



***CHAPTER VI***  
***COMPLAINT INVESTIGATION***



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## **6A INTRODUCTION TO CHAPTER VI**

This Chapter outlines the procedures to be used in processing and conducting the investigation of complaints alleging discrimination in employment by Government contractors. It focuses on the responsibilities of the CO with respect to investigation and resolution of complaints.

## **6B APPLICABILITY**

These procedures apply to complaints alleging employment discrimination in violation of:

- (a) Executive Order 11246, as amended;
- (b) Section 503 of the Rehabilitation Act of 1973, as amended; and
- (c) Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

The Order and Acts are implemented by regulations published in Chapter 60, Title 41 of the Code of Federal Regulations (41 CFR), specifically:

- (a) 41 CFR Parts 60-1 through 60-60;
- (b) 41 CFR Part 60-250; and
- (c) 41 CFR Part 60-741.

Individual complaints alleging employment discrimination in violation of Executive Order 11246, as amended, are generally referred to the Equal Employment Opportunity Commission (EEOC) pursuant to the EEOC/OFCCP Memorandum of Understanding. (46 FR 7435, January 23, 1981) Referrals to EEOC are generally handled at the Regional Office (RO) level.

## **6C FILING A COMPLAINT**



## ***6C00 INTAKE***

The OFCCP ROs are responsible for implementing the procedures, restrictions, and policies applicable to the disposition of all complaints filed under the above (6B) Order and Acts. The OFCCP Administrative Practices Binder (Green binder) contains the full exposition of this process. Complaints which are determined to be within the authority of OFCCP are assigned to an Area Office (AO)/ Field Office (FO) for investigation. This Chapter does not cover regional or other administrative matters except as they directly involve the Compliance Officer (CO).

## ***6C01 COMPLAINT FILING***

Complaints filed at any OFCCP location other than the appropriate RO should be sent immediately to the RO which has geographic jurisdiction over the area in which the identified establishment of the contractor is located. The location that receives the complaint will immediately date stamp the complaint and enter the date and time it was received into a log before forwarding it to the RO. This will be the date used for determining whether the complaint was timely filed. Generally, every effort should be made to have the complaint complete and sign Form CC-4 (Figure 6-18).

## **6D AREA/FIELD OFFICE PROCESSING: GENERAL**

### ***6D00 CASE FILE***

Upon receipt of an assigned complaint, the DO/AO will establish a case file. All documents, correspondence, interview notes, and records of telephone calls pertaining to the complaint should be maintained in this file. Upon the completion of the investigation, the case file should contain sufficient documentation to support either an enforcement recommendation based on a finding of violation or a decision to close the file based on a finding of no violation.

### ***6D01 CORRESPONDENCE***

All letters to a contractor concerning a complaint should be addressed to the senior official of the establishment with a copy for the chief executive officer (CEO) at the corporate address (except when the contractor is a single-location establishment).



### ***6D02 COUNSEL OR OTHER REPRESENTATION***

A contractor or complainant may designate an attorney or other representative as his/her contact person with OFCCP prior to or during a complaint investigation. Such designation shall be at the initiation of the contractor or complainant.

- (a) Written Designation: The designation of a contact person must be in writing by the contractor or complainant to the District or Area Office Director or Regional Director. This correspondence should provide the name, address, and telephone number of the contact person. In addition, the correspondence should clearly describe the extent of the contact person's authority, specifically:
- (1) If all contacts, including routine contacts to make appointments or to clarify submitted data or other information, should go through the contact person;
  - (2) If the contact person has the authority to negotiate settlements for the contractor or complainant; and
  - (3) If correspondence is to be mailed only to the contact person, or if copies are to be mailed to the contractor or complainant as well.
- (b) Duration of Designation: Such designation shall be only for the duration of the complaint investigation, unless otherwise indicated by the contractor or complainant in the written designation.

### ***6D03 TIMELY COMPLETION***

The DO/AO must complete the investigation within sixty (60) days after receiving the complaint from the RO, unless an extension of this period is granted by the Regional Director (RD). OFCCP policy on granting extensions is found in Order No. FCCM 83-10/CH 6, formerly 630a5, which is filed in the Administrative Binder behind the "COMPL" tab. Also, this period may be extended for up to (sixty) 60 days to provide the contractor the opportunity to process an employee complaint pursuant to 41 CFR 60-250.26(b) and/or 60-741.26(b).

### ***6D04 COMPLAINT ADMINISTRATION SYSTEM (CAS)***



The CAS is designed to track and monitor the processing of complaints filed with OFCCP. The DO/AO has specific responsibilities for providing information for entry into this automated system. These responsibilities begin with the receipt of the assigned complaint from the RO and end when the complaint file is closed. Specific instructions are found in the CAS Manual.

## **6E PROVIDING THE CONTRACTOR A COPY OF THE COMPLAINT**

### **6E00 GENERAL**

OFCCP regulations (41 CFR 60-250.26(b) and 60-741.26(b)) require that when a complaint is filed under Section 503 or 38 U.S.C. 2012 by an employee and the contractor has an applicable internal review procedure, the complaint shall be referred to the contractor for processing under that procedure. This requirement does not extend to complaints filed under the Executive order or complaints filed under Section 503 or 38 U.S.C. 2012 by someone other than an employee; e.g., a rejected applicant for employment. However, in the interests of consistency and evenhanded administration of its programs, OFCCP will also provide a copy of the complaint to the contractor even where there is no regulatory requirement to do so.

### **6E01 REVIEW OF COMPLAINTS BEFORE RELEASE**

- (a) Copy of Complaint: A full copy of the complaint will normally be provided to the contractor except to the extent it contains the following types of information which may be deleted. (Try to make any deletions so that the remaining text reads as smoothly as possible.)
- (1) The name and/or other information which would readily permit the identification of a person other than the complainant who might suffer retaliation, be construed as an informer, or suffer embarrassment or other unwarranted invasion of privacy.
  - (2) Obscene, inflammatory, or libelous language.
  - (3) Names and allegations against more than one company. Delete the name and allegations against company #1, from the complaint copy provided to company #2, and vice versa.
  - (4) The identifying characteristics of individuals named or readily identifiable in a third-party complaint that they have not signed or authorized.





- (b) Summary of Complaint: If the necessary deletions are extensive, a complaint summary may be prepared for forwarding to the contractor. If a summary is used, the CO, at the initial interview with the complainant, should obtain a redrafted complaint for submittal to the contractor prior to the onsite investigation.

***6E02 PROVIDING THE CONTRACTOR A COPY OF SECTION 503/38 U.S.C. 4212  
EMPLOYEE COMPLAINTS (INTERNAL REVIEW)***

- (a) General: All correspondence indicated below is to be sent certified mail, return receipt requested.

NOTE: The term employee may include, as used in this section, persons currently on the contractor's payroll and those who have been terminated, but who continue to have grievance or reemployment rights under a collective bargaining agreement or as a matter of company policy.

- (b) Internal Review Notice: Upon receiving the assigned complaint from the RO, the DO/AO will send a copy of the complaint to the contractor using the sample letter at Figure 6-1. Also, the complainant will be notified by using the sample letter at Figure 6-2. The DO/AO is responsible for keeping track of the 10-day period in which the contractor has been asked to reply. At the end of ten (10) days, if the contractor has not replied, the CO is to telephone the contractor to determine its intentions.
- (c) Internal Review to Be Used: If the contractor informs the DO/AO that it will use its internal review procedure, confirm this by using the sample letter at Figure 6-3. Also, notify the complainant by using the sample letter at Figure 6-4. The 60-day internal review period begins from the date the contractor received the first letter (b, above) as evidenced by the return receipt. The DO/AO is responsible for keeping track of the 60-day internal review period.
- (d) Internal Review Not Being Used: If the contractor informs the DO/AO that it will not attempt resolution through its own procedures, confirm this by using the sample letter at Figure 6-5. Also, notify the complainant by using the sample letter at Figure 6-6. The DO/AO should schedule the investigation as soon as possible.
- (e) Results of the Internal Review: At the end of the 60 day internal review period, if the DO/AO has not been informed of the results of the internal review, the CO should contact the contractor and the complainant to determine if there has been a resolution of the complaint satisfactory to the complainant.



- (f) Resolution of the Complaint: If the DO/AO is notified that the complaint has been resolved to the satisfaction of the complainant, every effort should be made to obtain written confirmation from the complainant and the contractor. Whether or not written confirmation is obtained, the DO/AO will confirm the notification by using the sample letters at Figures 6-7 and 6-8. The complaint case file may then be closed.
- (g) Complaint Not Resolved: If the DO/AO is notified that the internal review failed to reach a resolution satisfactory to the complainant, confirm this by using the sample letters at Figures 6-9 and 6-10. The DO/AO should schedule the investigation as soon as possible.

### ***6E03 PROVIDING THE CONTRACTOR A COPY OF EXECUTIVE ORDER AND OTHER SECTION 503/38 U.S.C. 4212 COMPLAINTS***

- (a) General: This section describes the process of providing the contractor with a copy of the complaint in those circumstances which are not included in 6E02 above. All correspondence indicated below is to be sent certified mail, return receipt requested.
- (b) Notice to Contractor: Upon receiving the assigned complaint from the RO, the DO/AO will send a copy of the complaint to the contractor using the sample letter at Figure 6-11. Also, the complainant will be notified by using the sample letter at Figure 6-12. The DO/AO should schedule the investigation as soon as possible.
- (c) Resolution of the Complaint: If, as a result of the notice to the contractor, a resolution is achieved which is satisfactory to the complainant, follow the procedures in 6E02(f) above, with whatever modifications individual circumstances may dictate.

