



Rehabilitation Act Compliance Obligations

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**A hero is an ordinary individual who finds the strength to persevere and endure in spite of overwhelming obstacles.
- Christopher Reeve**

Training Objectives

- **Understand the history of disability discrimination**
- **Understand what are considered disabilities**
- **Understand that not all disabilities are visible**
- **Understand the unemployment rate for people with disabilities**
- **Understand the Rehabilitation Act**
- **Understand the most common forms of disability discrimination**
- **Understand disability harassment**
- **Understand reasonable accommodations**
- **Understand undue hardship**
- **Understand the utilization goal for people with disabilities compliance**

Training Objectives

- **Understand the role of the OFCCP**
- **Understand the difference between the Rehabilitation Act of 1973 and the American Disability Act of 1990**
- **Understand what are Affirmative Action Plans (AAP's)**
- **Understand which organizations need to comply with AAP**
- **Understand the consequences of noncompliance with AAP**
- **Examples of organizations charged with noncompliance**
- **Understand interview questions do's and don'ts**
- **Quiz**



Does a picture like this remind us of the time we were thinking of?

Salem Witch Trials



It has been suggested that some of the “witches” that were put to death were actually individuals who had intellectual and psychiatric disabilities.

1817 The American School of the Deaf



The first school for primary and secondary education to receive federal aid when it was granted a tract of land in the Alabama territory.

1840 P.T. Barnum & The American Museum



Phineas Taylor Barnum purchased the American Museum and began to exhibit people with disabilities as a form of entertainment.

What are Considered Disabilities?

- **Autism**
- **Autoimmune disorder, for example, lupus, fibromyalgia, rheumatoid arthritis, or HIV/AIDS**
- **Blind or low vision**
- **Cancer**
- **Cardiovascular or heart disease**
- **Celiac disease**
- **Cerebral palsy**
- **Deaf or hard of hearing**
- **Depression or anxiety**

What are Considered Disabilities?

- **Diabetes**
- **Epilepsy**
- **Gastrointestinal disorders, for example, Crohn's Disease, or irritable bowel syndrome**
- **Intellectual disability**
- **Missing limbs or partially missing limbs**
- **Nervous system condition for example, migraine headaches, Parkinson's disease, or Multiple sclerosis (MS)**
- **Psychiatric condition, for example, bipolar disorder, schizophrenia, PTSD, or major depression**

Who has a disability?



How Many Adults in the United States Live with a Disability?



- A. 21 Million
- B. 31 Million
- C. 41 Million
- D. 51 Million
- E. 61 Million
- F. 71 Million

Key Statistics

The unemployment rate for people with a disability:

2022	8.3%
2021	10.1%
2020	12.6%
2019	7.3%
2018	8.0%
2017	9.2%



1973 Rehabilitation Act

It is a Federal Law enacted on September 26, 1973.

It was signed by President Richard Nixon.





The Rehabilitation Act has a long history. It began with the Smith-Hughes Act enacted in 1917, which created a Federal Board of Vocational Education with responsibility for addressing VR needs of veterans with disabilities. Over the years, legislation expanded VR services to civilians with disabilities and broadened the type of assistance and services provided.

An act to replace the vocational rehabilitation act, to extend and revise the authorization of grants to states for vocational rehabilitation services, with special emphasis on services to those with the most severe disabilities, to expand special federal responsibilities and research and training programs with respect individuals with disabilities, to establish special responsibilities in the secretary of health, education, and welfare for coordination of all programs with respect to individuals with disabilities within the Department of Health, Education, and Welfare, and for other purposes.

Principal sections of Title V – Rights and Advocacy of the Rehabilitation Act of 1973

- Section 501, which bars employment discrimination in the federal government
- Section 502, which created the Architectural and Transportation Barriers Compliance Board to enforce standards set by the Architectural Barriers Act of 1968
- Section 503, which prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires those employers to take affirmative action to recruit, hire, promote, and retain these individuals

Principal sections of Title V – Rights and Advocacy of the Rehabilitation Act of 1973

- Section 504, which prohibits discrimination on the basis of disability in programs receiving federal financial assistance
- Section 505, which addresses remedies and attorneys' fees under Section 501
- Section 508, which promotes access to communication and computer technology

**“Injustice Anywhere is a Threat to Justice Everywhere.”
- Martin Luther King Jr.**

What are the Most Common Forms of Disability Discrimination?



Who is a Disabled Person?

