CREATING A DISABILITY-INCLUSIVE WORKPLACE:
The Role of Accommodations

Facts About the Rehabilitation Act and Americans with Disabilities Act

Workplace disability inclusion enables employers to benefit from the skills and abilities of people with disabilities. Inclusion not only fosters a diverse workforce, but also expands an organization's market reach. The Rehabilitation Act of 1973 (Rehab Act) and the Americans with Disabilities Act of 1990 (ADA), which guarantee equal opportunities for people with disabilities, provide a foundation for disability inclusion. In 2023, we celebrate the anniversaries of these significant legislative accomplishments and take pride in the growth of disability-inclusive workplaces.

The Rehabilitation Act of 1973

The Rehab Act has several sections, including:

- **Section 501** of the Rehab Act requires affirmative action and prohibits employment discrimination against people with disabilities in the federal sector, including the U.S. Postal Service, the Postal Regulatory Commission, and the Smithsonian Institution. It does not require these entities to have a minimum number of employees at the worksite for coverage. Section 501 is administered by individual agencies’ Equal Employment Opportunity (EEO) offices. On January 3, 2017, the U.S. Equal Opportunity Commission (EEOC) issued a final rule to amend the regulations implementing Section 501. The rule requires each federal agency to adopt the goal of having 12% of its workforce be people with disabilities, and a sub-goal of 2% of its workforce be people with targeted disabilities. These goals apply at both higher and lower salary levels. Targeted disabilities are a subset of the larger disability category. The Federal Government has recognized that qualified people with certain disabilities face significant barriers to employment, above and beyond the barriers faced by people with a broader range of disabilities. To learn more about the rule, read EARN’s Section 501 policy brief, visit the EARN 501 Info Center, or read more about inviting applicants and employees to voluntarily self-identify as a person with a disability.

- **Section 503** of the Rehab Act prohibits employers with federal contracts (or subcontracts) from discriminating against applicants and employees with disabilities and requires affirmative steps to hire, retain, and promote people with disabilities. The nondiscrimination provisions apply to employers with federal contracts over $15,000 and any number of employees, while the affirmative action provisions apply to employers with 50 or more employees and contracts of $50,000 or more. In 2014, updates to Section 503 strengthened its affirmative action requirements and created a 7% representation goal. The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) also set a requirement that employers must invite applicants and employees to self-identify as
people with disabilities (applicants at both the pre-and post-offer stage and employees every five years). OFCCP administers and enforces section 503 and offers extensive information about its requirements on the agency’s Section 503 webpage.

Learn about best practices to help federal contractors meet their obligations under Section 503 and recruit, hire, advance, and retain workers with disabilities.

- **Section 504** of the Rehab Act prohibits discrimination against people with disabilities by any program or activity receiving federal financial assistance or by any program or activity conducted by a federal executive agency or the U.S. Postal Service. For programs or activities receiving federal financial assistance, there is no minimum threshold for coverage. Furthermore, there is no requirement that recipients or executive agencies have a certain number of employees. Section 504 protects not only people with disabilities who apply to and participate in such programs, but also job applicants and employees of the organizations that provide them. Each federal agency issues, administers, and enforces its own set of Section 504 regulations tailored to its programs, although all such regulations share common requirements.

- **Section 508** of the Rehab Act addresses the accessibility of information technology. Specifically, it requires federal agencies’ information and communications technology (ICT) to be accessible to people with disabilities—including not only members of the public but also employees. Although Section 508 only applies to federal agencies, many private employers have adopted its standards as a way to ensure their technology infrastructure is accessible. The Partnership on Employment and Accessible Technology (PEAT), which is funded by DOL’s Office of Disability Employment Policy (ODEP), provides a wealth of resources for employers on how to “think accessible” when it comes to technology. PEAT resources include a guide for employers and TalentWorks, an online tool that can help employers and human resources professionals ensure their online job applications are accessible.

**The Americans with Disabilities Act (ADA)**

Signed into law in 1990, the ADA is civil rights legislation that works to increase the inclusion of people with disabilities in all aspects of community life, including employment.

The ADA consists of five distinct titles that prohibit discrimination against people with disabilities in key areas of public life, such as telecommunications, public services, and public accommodations. **Title I** protects people with disabilities from employment discrimination and promotes equal opportunities in the workplace. It covers private employers and state and local government employers with 15 or more employees. It also applies to employment agencies, labor unions, and joint labor-management committees, regardless of the number of employees. **Title II** of the ADA covers programs, activities, and services of public entities. As part of this, it prohibits public entities, regardless of the size of the workforce, from discriminating against “qualified individuals with disabilities” in their employment practices. Thus, all state and local government employers are covered by Title II.

In addition to prohibiting discrimination, the ADA requires covered employers to provide “reasonable accommodations” to qualified job applicants and employees with disabilities, absent undue hardship. A reasonable accommodation is defined as any change or adjustment to a job, work environment, or the way things are usually done that would allow a person with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees.
The ADA Amendments Act (ADAAA) of 2008 became effective on January 1, 2009. The EEOC amended the ADA regulations to reflect the changes made by the ADAAA. Final regulations were published in March 2011. The ADAAA and its regulations impacted several prior Supreme Court decisions and made several significant changes to the ADA, including:

- The definition of “disability” was expanded from “limitation in major life activities” to include major bodily functions and established nine “rules of construction” explaining how to determine if a person is substantially limited in a major life activity.
- Discrimination is now prohibited “on the basis of disability” rather than “against a qualified individual with a disability because of the disability of such individual.”
- In keeping with Congress’s direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis.

Because of their alignment, both the Rehab Act and the ADA lay the legal framework for integrating workplace disability inclusion. Both laws require employers to provide reasonable accommodations to people with disabilities, which are critical to the success of many people in the workplace.