## **6F THE INVESTIGATION**

### ***6F00 DISCRIMINATION***

A complaint is merely an allegation of discrimination. The purpose of investigating an allegation of discrimination is to determine if in fact discrimination did occur. Unfairness, per se, is not equivalent to discrimination. See Chapter 7 for a detailed discussion of employment discrimination. The CO must exercise objectivity, reasoned thoughtfulness, and common sense in collecting and analyzing all available



facts pertinent to each investigation. No two sets of fact situations are the same; each investigation must be conducted in an atmosphere of open-mindedness and fairness to both parties.

- (a) Relationship to Compliance Reviews: Complaint investigations may be done with or without a compliance review except that full compliance reviews should be conducted whenever the complaint appears to involve systemic or class type discrimination and the contractor's establishment has not been reviewed in the two years prior to the filing of the complaint.
- (b) Investigative Priority: In scheduling complaints for investigation, the DO/AO should take immediate action on any complaint alleging retaliation or irreparable injury for filing a complaint with OFCCP, or for assisting in an OFCCP compliance review, complaint investigation, or enforcement action. (See 41 CFR 60-1.32, 60-250.51, and 60-741.51.) The DO/AO should also take immediate action on complaints from job applicants.

#### **6F01 THE INVESTIGATIVE PLAN**

- (a) Purpose of Plan: Every complaint investigation should have a plan. The investigative plan serves as a checklist or road map for the conduct of the investigation. While every step along the way may not be identified, the plan should contain the major actions to be taken. Because each complaint is based on a unique set of factual circumstances, so too must the plan be tailored to the particular circumstances described in the complaint. It should be recognized that the plan is subject to modification based on new or revised information. Experience in some OFCCP offices has shown that a more useful and comprehensive plan results when the assigned CO has discussed the complaint with his/her supervisor or with other COs in a structured meeting.
- (b) Content: It is not intended here to specify every item contained in a plan. However, most investigations will encompass and most plans should contain or provide for:
  - (1) A complete list of the allegations in the complaint;
  - (2) Interviewing the complainant;
  - (3) Obtaining the necessary Privacy Act and medical releases;
  - (4) A list of management officials (by name or position) to be interviewed;



- (5) A list of nonmanagement individuals (by name or position) and other complainant witnesses to be interviewed;
- (6) A list of the kinds of company records to be reviewed;
- (7) Onsite facility visit;
- (8) The possible need for a third party medical opinion in a Section 503/38 U.S.C. 4212 complaint;
- (9) The possible need for contact with the local VETS office in a 38 U.S.C. 4212 complaint; and
- (10) Questions or information needed based on sections 6F02, 6F03, or 6F04 below, as appropriate.

### ***6F02 EXECUTIVE ORDER COMPLAINT INVESTIGATIONS***

Complaints filed under Executive Order 11246, as amended, are investigated using the same principles and methods as are used in conducting the onsite aspects of a supply and service compliance review. Therefore, the CO should determine, from a review of the complaint, what specific personnel activity gave rise to the complaint; and then refer to Chapters 3 and 7 of this Manual for guidance on investigative techniques and theories of employment discrimination to use in developing the investigative plan and conducting the investigation.

### ***6F03 SECTION 503 COMPLAINT INVESTIGATIONS***

- (a) Special Investigative Guidelines: Appendix A contains a set of investigation guidelines to assist COs in investigating complaints brought by individuals with disabilities. These guide-lines discuss in detail the elements of a 503/4212 complaint filed by an individual with a disability; the complainant's qualifications to perform the job; the complainant's qualifications to perform the job if reasonably accommodated; and whether the complainant was reasonably accommodated. These should be used, as appropriate, in developing the investigative plan and conducting the investigation. Also, at Appendix B, see the list of publications on Disabled/Veterans' issues.



- (b) Obtaining Medical Documentation: In investigating complaints under Section 503, often it will be necessary to obtain medical records pertaining to the complainant. For example, medical records may be needed to establish disabled status, or to determine what accommodation might be appropriate. Physicians and medical treatment facilities usually will require a medical release before providing medical information to OFCCP. The complaint form, CC-4, contains a general medical release. However, if the complainant has altered the CC-4 medical release, if the physician or medical facility refuses to honor the signed CC-4 as a release, or if the complaint was not filed on a CC-4, then the CO should obtain the complainant's signature on a medical release (Figure 6-13).
- (c) Third Party Medical Opinion: Often there may be a difference of opinion between the complainant's medical practitioner and the contractor's medical representative. Assistance in resolving such differences of opinion can be obtained from the regional office of the Office of Workers' Compensation District Medical Director/Advisor. This office maintains a list of consultants who are experts in medical/occupational matters. When such consultants are used, the invoice for the services should be sent to the DO/AO which will submit it, with a brief explanatory memorandum indicating that the services were performed, to the OFCCP NO, Attn: Management Support Staff.
- (1) Medical Examination: When there is a difference of opinion regarding the complainant's medical condition, a third-party medical opinion should be obtained. In this instance, no previously obtained medical documentation should be provided to the practitioner; this will help to ensure that the new opinion is not swayed by the opinion of others.
- (2) Ability to Perform the Job: When there is a difference of opinion regarding the complainant's ability to perform the job, with or without accommodation, a third-party opinion should be obtained. Generally, a vocational or occupational specialist will be most helpful in this situation. In this instance, the CO should provide the consultant with documentation regarding the disabling condition. In addition, the consultant should be provided a thorough description of the work site and the job duties involved; this information should not be based solely on the contractor's official documents or oral statements, but should include what the CO has personally observed and determined during the onsite investigation (6F07 below). Figure 6-14 provides a sample letter for arranging the appointment for the complainant.

**6F04 38 U.S.C. 4212 COMPLAINT INVESTIGATIONS**

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- (a) General: Complaints filed under 38 U.S.C. 4212 may be from special disabled veterans (see 41 CFR 60-250.2, "Disabled veteran") or veterans of the Vietnam era (see 41 CFR 60-250.2, "Veteran of the Vietnam era"). In addition, an individual filing as a special disabled veteran must be "qualified," that is, capable of performing a particular job, with reasonable accommodation to his or her disability (41 CFR 60-250.2, "Qualified disabled veteran"). The definition of special disabled veteran has been amended by Public Law 96-466 (1980); Section 309 (1) and (2) of Public Law 97-306 (1982) and Public Law 98-223 (1984) since publication of the regulations. In reviewing a complaint filed under 38 U.S.C. 4212 and in discussing it with the complainant, the CO should clearly distinguish and determine whether the complainant believes the alleged discriminatory treatment was based on his/her status as a Vietnam era veteran, or based on a disabling condition attributable to his/her veteran status (peace or war). This distinction is important, for it will determine the nature of the investigation.
- (b) Qualified Special Disabled Veteran: In investigating this type of complaint, the CO should follow the procedures for a Section 503 complaint discussed at 6F03 above.
- (c) Vietnam Era Veteran: In investigating this type of complaint, the CO should focus on the pre-employment or personnel practices, as appropriate, which might indicate that the complainant's veteran status was taken into consideration in a manner which resulted in discriminatory treatment. In this instance, it is the complainant's veteran status, per se, which must be carefully related to the personnel action at issue.
- (d) State Employment Service: State employment services have special responsibilities regarding qualified special disabled veterans and veterans of the Vietnam era (41 CFR 60-250.33). The local offices usually have a representative who deals primarily with veterans' matters. The CO should contact the local employment service veterans' representative for any pertinent information regarding both the complainant and the contractor.
- (e) DOL Veterans' Employment and Training Services (VETS): Each DOL RO has a VETS office. The CO should contact that office, in accordance with regional procedures, to obtain any information which may be pertinent to the complaint. For example, the complainant may have contacted the VETS office prior to filing the complaint; as a consequence, the VETS office may have useful information based on its contact with the complainant and possibly the contractor as well.

## **6F05 INITIAL INTERVIEW WITH THE COMPLAINANT**

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- (a) General: The information provided on the complaint form is generally insufficient for purposes of conducting a proper investigation. Before going onsite, the CO should contact the complainant to establish a mutually agreeable time and place to conduct an interview. The interview should be conducted in person unless compelling circumstances preclude doing so. In these instances the interview can be conducted by telephone. If the complainant resides outside the area covered by the DO/AO, and the CO and his/her supervisor believe that a face-to-face interview is necessary, the appropriate OFCCP RO should be contacted to conduct the interview. All necessary and appropriate information should be provided to the RO conducting the interview. When no personal interview takes place at any time during the investigation, this fact should be recorded with the reason for it.
- (b) The Interview: The interview plan prepared by the CO should contain specific questions tailored to obtain the necessary information to support or refute the complainant's allegations. Examples of the types of information to be considered are:
- (1) Name(s) of contractor officials who allegedly discriminated;
  - (2) Name(s) of employee(s) who may have witnessed the alleged act(s);
  - (3) Detailed circumstances surrounding the act(s);
  - (4) Description of the contractor's personnel policies and practices related to the employment action at issue;
  - (5) The explanation given by the contractor to the complainant for the action;
  - (6) Copies of personnel policies, job advertisements, job descriptions, etc.

