
 - An agency probably won't be able successfully to assert cost as a defense, since cost will be evaluated in light of agency's entire budget;
 - Agency has burden of establishing undue hardship.

Reasonable Accommodation

- As a general rule, *the individual with the disability* is responsible for informing the agency that an accommodation is needed.



Reasonable Accommodation

Common types of accommodations include:

- Purchasing equipment or modifying existing equipment, as well as making written materials accessible through alternative formats, readers, or other means.
- Providing sign language interpretation, CART, or other means for effective communication.
- Making changes to facilities or work areas.



Reasonable Accommodation

Common types of accommodations (cont'd):

- Job restructuring.
- Altering when and/or how a task is performed.
- Allowing an employee to work from home or a remote location.
- Allowing an employee to use unpaid leave after accrued leave is exhausted for disability-related needs, such as treatment, recuperation, or training.



Reasonable Accommodation

Common types of accommodations (cont'd):

- Modifying a workplace policy.
- Modifying a supervisory method.
- Schedule, change, or switch to part-time work.
- As a last resort, reassignment to a vacant funded position for which the individual is qualified.

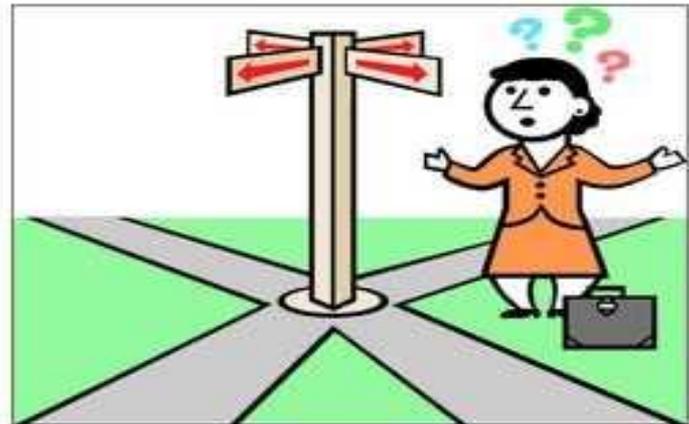


Reasonable Accommodation

What must an employer do after receiving a request for reasonable accommodation?

- The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation (aka “the interactive process”).

Reasonable Accommodation



Medical Documentation

When the disability or the need for reasonable accommodation is not obvious, the supervisor may request medical documentation to determine whether an individual requesting accommodation has a disability, to identify functional limitations and to determine appropriate accommodations.

- Request only the documentation that is needed to establish that a person has a disability and that the disability necessitates a reasonable accommodation.



Medical Documentation

- The requestor may be asked to provide relevant supplemental medical information if the initial information submitted does not clearly explain the nature of the disability or how the requested accommodation will assist the requestor to perform the essential functions of the position or enjoy the benefits and privileges of the workplace.
- Requests for medical information should be narrowly tailored to answer specific questions to help determine if the individual has a disability and/or if reasonable accommodation is needed (and if so, what specifically is required as a reasonable accommodation).



Say “Yes” to Reasonable Accommodation

- All federal agency programs, training, events, and any other activities must be fully accessible to all employees and any guests.
- Assistant Secretary of Defense Memo



ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUN 03 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Access for Individuals with Disabilities to Department of Defense Group Events

The Department of Defense (DoD) has a duty under the Rehabilitation Act of 1973, as amended ("Rehabilitation Act"), 29 U.S.C. §791, to provide accessibility to meetings and other gatherings, referred to in this memorandum as "group events," for qualified individuals with disabilities. In addition, if a group event must be attended by government employees in the course of their employment, there is a duty to reasonably accommodate employees with disabilities under Section 501 of the Rehabilitation Act, 29 U.S.C. §791. This memorandum is a reminder of current DoD policy, as implemented by DoD Directive 1020.1, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," and other relevant regulations.