A disability is any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions).



What are the Most Common Forms of Disability Discrimination?

1. Refusing to Hire a Job Applicant Based on Their Disability
2. Firing or Demoting an Employee Because of Their Disability
3. Failing to Give Disabled Employees the Same Opportunities
4. Harassing an Employee Based on Their Disability
5. Failing to Provide Reasonable Accommodations

1. Refusing to Hire a Job Applicant Based on Their Disability



According to the law, a prospective employer is generally not allowed to ask you disability-related questions or require you to get a medical examination until after they have made you a conditional job offer.

2. Firing or Demoting an Employee Because of Their Disability

It is **illegal** for an employer to **take any adverse or negative action** against a qualifying worker based on a real or assumed disability.



Examples of Adverse Employment Actions

- Firing you or demoting you from your position
- Terminating your employment contract
- Changing your schedule or cutting your hours
- Failing to assign you to priority projects
- Refusing to put you in a client-facing role
- Denying you deserved promotions while your coworkers progress
- Cutting you out of benefits that other employees enjoy
- Taking unfair disciplinary action against you
- Reducing your pay, salary, or benefits

3. Failing to Give Disabled Employees the Same Opportunities



Employers can't treat employees differently than other employees because they have a disability.

4. Harassing an Employee Based on Their Disability

Disability discrimination and harassment can lead to a toxic or hostile work environment, which can cause stress, anxiety, depression, and mental anguish



Examples of Disability Harassment

- Verbal harassment such as teasing, jokes, or slurs based on the disability
- Intrusive comments or questions about the disability at work
- Singling an employee out for different treatment based on their disability
- Refusing to offer reasonable accommodation for the individual with the disability to do their job
- Failing by management to stop harassing behavior once it's reported
- Forcing employees into positions that aggravate their disability
- Repeatedly making assumptions about their capabilities

5. Failing to Provide Reasonable Accommodations



Examples of Reasonable Accommodations

- Making existing facilities more accessible
- Restructuring non-essential duties of a job
- Schedule modifications based on the individual needs
- Protected leave time for medical treatments and care
- Adjusting or modifying application procedures
- Adjusting or modifying training material or policies
- Acquiring or modifying equipment
- Last resort – reassignment to a vacant position

Undue Hardship



Do the Section 503 regulations require contractors to collect and document specific data related to the number of applicants and hires?



Data Collection

- For applicants: the total number of applicants for employment, and the number of applicants who are known individuals with disabilities;
- For hires: the total number of job openings, the number of jobs filled, and the number of individuals with disabilities hired;
- The total number of job openings; and
- The number of jobs that are filled.

This data must be retained for **three years**.

**Do the regulations include a national utilization goal?
What is a utilization goal?**



If I am a federal contractor, does my company have to use the utilization goal? How do I apply it to my workforce?



**What happens if my company does not meet the 7% goal?
Will we be sanctioned or fined?**



When should my company invite pre-offer self-identification from applicants? Is the timing the same for internet applicants?



Are there other requirements related to voluntary employee self-identification, in addition to the requirement that contractors provide applicants a voluntary pre-offer self-identification opportunity?



Under the regulations, must a contractor hire an individual with a disability who is not the best qualified but who meets the minimum requirements of the job for the purposes of affirmative action?



No. Section 503 regulations do not require contractors to hire an individual who is not qualified for the position being sought. Nor do they require contractors to hire a less qualified candidate instead of the best-qualified candidate for the purposes of affirmative action. However, it would not violate Section 503 for a contractor to select a person with a disability over a candidate without a disability who was equally or better qualified, so long as that selection was not based on a prohibited factor such as race, gender or ethnicity.

Affirmative Action Programs



An AAP is a management tool designed to ensure equal employment opportunity. These programs are meant to ensure that a company or institution's workforce will reflect the available labor pools. Companies are tasked with evaluating, and updating as necessary, company practices to ensure equal employment opportunity is achieved.

Who Needs to Comply with AAP?

Non-construction federal contractors and subcontractors with 50 or more employees are required to develop an AAP for each of their organizations within 120 days from the start of a federal contract, if they meet one of the following requirements:

- HAVE A FEDERAL CONTRACT OR SUBCONTRACT TOTALING \$50,000 OR MORE HAVE GOVERNMENT BILLS EXPECTED TO TOTAL \$50,000 WITHIN A 12-MONTH PERIOD
- SERVE AS A DEPOSITORY OF FEDERAL FUNDS TOTALING ANY AMOUNT
- ARE A FINANCIAL INSTITUTION THAT IS AN ISSUING AND PAYING AGENT FOR U.S. SAVINGS BONDS AND SAVINGS NOTES IN ANY AMOUNT.