Additional interview elements and guidance for Executive order complaints may be found in Chapters 3 and 7; and for complaints from individuals with disabilities, in Appendix A.

### ***6F06 NOTIFYING THE CONTRACTOR OF THE ONSITE INVESTIGATION***

When the investigative plan has been completed, and modified based on any additional information obtained during the initial interview with the complainant, arrangements should be made for the onsite visit. The CO should telephone the contractor and speak with the individual who will represent the contractor during the onsite visit. The CO should advise the representative that:



- (a) There should be an entrance conference with the facility's senior officer (or designee) to outline the investigative process, what will be done onsite, and estimate how many days the visit will take;
- (b) Certain records should be available for review (be as specific as possible); and
- (c) Named (or use position title) management employees should be available for interviewing.

Establish a mutually agreeable date for beginning the visit. A letter confirming the onsite visit must be sent (Figure 6-15). The letter must include notification that I-9 forms will be inspected, therefore it must be sent so as to reach the contractor at least three days prior to the visit. (See Chapter 3.)

#### ***6F07 ONSITE INVESTIGATION***

- (a) General: The onsite investigation must be conducted in a manner which con-veys the objectivity and fact finding intent of the CO. The focus of the CO's activity must be on the complainant's allegations and the personnel actions which gave rise to them. The records being reviewed and the interviews being conducted should provide information clearly related to the issues raised in the complaint. For example, an Executive order complaint alleging discrimination against Blacks will require an approach generally analogous to that used in a supply and service compliance review (see Chapters 3 and 7), while a complaint alleging disability discrimination will require an approach which focuses on the physical and/or mental condition and ability of the complainant as they relate to the job in question and the contractor's obligation to provide reasonable accommodation.
- (b) Entrance Conference: The entrance conference with the facility's senior official/designee sets the stage for the entire visit. Being well organized and nonjudgmental will contribute to the impression that the CO is a fact finder and not a prosecutor. The CO should discuss at least:
  - (1) The investigative process;
  - (2) What will be done onsite;
  - (3) An estimate of the length of the visit;
  - (4) The need to inspect the I-9 forms; and





- (5) A mutually agreeable day and time for an exit conference.

Inasmuch as the contractor was previously provided a copy of the complaint and informed of the Order/Act under which it was filed, there is no need to repeat that information. However, the CO should be prepared to respond to any questions regarding them. Experience has shown that most senior officials will leave to their representative the details of arranging interviews and record reviews. However, the CO should be prepared to discuss these matters if called upon to do so by the official.

- (c) Facility Tour: A tour of the contractor's establishment should be conducted during the early stages of the onsite investigation. In the instance of a complaint of an individual with a physical disability, the CO should note (and possibly diagram) the physical setting of the job in question and the activities of employees performing similar duties in that setting. In the instance of an Executive order complaint brought; e.g., by a woman, the CO should note the presence or absence of women in the work area or job positions at issue. There may be situations where a tour might be unnecessary; e.g., when the alleged discriminatory act involves the contractor's medical leave practices as they apply to pregnancy. As indicated by these examples, the CO is viewing specific work areas for the specific purpose of gaining knowledge about the job at issue. If it is not overly intrusive, the CO may speak briefly and informally with employees at their work stations to get an understanding of the job process if this information is pertinent to the investigation.
- (d) Interviewing:
- (1) General: This section, "Interviewing," is not intended to teach the CO how to interview witnesses. Rather, it is intended to reflect current OFCCP policies regarding the mechanics of the process. Also, because interviewing is the most personal process undertaken in the investigation, it is essential that the CO maintain a high degree of objectivity.
- (2) Informing the Witness: At the outset of an interview, each individual should be told that he/she will be shown and asked to sign a statement containing their answers to the questions asked. The interviewee's home address and telephone number should be requested in case it becomes necessary to clarify any matters at a later date. The CO should enter the following phrase above the space where the interviewee will sign, "I have read the above and it is true." In addition, the CO should clearly inform the



individual that it is against the law for the contractor to take any retaliatory action or to intimidate them for participating in the interview.

- (3) Interview Notes: The CO should start with a list of questions developed prior to the onsite. This list, with the interviewee's responses noted, comprise the "interview notes." Follow-up questions and answers should be added to the notes as the interview progresses. At the end of the interview, the individual's name should be printed or typed on the list and he/ she should sign it. As stated above, the CO should also attempt to obtain the individual's address and telephone number. If the interviewee refuses to sign the notes, the CO should note the refusal.
  - (4) Management and Supervisory Officials/Witnesses: "Management" or "supervisory" employees refers to bona fide executive employees who are exempt from the provisions of the Fair Labor Standards Act pursuant to 29 U.S.C. 213(a)(1) and 29 CFR 541.1. When these employees are interviewed, they may be speaking not only for themselves, but also for the contractor; e.g., a management employee when he/she is describing personnel policies of the contractor that he or she is responsible for enforcing. On the other hand, a management employee who is filing a complaint about his/her own employment is not speaking on behalf of the contractor.
  - (5) Presence of Management Employees: Contractor representatives, including attorneys, may be present at interviews of management and supervisory employees when such employees are being interviewed in their official capacity. In conducting such interviews in the presence of a contractor representative, the CO should explain that the presence of the representative means that the contractor acknowledges that the interviewee speaks on its behalf and that his or her statements regarding policies and actions may fairly be treated as those of the contractor. The fact that this explanation was made should be noted in the CO's interview notes.
  - (6) Other Employees/Witnesses: It is the policy of OFCCP to interview privately contractor employees who are not management or supervisory employees. This helps to ensure that such employees are free from any possible intimidation or retaliation. Should a contractor object to the CO's attempt to privately interview employees on its premises, the CO should undertake to conduct the interview away from the contractor's facility.
- (e) Documentary Evidence and Records:



- (1) Policies and Practices: The CO should obtain copies of all documents which explain any policy or practice that bears on the allegations in the complaint. For example, when job requirements are not written or the written material is not current, the CO should request that the contractor provide a written statement of facts or conditions currently in effect.
  - (2) Relevance: The CO should only obtain copies of written material which is relevant to the complaint. For example, a complaint which alleges discriminatory discharge, which the contractor states was due to poor performance, will require copies of performance evaluations and written notices from the complainant's supervisor, but not a copy of the complete personnel file.
  - (3) Medical Releases: In the instance of a complaint involving disability discrimination in which it is alleged that the contractor's medical officer played a role in the action at issue, the CO should obtain a medical release from the complainant before going onsite. This will make it easier to obtain the contractor's medical records of the complainant.
- (f) Exit Conference: Upon completion of the onsite investigation, the CO should conduct an exit conference with the facility's senior official/designee (preferably the same person who was at the entrance conference). At this meeting, the CO should present a summary of any violations and document rebuttal arguments made by the contractor. The CO should emphasize that the findings are preliminary and that no final conclusions will be drawn until the analysis of all data collected is complete, and each allegation is either affirmed or refuted. At his/her own discretion, the CO may remind the contractor that it still has the opportunity to attempt to resolve the complaint to the satisfaction of the complainant. The contractor should be informed of the approximate length of time it will take to complete the off-site analysis, prepare the investigative report, and issue the Notification of Results of Investigation (NRI).

## **6G INVESTIGATIVE REPORT**

A written investigative report is required in all instances in which an onsite investigation is conducted. Appendix C contains the format for this report. In writing this report, the CO should avoid expressing personal opinions and should avoid including extraneous matters not related to the issues of the complaint. The CO should make every effort to present factual information and the basis for it.

## **6H NOTIFICATION OF RESULTS OF INVESTIGATION (NRI)**



### ***6H00 WHEN USED***

A NRI is prepared if the complaint is still unresolved by the time the investigative report is completed. If, during the interval of time between the exit conference (6F07(f)) and the onset of the preparation of the NRI, the DO/AO is informed of a resolution of the complaint satisfactory to the complainant, the NRI is not to be prepared.

### ***6H01 SIGNATURE AND PROCEDURES***

The NRI should be prepared for the signature of the RD or his/her designee. After being signed, the original NRI is to remain in the case file; copies of the NRI are to be issued to the complainant and the contractor with a letter of transmittal, sent certified mail, return receipt requested. Formats for the two types of NRIs (no violation/violation) are included in Figures 6-16 and 6-17.

### ***6H02 NOTICE TO LABOR UNION (VIOLATION)***

Where remedy for a finding of violation would require a change in or otherwise affect a CBA between the contractor and a union or require the award of retroactive seniority where seniority is governed by a CBA, the union will be notified of the particular violation, and will be invited to participate in its conciliation (see Sections 8C, 7F06, and 7F06A). Where the union declines to participate or to sign the Conciliation Agreement (CA), that fact will be noted in paragraph 1 of the CA (see Section 8F01(b)(2) and (e)) and the Nonadmissions Clause will be omitted.