These requirements apply to a variety of group events, both internal and open to the public, including staff meetings, informational presentations, awards ceremonies, holiday commemorations, retirement ceremonies, and training events as well as video broadcasts and recordings of such events. Commonly requested accommodations for individuals with disabilities at such events include sign language interpretation, Communication Access Realtime Translation (CART, also known as real-time captioning), assistive listening devices, and access to electronic documents that are compliant with Section 508 of the Rehabilitation Act, 29 U.S.C. §794d.

Attached is a document providing details of good practices for DoD Components sponsoring, initiating or facilitating group events. Following these practices will help ensure that DoD group events are fully accessible. Please disseminate this information throughout your Component. Questions about this memorandum should be directed to Mr. Stephen M. King, Director of Disability Programs, Office of Diversity Management and Equal Opportunity at 703-571-9327, or via e-mail to Stephen.King@osd.mil.


F. E. Vollrath

Attachments:
As stated

Say “Yes” to Reasonable Accommodation

- Develop written reasonable accommodation procedures in accordance with Executive Order 13164
- Institutionalize centralized funding for reasonable accommodations throughout your agency.
- Recommendation of E. O. 13548
- Endorsed by EEOC



Reasonable Accommodation

Accommodation Resources

- Computer/Electronic Accommodations Program is a DoD program that provides assistive technologies at **no cost** to federal employees at partnering agencies.
 - Wounded Service Member Initiative
 - Public Accessibility and Communication Initiative
 - CAP Technology Evaluation Center
 - CAP Webinar Series / Training
 - Submit request online at www.cap.mil



Accommodation Resources

- Job Accommodation Network is a free and confidential service sponsored by the Office of Disability Employment Policy, U.S. Department of Labor.
 - www.askjan.org
 - **800-526-7234**

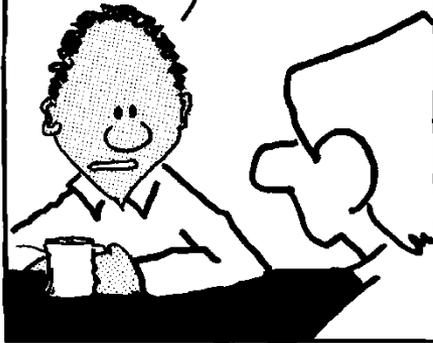


Resources

- Knowledge Articles posted to mypers
 - Reasonable Accommodation
 - Reassignment as a Reasonable Accommodation
- OPM Training “Roadmap to Success”
http://hru.gov/Course_Catalog.aspx?cid=195&mgr=false
- ABCs of Schedule A -
http://www.eeoc.gov/eeoc/initiatives/lead/abcs_of_schedule_a.cfm

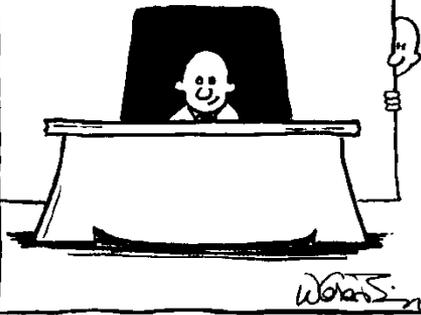
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BLIND PERSON IN THE
V.P.'S OFFICE ON THE
EXECUTIVE FLOOR?



I DON'T KNOW -
WHAT?



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WHAT?

A VICE-PRESIDENT.

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Worries

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Our Attitudes Remain the Real Disability

Finally

- Federal agencies are mandated to be model employers of individuals with disabilities
- We all have a role to play
 - A welcoming, inclusive environment
- Managers have additional responsibilities
 - Agency efforts to attract and retain a diverse workforce
 - Ensure that employees have the tools they need to perform their duties and to access the benefits and privileges of employment
- Human Resources and EEO Professionals
 - Play an integral supporting role in supporting management
 - Knowledge of laws, regulations, tools and resources are key
 - Collaboration is required

Questions?

Ms. Kendra M. Duckworth
Disability Program Manager
Department of the Air Force
Equal Opportunity Policy Office
JB Andrews, MD 20762
240-612-4006 DSN 612-4006
kendra.m.duckworth.civ@mail.mil



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