What are the Consequences of Noncompliance



Consequences of Noncompliance

- If a contractor is in violation of the regulations and fails or refuses to come into compliance, the contractor may be subject to sanctions, including suspension or debarment of their Federal Government contracts.
- A contractor may only be reinstated upon a finding that the contractor has come into compliance and has shown that it will comply in the future.

Examples of Organizations Charged for Noncompliance

- June 23, 2022 Becton, Dickinson and Company agrees to pay a total of \$499,349 in back pay and interest to resolve alleged hiring discrimination
- May 3, 2022 LinkedIn agrees to pay a total settlement amount of \$1,800,000 in back pay and interest to resolve alleged pay discrimination on behalf of 686 female workers in California
- April 28, 2022 US Department of Labor agreement with Rockland Bakery Inc. requires employer to pay \$850,000 in back pay and interest to resolve hiring discrimination allegations

Interview Questions Do's

- Ask applicant about ability to perform job related functions
- Ask applicant to describe or demonstrate how he/she will perform job related functions
- Ask applicant to be interviewed if special accommodations will be needed



Interview Questions Don'ts

- Applicant whether he/she is disabled or about the nature or severity of the disability
- Require an applicant to take a medical examination before making the offer
- Request disability related information from a previous employer, family member, or other source
- Have you ever been hospitalized or treated for a mental disorder?
- How many days were you absent last year due to illness?

Interview Questions Don'ts

- Do you have any known physical disabilities?
- Are you taking any medications?
- Have you ever been treated for alcoholism or drug addiction?
- Do you have any physical or mental impairment that would affect your job performance?
- Have you ever filed a workers' compensation claim?

1. Which agency enforces section 503 of the Rehabilitation act of 1973?

- A. EEOC
- B. OSHA
- C. OFCCP
- D. NLRB

2. The unemployment rate for people with disabilities is generally:

- A. Half the rate of people with no disabilities
- B. Twice as much as of people with no disabilities
- C. Three time as much as of people with no disabilities
- D. Exactly the same as of people with no disabilities

3. The Utilization goal for people with disabilities is:

- A. 3%
- B. 5%
- C. 7%
- D. 9%

4. All of the following are examples of reasonable accommodation EXCEPT:

- A. Schedule modifications based on the individual needs
- B. Protected leave time for medical treatments and care
- C. Providing personal equipment such as a wheelchair
- D. Adjusting or modifying application procedures

5. For how long data collection of job opening and number of applicants and hires must be retained?

- A. 2 years
- B. 3 years
- C. 5 years
- D. 7 years

5. How many employees does a company needs to have to prepare, implement, and annually update a written affirmative action program (AAP)?

- A. 1 or more
- B. 15 or more
- C. 50 or more
- D. 100 or more

6. How much business does a company needs to have to prepare, implement, and annually update a written affirmative action program (AAP)?

- A. \$25,000 or more
- B. \$50,000 or more
- C. \$100,000 or more
- D. \$150,00 or more

7. To prove an undue hardship defense an employer must do which of the following?

- A. Demonstrate that it is significantly expensive
- B. Demonstrate that it is significantly disruptive
- C. Needs to present evidence
- D. All of the above

8. All of the following questions can be asked during an interview EXCEPT:

- A. Ask applicant about ability to perform job related functions
- B. Ask applicant to describe or demonstrate how he/she will perform job related functions
- C. Ask applicant to be interviewed if special accommodations will be needed
- D. Ask applicant if they take any medication for their disability

How many adults live in the United States with a disability?

- A. 1 in 4
- B. 1 in 10
- C. 1 in 15
- D. 1 in 20

10. All of the following are true EXCEPT:

- A. An AAP is a management tool designed to ensure equal employment opportunity
- B. These programs are meant to ensure that a company or institution's workforce will reflect the available labor pools
- C. Companies are tasked with evaluating, and updating as necessary, company practices to ensure equal employment opportunity is achieved
- D. Quotas are required in AAP to correct the underrepresentation of protected classes

**“People with Disabilities Do Not Need To Be Fixed;
They Need to Be Accepted For Who They Are.”**

- Jordan Christian

Questions