## **6I CONCILIATION OF THE COMPLAINT (VIOLATION)**

### ***6I00 SETTLEMENT BEFORE COMPLETION OF INVESTIGATION***

The CO should be prepared to discuss settlement at any stage of the investigation as long as there is sufficient evidence to ensure that there is a violation, and the settlement will provide a just resolution of the violations. Before engaging in conciliation discussions, the CO should advise the contractor that:

- (a) There is no prejudice to the position of the contractor for participating in conciliation sessions prior to completion of the investigation, or for not participating in the discussions; and



- (b) The Government's participation in conciliation sessions is not to be construed as a waiver of the Government's right to proceed to a formal NRI if the conciliation sessions are unsuccessful.

Any agreement reached is subject to review and approval by the RD or his/her designee.

### **6101 SETTLEMENT AFTER COMPLETION OF INVESTIGATION**

The NRI (violation) invites the contractor to join with the Department of Labor in resolving the complaint through conciliation by informal means. The CO is to telephone the contractor within ten (10) days of its receipt of the NRI to arrange the conciliation meeting.

- (a) Conciliation Meeting: The conciliation meeting is the method by which the Government attempts to obtain voluntary compliance with the Order/Acts, and there-fore participation is limited to Government and contractor officials. Thus, the complainant is not a party to the meeting. However, the CO should keep the complainant informed of the progress of the meeting(s), in order to gather further input and to discuss proposed settlements.
- (b) Reasonable Settlement: If the DO/AO believes it has arrived at a reasonable settlement, which the complainant accepts, the contractor will acknowledge its responsibility to fulfill the settlement by signing a conciliation agreement. RDs are hereby granted authority to modify paragraphs 1 through 7 of the General Provisions of the CA, as appropriate, to fit the settlement of the complaint. As provided elsewhere, the mandatory enforcement clause (paragraph 8) may not be modified in any way without the express prior approval of the Deputy Assistant Secretary (DAS). The Specific Provisions, Part II, and Reporting, Part III, would be written to reflect proper settlement and follow-up on the complaint. If the complainant will not accept what the DO/AO considers to be a reasonable settlement, the DO/AO may cease its efforts on behalf of the complainant, but must nevertheless obtain from the contractor correction of any policies or practices; e.g., maternity leave policy, which caused the discrimination. The steps in accomplishing this are as follows:
- (1) The DO/AO should request that the contractor submit in writing, to the DO/AO, a full statement of its agreed upon settlement to be maintained in the case file;
  - (2) The DO/AO is to notify the complainant, in writing, of the full details of the settlement and request a written reply accepting or rejecting the settlement;



- (3) If the DO/AO considers the offered settlement to be reasonable, and the complainant persists in refusing to accept it, the DO/AO should cease its efforts on behalf of the complainant and close the case file, and should obtain from the contractor a CA resolving all discriminatory policies and practices.

## **6J ENFORCEMENT**

If any matter raised in the NRI violation cannot be resolved through conciliation with the contractor, it should be processed for enforcement. Refer to Chapter 8.



## **FIGURES**

### ***Figure 6-1: DO/AO LETTER TO CONTRACTOR FORWARDING SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINT***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Contractor*]  
[*Title of .....*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Dear (*name of contractor*):

This is to notify you that the Office of Federal Contract Compliance Programs (OFCCP) has received a complaint (copy enclosed) filed under the provisions of (*Section 503 of the Rehabilitation Act of 1973, as amended*)(*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212*).

This Office has been assigned this complaint for investigation under the Act and OFCCP's regulations (41 CFR Part 60-741/60-250, copy enclosed), which require that Federal contractors and subcontractors with a contract (in excess of \$10,000 or more) take affirmative action to employ and advance in employment (*qualified individuals with disabilities*)(*qualified special disabled and Vietnam Era veterans*).

As required by our regulations, please retain full and accurate records relevant to this complaint and ensure that there is no retaliation against the complainant (41 CFR 60-741.51 and .52/60-250.51 and .52). Also, our regulations require that the complaint and all actions taken with regard to it shall be kept confidential (41 CFR 60-741.26/60-250.26).

You are offered the opportunity by our regulations to attempt to resolve this complaint under an internal review procedure [41 CFR 60-741.26(b)/60-250.26(b)]. If you have such a procedure and wish to use it, please immediately notify us in writing and we will defer scheduling an investigation for sixty (60) days.

If you are successful in internally resolving the complaint to the satisfaction of the complainant, we will need verification from the complainant. However, OFCCP reserves the option to conduct its own investigation if, in its judgment, the circumstances warrant. If you do not intend to attempt to resolve this complaint internally, please



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notify us of this within ten (10) days. In this instance, we will schedule the complaint for investigation. During an investigation we may examine your current Affirmative Action Program required under 41 CFR 60-741.5/60-250.5.

This letter is neither a prejudgment of the issues nor an indication that your company has violated any law, but is rather an effort to resolve this matter as expeditiously as possible.

The complaint investigation will also include a review of your Immigration and Naturalization Service I-9 Forms. You are to make available for inspection the I-9 Forms for each eligible employee. We are requesting that you transmit to us a list of all your employees hired after November 7, 1986, or since the last inspection of the I-9 Forms for which you were found to be in compliance. That list should include the termination dates of the aforementioned hires that are no longer employed at your establishment. This list may be a seniority list or a copy of a list used for other Government agencies; e.g., a workers' compensation list or a list used to make quarterly social security payments to Internal Revenue Service. We also request that you provide information on when the last I-9 inspection was performed, and by which Government agency. This letter provides you with three (3) business days advance notice of the I-9 inspection as required by law.

During the onsite phase of the investigation, we will need to have available copies of I-9 forms for:

- (1) All employees, both current and former, hired within the last three years; and
- (2) Any former employees hired more than three years ago (but after November 6, 1986) who terminated within the past year.

You should also have available documentation; e.g., payroll records, sufficient to identify all employees for whom I-9 Forms are required.

Please contact (DD/ADD/CO name) at (telephone #) if you have any questions.

Sincerely,

DD/ADD

- Enclosures:   1. Complaint of (name) (CAS #)  
                  2. Regulations





**Figure 6-2: DO/AO LETTER TO SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINANT  
ON REFERRAL FOR INTERNAL REVIEW**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Complainant*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to acknowledge receipt of your complaint against the above contractor which has been assigned to this Office for investigation.

Before scheduling an investigation, our regulations require that the contractor be given sixty (60) days to attempt to resolve your complaint through its internal review procedures. The purpose of this procedure is to permit the contractor to examine thoroughly the issues raised by your complaint, and then try to reach a resolution that is satisfactory to you.

The contractor has been notified that it has the opportunity to attempt to resolve your complaint and has been asked to inform us within ten (10) days whether it will make this effort. We will inform you of the contractor's response.

We have also advised the contractor that our regulations require that all relevant records be retained, that there is to be no retaliation against you, and that this matter is to be treated as confidential.

Please keep us advised of any change in your address or telephone number. If you have any questions, you may contact (*DD/ADD/CO name*) at (*telephone #*).

Sincerely,

DD/ADD



***Figure 6-3: DO/AO LETTER TO CONTRACTOR CONFIRMING USE OF INTERNAL REVIEW PROCEDURE***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Contractor*]  
[*Title of .....*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint of (*name*) (*CAS #*)

Dear (*name of contractor*):

Thank you for your (*letter*) (*telephone call*) of (*date*) in which you informed us that you will use your internal review procedure in an attempt to resolve the above complaint. We will defer scheduling an investigation of the complaint for sixty (60) days from the date you received our letter of (*date of Figure 6-1 letter*).

Please keep us advised of the progress of your internal review. We have advised the complainant that you will attempt to resolve the complaint through your internal review procedure.

By the end of the 60-day period, please provide us with a written summary of the results of the review.

We appreciate your cooperation in attempting to resolve this complaint expeditiously.

Sincerely,

DD/ADD



***Figure 6-4: DO/AO LETTER TO SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINANT  
CONFIRMING CONTRACTOR'S USE OF INTERNAL REVIEW PROCEDURE***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Complainant*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to inform you that the above company will use its internal review procedure to attempt a resolution of your complaint. We have advised the company that we are informing you of this procedure. Should the company contact you, we urge your cooperation in this matter.

As we stated in our letter to you of (*date of Figure 6-2 letter*) the contractor has sixty (60) days to attempt to resolve your complaint. We have asked the contractor to provide us a written report of its efforts by the end of the 60-day period. If, before the end of this period, a resolution is reached satisfactory to you, please let us know immediately, preferably in writing.

If, however, a resolution satisfactory to you has not been reached by the end of the 60-day period, we will schedule your complaint for investigation.

If you have any questions please contact (*name*) at (*telephone #*).

Sincerely,

DD/ADD



***Figure 6-5: DO/AO LETTER TO CONTRACTOR WHO WILL NOT USE INTERNAL REVIEW PROCEDURE***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Contractor*]  
[*Title of .....*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint of (*name*) (*CAS #*)

Dear (*name of contractor*):

This confirms (*your letter*) (*or telephone conversation*) of (*date*) in which you stated that you will not use an internal review procedure to attempt resolution of the above complaint. We will, therefore, schedule this complaint for investigation. A Compliance Officer will contact you to arrange an appointment to see you.

If you wish to submit a statement of position or evidence pertaining to the complaint, such material will be included in the case file and will be considered when the complaint is investigated.