**Questions & Answers about the ADA & Rehab Act**

**Q: What are reasonable accommodations?**
A: Title I of the ADA and Section 501 of the Rehab Act require an employer to provide reasonable accommodations (changes to the ways things are usually done) to employees and job applicants who have or had an impairment that substantially limits a major life activity, unless doing so would cause undue hardship for the employer. A reasonable accommodation can help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment without disabilities.

**Q: What is undue hardship?**
A: An employer does not have to provide a reasonable accommodation that would cause an “undue hardship” to the employer. Undue hardship is based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

**Q: What does it mean to be a “qualified” person with a disability?**
A: A qualified person with a disability who is eligible for accommodations under the law must have a disability (as defined by the applicable laws) and possess the skills, experience, education, and other job-related requirements of the job. To be qualified, the person must be able to complete the essential functions of the position, with or without reasonable accommodation.

**Q: What is an essential job function?**
A: Essential functions are the core job duties that an employee must be capable of performing to be considered qualified for a particular position. For example, an airline pilot spends only a few minutes of a flight landing a plane, but landing the plane is an essential function because of the very serious consequences if the pilot could not perform this function.

The EEOC provides guidance on reasonable accommodation and is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the disability. The Job Accommodation Network (JAN), an ODEP-funded technical assistance center, provides practical application advice to employers.
Reasonable Accommodations: An Interactive Process

Employers should engage in an ongoing, flexible, and interactive process with employees to determine effective and appropriate reasonable accommodations. This practice is most effective when the employer and employee collaborate to find a mutually beneficial solution.

For assistance in engaging in the interactive process, consider speaking with one of the experts at JAN. JAN is the leading source of free, confidential guidance on job accommodations and disability employment issues. JAN provides one-on-one practical guidance and technical assistance on job accommodation solutions, Title I of the Americans with Disabilities Act (ADA), and related legislation.

JAN offers the following outline for an interactive process, including sample dialogue:

1. **Requesting an Accommodation**
   - When an employee indicates a work-related challenge due to a medical condition/disability, employers should consider whether the employee is making a request for reasonable accommodation.
   
   “I am having trouble concentrating on my work because of my migraines.”

2. **Gathering Information**
   - Employers should gather any information necessary to address the employee's request. This includes engaging in a transparent conversation, requesting formal documentation of the disability, and need for the accommodation.

   “Can you tell me more about your situation? Do you experience migraines at a certain time of day or in specific environments?”

3. **Exploring Accommodation Options**
   - The employee experiencing the limitation may have ideas about effective accommodations. Inviting the employee to suggest ideas or consider whether an employer's ideas are appropriate is pivotal to the interactive process.

   “My headaches get worse when I’m in our conference room. Is there another place I can work where I can shut the door and turn off the lights?”
Choosing an Accommodation

With this information, employers should consider the employee's preferences and select in partnership with the employee which accommodation(s) to implement. Part of the interactive process is knowing that the accommodation can change. Employers and employees may want to consider a trial period to test whether the accommodation meets the employees' needs.

“We don’t have access to a private office for the full workday, but you can use the space at the end of the hall whenever you need it for a few hours at a time. Let’s try this and see how it goes for two weeks.”

Implementing an Accommodation

Employers should take all necessary steps to implement the accommodation promptly and properly. Employers should also communicate any work-related changes to relevant supervisors, while maintaining the employee's confidentiality by only providing information on a “need to know” basis.

“The extra office is available to you anytime it is not in use, but please inform your manager whenever you plan to use it.”

Monitoring the Accommodation

Ongoing communication is key to monitoring accommodations. During the trial period, and periodically as necessary, employers should check in with the employee to see if the accommodation is working effectively.

“It’s been a few months since you’ve started to use the extra office. Has your concentration improved? Is access to a dark, quiet space still helpful for your migraines?”

JAN offers more information about reasonable accommodations and the interactive process.

Examples of No or Low-Cost Reasonable Accommodations

- Accessible online documents, applications, and software
- Preferential parking spaces
- Unobstructed pathways
- Mentors
- Ergonomic furniture (chair with headrest, standing desk, footrest)
- Schedule Modifications (breaks, hybrid/flexible arrangements, telework, alternate work schedule)
- Captions for virtual meetings/trainings
- Speech-to-Text, Text-to-Speech technology
- Inclusive and flexible policies (leave and absence, benefits, dress code)
- Alternative presentation of tasks/responsibilities (written vs. spoken)
- Frequent team check-ins
- Noise-cancelling headphones
- Equipment (calculators, clipboards, speakers, armrests)
- Adjusting brightness settings on lights and shared equipment
Resources

EARN:
- ADA of 1990
- ADA & Workplace Safety
- Medical Inquiries
- Rehabilitation Act of 1973 (Rehab Act)
- Reasonable Accommodations

JAN:
- Accessibility Under the ADA
- ADA Library
- Employers’ Practical Guide to Reasonable Accommodation Under the ADA
- Workplace Accommodation Toolkit
- Costs and Benefits of Accommodation
- Accommodation and Compliance: Rehabilitation Act
- The ADA: A Brief Overview
- EEOC Resources on the ADA

DOL:
- Accommodations
- The ADA
- Employers and the ADA: Myths and Facts
- Reasonable Accommodations for Employees and Applicants with Disabilities

EEOC:
- Rehabilitation Act of 1973
- ADA of 1990 (Original Text)
- The ADA: Your Responsibilities as an Employer
- EEOC Factsheet on Disability Discrimination

Additional Resources:
- ADA.gov
- ADA National Network: What is the ADA?
- USA.gov: Your Rights Under the ADA
- U.S. Access Board: ADA Accessibility Standards

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