Sincerely,

DD/ADD



(Intentionally left blank)



***Figure 6-6: DO/AO LETTER TO SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINANT  
INFORMING THAT CONTRACTOR WILL NOT USE INTERNAL REVIEW PROCEDURE***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Complainant*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to inform you that the above company advised us that it does not wish to use an internal review procedure to attempt resolution of your complaint. We will, therefore, schedule your complaint for investigation. A Compliance Officer will be in touch with you to arrange an appointment to discuss the complaint.

Please be sure to keep us advised of any change in your address or telephone number.

Sincerely,

DD/ADD



***Figure 6-7: DO/AO LETTER TO CONTRACTOR CONFIRMING COMPLAINT RESOLUTION  
DURING 60 DAY INTERNAL REVIEW PERIOD***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Contractor*]  
[*Title of .....*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint of (*name*) (*CAS #*)

Dear (*name of contractor*):

This confirms (*your letter*) (*our telephone conversation*) of (*date*) in which you stated that the above complaint has been resolved to the satisfaction of the complainant. We have been in contact with the complainant who has stated there has been a satisfactory resolution of the complaint.

We appreciate your efforts in resolving this matter.

Sincerely,

DD/ADD



***Figure 6-8: DO/AO LETTER TO SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINANT  
CONFIRMING COMPLAINT RESOLUTION DURING 60-DAY INTERNAL REVIEW PERIOD***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Complainant*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to confirm (*your letter*) (*our telephone conversation*) of (*date*) in which you stated that your complaint against the above company has been resolved to your satisfaction.

If you are satisfied with the resolution of your complaint, please sign on the line indicated below and return this letter to us in the enclosed stamped envelope.

Sincerely,

DD/ADD

There has been a satisfactory resolution to my complaint filed against (*name of contractor*).

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





**Figure 6-9: DO/AO LETTER TO CONTRACTOR CONFIRMING NO RESOLUTION DURING 60 DAY INTERNAL REVIEW PERIOD**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Name of Contractor]  
[Title of .....]  
[Street Address]  
[City, State, and Zip Code]

Re: Complaint of (*name*) (*CAS #*)

Dear (*name of contractor*):

This confirms (*your letter*) (*our telephone conversation*) of (*date*) in which you stated that your efforts to resolve this complaint to the satisfaction of the above complainant have been unsuccessful. We will, therefore, schedule this complaint for investigation. A Compliance Officer will contact you to arrange an appointment to begin the investigation.

We wish to remind you that during the investigation we may examine your current Affirmative Action Program required under 41 CFR 60-741.5/60-250.5.

Sincerely,

DD/ADD

**Figure 6-10: DO/AO LETTER TO SECTION 503/38 U.S.C. 4212 EMPLOYEE COMPLAINANT CONFIRMING NO RESOLUTION DURING 60-DAY INTERNAL REVIEW PERIOD**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Name of Complainant]



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[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to inform you that the above company has informed us that they have been unable to resolve your complaint to your satisfaction through its internal review procedure. We will, therefore, schedule your complaint for investigation. A Compliance Officer will be in touch with you to arrange an appointment to discuss your complaint.

Please be sure to keep us advised of any change in your address or telephone number.

Sincerely,

DD/ADD



***Figure 6-11: DO/AO LETTER TO CONTRACTOR FORWARDING NON-EMPLOYEE  
SECTION 503/38 U.S.C. 4212 OR EXECUTIVE ORDER COMPLAINT***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[Name of Contractor]  
[Title of .....]  
[Street Address]  
[City, State, and Zip Code]

Dear (name of contractor):

This is to notify you that the Office of Federal Contract Compliance Programs (OFCCP) has received a complaint (copy enclosed) filed under the provisions of (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212*) (*Executive Order 11246, as amended*).

This Office has been assigned this complaint for investigation under the (Act/Order) and OFCCP's implementing regulations 41 CFR Part (60-741) (60-250)(60-1 through 60-60) (copy enclosed), which require that Federal contractors and subcontractors having (a contract in excess of \$10,000) (a contract of \$10,000 or more) (contracts whose total value in any twelve month period is more than \$10,000) [take affirmative action to employ and advance in employment (qualified individuals with disabilities)(qualified special disabled and Vietnam Era veterans)] [not discriminate and take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin].

As required by our regulations, please retain full accurate records relevant to this complaint and ensure that there is no retaliation against the complainant [41 CFR (60-741.51 and .52) (60-250.51 and .52) (60-1.32 and 1.43)]. Also, our regulations require that the complaint and all actions taken with regard to it shall be kept confidential [41 CFR (60-741.26) (60-250.26)].

This letter is neither a prejudgment of the issues nor an implication that your firm has violated any law, but is rather a notice of complaint filing and a notice to retain information that will later permit an expeditious investigation and resolution of this matter.

You may wish to review and attempt to resolve this complaint internally, and if you are successful in resolving it to the satisfaction of the complainant, we will need verification from the complainant. However, OFCCP reserves the option to conduct its own investigation if, in its judgment, the circumstances warrant.



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If you do not wish to make such an attempt or are unsuccessful in doing so, you may wish to send us a statement of position or evidence concerning the complaint. Any such material submitted would be included in the case file, and would be considered when the complaint is investigated. Please note that during such an investigation, we may need to examine your current Affirmative Action Program required under 41 CFR (60-741.5) (60-250.5) (Part 60-2).

The complaint investigation will also include a review of your Immigration and Naturalization Service I-9 Forms. You are to make available for inspection the I-9 Forms for each eligible employee. We are requesting that you transmit to us a list of all your employees hired after November 7, 1986, or since the last inspection of the I-9 Forms for which you were found to be in compliance. That list should include the termination dates of the aforementioned hires that are no longer employed at your establishment. This list may be a seniority list or a copy of a list used for other Government agencies; e.g., a workers' compensation list, a list used to make quarterly social security payments to the Internal Revenue Service, etc. We also request that you provide information on when the last I-9 inspection was performed, and by which Government agency. This letter provides you with three (3) business days advance notice of the I-9 inspection as required by law.

During the onsite phase of the investigation we will need to have available copies of I-9 Forms for:

- (1) All employees, both current and former, hired within the last three years; and
- (2) Any former employees hired more than three years ago (but after November 6, 1986) who terminated within the past year.

You should also have available documentation; e.g., payroll records, sufficient to identify all employees for whom I-9 Forms are required.

Should you have any questions, you may contact (DD/ADD/CO) at (telephone #).

Sincerely,

DD/ADD

Enclosure:      1. Complaint of (*name of complainant*) (*CAS #*)  
                      2. Regulations



***Figure 6-12: DO/AO LETTER ACKNOWLEDGING RECEIPT OF EXECUTIVE ORDER/NON-EMPLOYEE SECTION 503/38 U.S.C. 4212 COMPLAINT***

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Complainant*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint against (*name of company*) (*CAS #*)

Dear (*name of complainant*):

This is to acknowledge receipt of your complaint against the above contractor which has been assigned to this Office for investigation.

We have notified the contractor of your complaint, provided it a copy, and suggested that it might wish to attempt to resolve the complaint. We have also informed the contractor that our regulations require that all relevant records be retained, that there is to be no retaliation against you, and that this matter is to be treated as confidential.

If the contractor and you are able to resolve your complaint to your satisfaction, please let us know immediately, preferably in writing. In the meanwhile, we will schedule your complaint for investigation.

Please be sure to keep us advised of any change in your address or telephone number. If you have any questions, you may contact (*DD/ADD/CO name*) at (*telephone #*).

Sincerely,

DD/ADD



***Figure 6-13: AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION***

Re: Complaint against (*name of contractor*)

OFCCP CAS # \_\_\_\_\_

I hereby authorize the release to the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), of any medical information needed by OFCCP in its investigation of the complaint of discrimination which I filed on (*date*) against the above-named contractor.

PRINTED/TYPED NAME OF PATIENT:

SIGNATURE OF PATIENT:

DATE:



**Figure 6-14: LETTER TO PHYSICIAN**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Physician*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: (*name of complainant*)

Dear Dr. (*name of physician*):

Pursuant to our telephone conversation, I am confirming the appointment of (*name of complainant*) on (*date*) at (*time*).

The purpose of the examination is to determine whether (*name of complainant*) is capable of performing the job of (*title of job*). The attachment to this letter lists the physical and mental requirements of the job and a general description of the work environment. We are particularly interested in your opinion whether (*name of complainant*) is presently able to perform the job, given his/her present condition. Also, if there is a risk of injury to him/her, how severe is the potential injury, what is the likelihood that it will occur, and when will it arise.

(*Name of complainant*) has informed us that he/she has a history of \_\_\_\_\_/disability of \_\_\_\_\_.

Please submit to this Office a report of your findings and a bill for your services. If you are called upon to give testimony regarding your findings, you will be compensated for any additional time required by your participation.

Should you have any questions, you may contact me at (*telephone #*).

Sincerely,

Compliance Officer

Attachment

cc: (*Name of Complainant*)



**Figure 6-15: CONFIRMATION OF ONSITE INVESTIGATION**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[*Name of Contractor*]  
[*Title of .....*]  
[*Street Address*]  
[*City, State, and Zip Code*]

Re: Complaint of (*complainant's name*) (*CAS #*)

Dear (*name of contractor*):

This letter confirms my telephone call of (*date*) with (*name of contractor representative*) scheduling the investigation of the above complaint filed under (*Executive Order 11246, as amended*) (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212*), to begin (*date*) at (*time*). In the telephone call, I requested that certain records and individuals be available during the visit. These are listed on the attachment to this letter.

During the investigation, I will inspect the Employment Eligibility Verification (Form I-9) as required by the Immigration Reform and Control Act of 1986.

Should you have any questions, you may contact me at (*telephone #*).

Sincerely,

Compliance Officer

Attachment





**Figure 6-16: NOTIFICATION - NO VIOLATION**

NOTIFICATION - NO VIOLATION

Complainant's Name

COMPLAINANT

Street

City, State, Zip

Company Name

CONTRACTOR

Street

City, State, Zip

NOTIFICATION OF RESULTS OF INVESTIGATION

On (*date*) the Office of Federal Contract Compliance Programs (OFCCP), U. S. Department of Labor (DOL) conducted an investigation on the allegation(s) of (*type*) discrimination made in the complaint of (*name of complainant*) filed on (*date*). Our investigation has resulted in the following findings:

1. The (*name of contractor*) is a nonexempt Government contractor subject to the requirements of (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended*) (*Executive Order 11246, as amended*).
2. (*Name of complainant*) is (*an individual with a disability*) (*a special disabled veteran/veteran of the Vietnam era*) within the meaning of (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212*) and the regulations at 41 CFR Part (60-741) (60-250).<sup>1</sup>
3. The complainant alleges the contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contracts by (terminating, not promoting, etc.).

<sup>1</sup> If Executive Order, substitute: (*Name of complainant*) is a (*minority*) (*woman*) covered by Executive Order 11246, as amended, and the regulations at 41 CFR Chapter 60.



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4. The contractor's position is that the complainant was (*terminated, not hired, etc.*) because .
5. Our investigation indicates that the contractor (*describe contractor's actions*).
6. Based on the findings of this investigation, there was insufficient evidence to conclude that the contractor has violated its obligations under the nondiscrimination and affirmative action provisions of (*Section 503*) (*38 U.S.C. 4212*) (*the Executive Order*). Therefore, DOL's processing of this complaint is concluded.

As set forth in 41 CFR (*60-741.26(g)*) (*60-250.26(g)*) (*601.24(c)*), the Deputy Assistant Secretary of the Office of Federal Contract Compliance Programs may, for reasonable cause, reconsider or order the reconsideration of this determination. A request for reconsideration based on reasonable cause should be addressed, within thirty (30) days of receipt of this notification, to:

Deputy Assistant Secretary, OFCCP  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210.

Such a request should be accompanied by affidavits, signed testimony of supervisory or co-workers, or other written documentation which would substantially alter our findings in this case.

On behalf of the United States Department of Labor,

\_\_\_\_\_ RD (or designee) \_\_\_\_\_ (Date)

Region:



**Figure 6-17: NOTIFICATION - VIOLATION**

NOTIFICATION - VIOLATION

<u>Complainant's Name</u>	COMPLAINANT
<u>Street</u>	
<u>City, State, Zip</u>	
<u>Company Name</u>	CONTRACTOR
<u>Street</u>	
<u>City, State, Zip</u>	

NOTIFICATION OF RESULTS OF INVESTIGATION

On (*date*) the Office of Federal Contract Compliance Programs (OFCCP), U. S. Department of Labor (DOL) conducted an investigation of the allegation(s) of (*type*) discrimination made in the complaint of (*name of complainant*) filed on (*date*). Our investigation has resulted in the following findings:

1. The (*name of contractor*) is a nonexempt Government contractor subject to the requirements of (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended*) (*Executive Order 11246, as amended*).
2. (*Name of complainant*) is (*an individual with a disability*) (*a special disabled veteran/veteran of the Vietnam era*) within the meaning of (*Section 503 of the Rehabilitation Act of 1973, as amended*) (*the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212*) and the regulations at 41 CFR Part (60-741) (60-250).<sup>1</sup>
3. The complainant alleges the contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contracts by (*terminating, not promoting, etc.*).
4. The contractor's position is that the complainant was (*terminated, not hired, etc.*) because \_\_\_\_\_.

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<sup>1</sup> If Executive order, substitute: (*Name of complainant*) is a (*minority*) (*woman*) covered by Executive Order 11246, as amended, and the regulations at 41 CFR Chapter 60.



**U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)  
CHAPTER VI - COMPLAINT INVESTIGATION**

- 
5. Our investigation indicates that the complainant has (*or the contractor regards the complainant as having*) (describe disability/veteran status and the situation or refer to protected group status).
  6. Our investigation indicates that the contractor (describe contractor's actions).
  7. The action described in Paragraph 6 violated the contractor's obligations under the regulations as follows: (list sections violated and describe violation).

In accordance with the regulations implementing (*Section 503*) (*38 U.S.C. 4212*) (*Executive Order 11246*), 41 CFR ([*60-741.26(g)(2)*] [*60-250.26(g)(2)*] [*60-1.24(c)(2)*]), DOL now invites (*name of contractor*) to join with it to resolve this matter through conciliation by informal means. A Compliance Officer from this Office will be in contact with (*name of contractor*) by (*date*) to begin the conciliation process.

On behalf of the United States Department of Labor,

\_\_\_\_\_ RD (or designee) \_\_\_\_\_ (Date)

Region:



**U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)  
CHAPTER VI - COMPLAINT INVESTIGATION**

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***Figure 6-18: Complaint of Discrimination in Employment Under Federal Government Contracts  
(Form CC-4)***

Form CC-4 is on the Internet at [www.dol.gov/dol/esa/public/regs/compliance/ofccp/pdf/pdfstart.htm](http://www.dol.gov/dol/esa/public/regs/compliance/ofccp/pdf/pdfstart.htm).



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(Page 4 of CC-4)





## APPENDICES

### ***APPENDIX A: INVESTIGATION GUIDELINES FOR SPECIAL DISABLED VETERANS AND INDIVIDUALS WITH DISABILITIES COMPLAINTS***

The elements of a Section 503/4212 case - Basic to every case under Section 503/4212 are a number of important issues. If a determination of a violation is to be made, these issues should be fully developed:

- (a) Whether the complainant is an individual with a disability;
- (b) Whether the complainant was qualified to perform the job in question, despite his or her disability;
- (c) Whether the complainant would have been qualified to perform the job if he or she were reasonably accommodated by the contractor;
- (d) Whether the complainant was in fact reasonably accommodated by the contractor; and
- (e) Whether the complaint was timely filed.

The following is a list of questions, the answers to which are useful in developing the background information for such complaints. It is important to note that these questions serve only as a guide and that each case must be examined individually for a proper determination of a violation. Every case is different and it may be necessary to investigate different factual issues as the case may dictate. The questions outlined below are some of the ones which an attorney in the DOL Office of the Solicitor would need answered in determining the legal sufficiency of a case.

#### I. Individual with a Disability

- (a) The first thing to determine is whether the complainant is an individual with a disability as defined by the regulations.
- (b) An individual with a disability is defined by 41 CFR 60-741.2 as any person who:



- (1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
  - (2) Has a record of such impairment; or
  - (3) Is regarded as having such an impairment.
- (c) An individual with a disability is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

## **II. The Complainant's Qualifications to Perform the Job**

One of the most important requirements of Section 503/4212 is that the complainant must have been qualified to perform the job in question. Sometimes the complainant was fully qualified to perform the job and the disability had no effect on these qualifications. At other times, if the complainant were reasonably accommodated, he/she would have been qualified to perform the job. The following will help determine the complainant's qualifications:

- (a) Obtain the "official" job description from the contractor.
  - (1) According to the contractor, was the complainant able to perform all or some of the described job duties?
  - (2) What were the job duties the complainant was able to perform?
  - (3) What were the job duties the complainant was not able to perform?
  - (4) According to the complainant, what were the job duties he/she was able and not able to perform?
- (b) Obtain a description of the "actual" job functions from the complainant, the union, other employees who perform the same job, or anyone else having knowledge of the job. In particular determine:
  - (1) How does this description vary from the "official" job description?
  - (2) How does the job description vary according to location and other conditions particular to a certain area; e.g., same job in a suburb compared to a city?



- (3) Does the job description vary depending on grade level, seniority, etc.?
- (4) For each of the job duties required by the position, how frequently is it performed or what proportion of the total job does it represent?



- (c) If it is determined that the complainant was in fact not qualified, determine the following:
- (1) What were the job functions the complainant could perform?
  - (2) What other job categories could the complainant perform?
  - (3) Of these other categories, which jobs were nearest in skill, salary, promotional opportunities, etc., to the original job?
  - (4) Were other employees transferred to these jobs from the same job level as the complainant? Why?
- (d) What, if any, were the medical restrictions placed upon the complainant by the contractor?
- (1) Obtain all medical restrictions from the time they were first placed upon complainant until the present.
  - (2) Were the job restrictions based on the "official" job description or the "actual" job description?
  - (3) Did the complainant's doctor agree with the medical restrictions placed by the contractor?
    - (i) Which job description was this based upon?
    - (ii) What different, if any, medical restrictions did complainant's doctor recommend?
  - (4) Did the complainant agree with the medical restrictions recommended by the contractor and/or his/her personal physician?
  - (5) Could the complainant still have done the job with the medical restrictions placed by the contractor?
  - (6) Could the complainant still have done the job with the medical restrictions placed by his/her own physician?

III. The Complainant's Qualifications to Perform the Job if Reasonably Accommodated



Though the complainant may not have been qualified to perform the job initially, if there were reasonable accommodations that the contractor could provide, he/she was still a qualified individual with a disability.

The following would help to determine if a reasonable accommodation was possible:

- (a) What was the accommodation, if any, that the contractor did provide?
- (b) How was this accommodation determined; e.g., did the complainant provide any input?
- (c) Was this accommodation based on a contractor policy?
  - (1) If so, were all employees under the same policy or was the policy based on the type of disability; i.e., was the policy different for temporary disabilities and permanent disabilities?
  - (2) Obtain a copy of this written policy.
- (d) Did the contractor offer complainant a reasonable accommodation, but one different from that which he/she was seeking? What was it?
- (e) What accommodation did the complainant request? Did the contractor provide it? If not, why not?
- (f) What other accommodations were available to contractor?
  - (1) Were there accommodations that could have been made in the original job based on the job functions the complainant actually performed?
  - (2) Were there accommodations in jobs of a similar skill, pay level, etc., available to contractor?
  - (3) Were other employees accommodated in any of the above ways?

IV. Was the Complainant Reasonably Accommodated?

In determining the extent of a contractor's reasonable accommodation responsibility the CO should look at such factors as *business necessity* and *financial cost and expenses* in determining whether these accommodations would be an undue hardship on the contractor. If the contractor can show an undue



hardship, the accommodation is not reasonable. It should be noted that the Supreme Court in Southeastern Community College v. Davis, 99 S. Ct. 2351 (1979), inferred that since Section 503 is an affirmative action law, it requires more than an "evenhanded approach" in accommodating individuals with disabilities. The following questions should help determine if the accommodations were reasonable:

- (a) Were the accommodations that the complainant sought financially prohibitive?
  - (1) Look to the size of the contractor;
  - (2) Look to the number of employees in the job category; and
  - (3) Determine the financial outlook of the contractor; e.g., was this a time of growth with adding of employees, or was the contractor shrinking its labor force?
- (b) Are there job openings in positions that the complainant is qualified for?
- (c) What is the availability of jobs in job categories at a similar skill, pay level, opportunity level, etc.?
- (d) What was the likelihood of relocation to a different job site as an accommodation?
- (e) Were other employees hired or transferred into these job categories during the period accommodations were being sought for the complainant? Who were they and for what reasons were they transferred?
- (f) Did the contractor accommodate other individuals with disabilities?



***APPENDIX B: DOL PUBLICATIONS ON DISABLED/VETERANS' ISSUES***

1. Affirmative Action for the Handicapped: A Handbook for Equal Employment Opportunity Specialists of the Office of Federal Contract Compliance Programs (OFCCP) (April 1980) U. S. Department of Labor
2. Literature Review of Key Issues Relevant to OFCCP Regulations Regarding the Employment of the Handicapped (March 29, 1985) U. S. Department of Labor
3. Anti-Discrimination and Affirmative Action for Handicapped Workers Under State Law (February 1984) U. S. Department of Labor
4. Office of Federal Contract Compliance Veterans and Handicapped Workers Training (Manual-Workbook) (May 1979)



***APPENDIX C: INVESTIGATIVE REPORT***

(name of complainant) v. (CAS #)

(name of contractor)

1. Basis: (Executive Order 11246, as amended) (Section 503 of the Rehabilitation Act of 1973, as amended) (Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212)
2. Contractor: (company name) (address)  
(name of contractor's representative)  
(contact telephone number)
3. Contract Coverage: Contract number, agency name, date of award, duration of contract period, place of performance
4. Issue(s): The personnel action which gave rise to the complaint and the applicable regulatory citations
5. On-site Investigation: (date(s))
6. Allegations: What the complainant alleged happened to him/her, including the circumstances of the action as the complainant expressed them in the complaint and in the interview.
7. Rebuttal: The contractor's explanation of what happened and why it happened, including the circumstances of the action.
8. Findings of Fact:
  - a. Description of contractor's relevant personnel policies and practices; relevant union rules. (Reference case file location of copies)
  - b. Results of review of documentary evidence and records. (Reference case file location of copies)





- c. Summary of relevant information obtained from interviews of contractor management and supervisory employee witnesses. (Reference case file location of interview notes.)
  - d. Summary of relevant information obtained from interviews of other witnesses. (Reference case file location of interview notes.)
9. Analysis: Explanation of how and why the findings of fact confirm or refute the allegations.
10. Conclusion: The contractor (*has*) (*has not*) violated (*regulatory citation*).
11. Remedy: (To be used when a violation has been found)
- a. Describe all the remedies the complainant should receive.
  - b. Describe the corrective actions the contractor must take regarding its policies and practices.



***APPENDIX D:***

1. Acquired Immune Deficiency Syndrome (AIDS) and related conditions as protected handicaps under Section 503 of the Rehabilitation Act of 1973, as amended.
2. This appendix establishes policies under Section 503 of the Rehabilitation Act of 1973 concerning AIDS and related conditions and guidelines for processing and investigating complaints filed by or on behalf of persons with AIDS and related conditions, and provides accurate information on which compliance personnel may rely in processing such complaints.
3. Background:
  - A. Medical. Aids is primarily a disease of the body's immune system, which causes the system's collapse, and consequently, renders the afflicted individual vulnerable to many infections and cancers. AIDS results from infection by the human immunodeficiency virus (HIV or the AIDS virus). The virus cannot be transmitted through casual interpersonal contact, but only through sexual contact with infected persons, the introduction of infected blood into the bloodstream; e.g., by the sharing of syringes and needles, or from an infected mother to her infant during the birth process (or possibly by breast-feeding). Currently no cure for AIDS is known.

AIDS is the most severe form of a progressive immunologic compromise caused by HIV. The spectrum of health effects associated with HIV infection is divided generally into three categories for purposes of monitoring the progression of disease: AIDS itself, AIDS-related complex (ARC), and "asymptomatic" infection.<sup>1</sup> ARC refers to a specific

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<sup>1</sup> As stated by the United States Surgeon General:

HIV infection is the starting point of a single disease which progresses through a variable disease which progresses through a variable range of stages. In addition to an acute flu-like illness, early stages of the disease may involve subclinical manifestations; i.e., impairment and no visible signs of illness. . . . Accordingly, from a purely scientific perspective, persons with HIV infection are



set of clinical signs and symptoms related to HIV infection but which is currently unaccompanied by overt signs of symptoms of related disease. All three will be collectively referred to herein as "HIV-related conditions."

B. The Rehabilitation Act

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clearly impaired. They are not comparable to an immune carrier of a contagious disease such as Hepatitis B.

Letter from C. Everett Koop, M.D., Surgeon General to Douglas Kmiec, Esq., Acting Assistant Attorney General (July 29, 1988).



- (1) Statutory Requirements. Section 503 of the Rehabilitation Act (29 U.S.C. §793) together with its implementing regulations (41 CFR Part 60-741) requires Government contractors and subcontractors to take affirmative action to employ, and to refrain from discriminating against, qualified handicapped persons. The Act protects “individuals with handicaps,” defined as “...any person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” (29 U.S.C. §706(8)(B)).<sup>2</sup>

In 1988, the Rehabilitation Act was amended by the Civil Rights Restoration Act to clarify the application of the definition of “individual with handicaps” with respect to contagious diseases and infections. The amendment (which will be referred to herein as the “contagious disease” amendment) provides (at 29 U.S.C. §706(8) (C)) that the term “individual with handicaps” does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

- (2) The Supreme Court Decision in Arline. Prior to the passage of the contagious disease amendment discussed above, the Supreme Court held in School Board of Nassau County v. Arline, 107 S. Ct. 1123 (1987), that a person with a contagious disease may be deemed a protected handicapped person under Section 504 of the Rehabilitation Act. The Court also held that in order to determine whether a person handicapped by a contagious disease is qualified to perform a particular job, an individualized inquiry must generally be made concerning the specific risk of contagion at issue. However, the Court declined to decide the questions whether an asymptomatic carrier of a contagious disease such as AIDS could be considered physically impaired, or whether he/she could be considered handicapped by virtue of his/her contagiousness. The contagious disease amendment does not attempt to answer the question either; rather, it simply adopts the “qualified” standard set out in Arline.

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<sup>2</sup> The Rehabilitation Act Amendments of 1986 substituted the phrase “individual with handicaps” for the phrase “handicapped individual” (at each place the latter phrase appeared) in the Rehabilitation Act; however, the Amendments made no substantive changes in the scope of protection under Section 503. (See OFCCP Order No. FCCM 87-8/CH1 (September 2, 1987)).



- (3) The Department of Justice (DOJ) Opinion Regarding HIV Infection. On October 6, 1988, the United States DOJ, Office of Legal Counsel, issued an Opinion Act to HIV-infected individuals. Briefly stated, the Opinion concluded that persons with symptomatic or asymptomatic HIV-infection are substantially limited in their major life activities and may be deemed protected "individuals with handicaps," provided that (consistent with both Arline and the contagious disease amendment) their HIV infection neither prevents them from performing the duties of the job nor poses a direct threat to the health and safety of others.

4. Policy

- A. All HIV-related conditions--AIDS, ARC, and asymptomatic HIV infection--are substantially limiting impairments, and shall be treated as covered handicapping conditions under Section 503 of the Rehabilitation Act, provided that the individual's condition does not pose a direct threat to the health or safety of others or prevent successful job performance.
- B. Where jurisdiction has been established, OFCCP will accept, process, and investigate complaints alleging handicap discrimination based on all HIV-related conditions.
- C. In resolving Section 503 issues involving discrimination based on HIV-related conditions, OFCCP will follow the 1988 Rehabilitation Act amendment relating to the coverage of contagious diseases, the Arline decision and other appropriate Rehabilitation Act case law, and the 1988 DOJ Opinion regarding HIV infection.
- D. Recognizing the potentially urgent circumstances facing complainants who allege discrimination based on HIV-related conditions, all offices shall expedite the processing of these complaints.
- E. Regions shall include in the weekly report notice of any complaints based on an HIV-related condition.

5. Investigative Guidelines<sup>3</sup>

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<sup>3</sup> This discussion of investigative procedures is intended to address only the determination of whether a person with an HIV-related condition is an individual with handicaps. Of course, it remains the Compliance Officer's responsibility to establish the remaining elements of a Section 503 case; e.g., the connection between the adverse employment decision and the handicap.



In order to establish that a complaint alleging discrimination based on an HIV-related condition is covered by Section 503, it is necessary to show *that the person had a substantially limiting impairment* and that *the person's condition did not pose a direct health or safety threat or prevent successful job performance*. The following subsections address each of these elements and detail specific factual material which should be sought during the course of the investigation.

- A. **Substantially Limiting Impairment.** As is set forth in Section 4.A. above, OFCCP's policy is that all HIV-related conditions are substantially limiting impairments. Therefore, documentation must be provided showing that the complainant had, had a record of, or was regarded as having an HIV-related condition.

Complete medical information shall include the degree of the complainant's impairment and the extent to which the impairment limits major life activities. This record is particularly important with respect to asymptomatic HIV infection, since few court decisions have considered whether asymptomatic infection is a substantially limiting impairment.

In establishing the disability, the "regarded as" clause could be particularly significant. For instance, a substantial limitation might be established by showing that an adverse decision was based on the contractor's belief that an HIV-infected individual posed a risk of infection to others. In this example, the contractor, "regarded" the individual's impairment, HIV infection, as preventing safe interaction with coworkers, customers, and/or the public. The contractor's perception or attitude was that the individual's impairment restricted his major life activities of "employment" and "socialization."

Moreover, protection for persons with asymptomatic infection might be established under the "regarded as" clause by showing that the contractor's adverse action was based on the perception that the individual had AIDS (or ARC). In equating asymptomatic HIV infection with AIDS (or ARC), the contractor "regarded" the individual as having a substantially limiting impairment.

Alternatively, it might be shown that the contractor viewed the complainant as an "AIDS risk," and denied an employment opportunity based on concerns of future debilitation. In this regard, the Federal Center for Disease Control (CDC) has stated that certain groups bear an increased risk of HIV infection. These include homosexual and bisexual men, past and present intravenous drug abusers, and the sexual partners of persons in these groups. Because of the risk status these groups bear, they may be prime targets for



being regarded as handicapped by HIV infection (irrespective of whether they are actually infected).

Thus, when establishing the existence of a substantially limiting impairment the Compliance Officer (CO) should investigate the following:

- (1) The complainant's medical condition (at the time the alleged discrimination occurred), including:
  - a. The results of any tests for HIV infection;
  - b. Medical diagnoses, and related medical reports;
  - c. Any medical restrictions placed on the complainant or recommended by his/her physician or other health authority; and
  - d. Any debilitation or other symptoms (such as skin lesions associated with Kaposi's sarcoma, swollen lymph glands, fatigue, or weight loss) being experienced by the individual.
- (2) Employer reactions to the complainant's condition, including:
  - a. Whether the complainant has been (allegedly due to an HIV-related condition) denied other employment or promotion opportunities, and if so all pertinent facts; and
  - b. Information (including employer and third-party statements) indicating that the employer regarded the complainant as physically unable to perform the job, as having a condition more severe than the condition the individual actually had, as posing a risk of contagion, or as posing a risk of future infection and/or debilitation.

- B. Health and Safety/Successful Job Performance. Under the contagious disease amendment to the Rehabilitation Act (see Section 3.B.1.), persons with HIV-related conditions will be deemed not to be individuals with handicaps if their condition--notwithstanding the contractor's reasonable accommodation efforts--poses a health or safety threat to others or prevents successful job performance. As discussed below, Arline (and other Rehabilitation Act case law) generally requires individual



determinations based on reasonable medical judgements. Accordingly, a contractor may not use an HIV-antibody test or other job-qualification requirements which screen out qualified handicapped persons with HIV-related conditions, unless the contractor can demonstrate that the requirement is related to the particular job and is consistent with business necessity and safe performance of the job. (See 41 CFR 60-741.6(c)(2).)

An individual who poses a health or safety threat or who couldn't successfully perform the job because of factors involving HIV-related debilitation, would not be covered. One consideration in making such a determination is the nature of the job involved (see footnote 4 below). Another key factor is the precise nature and severity of the individual's debilitation, if any. A third key factor is the contractor's ability (and actual efforts) to make reasonable accommodations for successful performance of the job at issue. Accommodations might include restructuring job duties, modifying work schedules, and permitting advance sick leave. The nature of the work and the extent of the individual's debilitation, might pose an undue hardship. However, it is the contractor's responsibility to demonstrate that such an accommodation would be an undue hardship. (41 CFR 60-741.6 (d).)

Exclusionary employment decisions can rarely be justified on the basis of HIV contagion. The CDC has found, that the AIDS virus is not transmitted through casual physical contact and that there is no risk of HIV transmission to coworkers, clients, or consumers in ordinary employment settings, including, for example, offices, factories, schools, construction sites, and food service establishments.<sup>4</sup> In this regard, a contractor which seeks to justify an adverse

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<sup>4</sup> see CDC Recommendations for Preventing Transmission of Infection with [HIV] in the Workplace (CDC Workplace Recommendations), 34 MMWR (Morbidity and Mortality Weekly Report) 681 (November 5, 1985). The CDC recognizes, however, that the threat of contagion may be a legitimate concern in some very special circumstances. For instance, a health-care worker with HIV infection would pose a risk of infection to a patient if during an invasive procedure; e.g., surgery, the worker sustained a needle stick or scalpel injury. Thus, the CDC has concluded that "...[t]he question of whether [health-care] workers infected with HIV--especially those who perform invasive procedures--can adequately and safely be allowed to perform patient-care duties or whether their work assignments should be changed should be determined on an individual basis." CDC, Recommendations for Prevention of HIV Transmission in Health-Care Settings (CDC Health-Care Recommendations), 36 MMWR Supp. 2S, 16S (August 21, 1987). Also, the CDC's Workplace Recommendations state that all health-care workers with oozing lesions or weeping dermatitis, regardless of HIV-infection status, should refrain from direct patient care and from handling patient-care equipment until the condition clears. These Recommendations contain similar guidance for personal-service workers; i.e., workers who have close physical contact with their clients, such as hairdressers, barbers, cosmetologists, and manicurists.





employment decision on the risk of HIV transmission, must show that, with medical documentation, the particular risk of HIV contagion posed a significant threat to the health and safety of others.

The majority of secondary infections which result from HIV infection are not transmissible in ordinary work or social settings to persons with normal immune systems. However, a few of these infections such as tuberculosis, may be communicable in some settings. The contractor must assess persons who develop such communicable infections on a case-by-case basis to determine whether they are qualified for the position at issue. The contractor must demonstrate that it could not satisfactorily reduce the risk of contagion through some method of reasonable accommodation.

In this connection, it may be appropriate (where medically indicated) for a contractor to obtain periodic physician's reports for the purpose of monitoring an individual's condition and the risk of contagion. Also, it is not uncommon in some workplaces for supervisors and coworkers of persons suspected or known to be HIV-infected to be concerned about a risk of contagion.<sup>5</sup> In such situations (and preferably before a problem situation arises), contractors should consider providing both ongoing training for supervisors and managers regarding medical and personnel issues related to AIDS in the workplace, and general educational and counseling programs to allay employee concerns.

Thus, when investigating the health and safety/successful job performance element of the definition, the CO should attempt to establish facts relating to the following:

- (1) The duties of the job, both as the job is formally defined and as the job is actually performed.
- (2) The extent of the complainant's debilitation, if any, and any job duties the individual was unable to perform as a result of the debilitation.
- (3) The contractor's efforts to accommodate the complainant, including the accommodations made and those considered but rejected.

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<sup>5</sup> Contractors are generally required to keep confidential all information regarding an employee's or applicant's physical or mental condition, including his HIV-infection status. However, relevant medical information may be disclosed to supervisors and managers regarding work restrictions and accommodations; first aid and safety personnel (if the condition may require emergency treatment); and Government officials investigating compliance with Section 503. (41 CFR 60-741-6(c)(3).)



- (4) The particulars regarding the assertion of undue hardship. These include cost degree to which the job would have to be altered to accommodate the individual.
- (5) The medical opinions and other information (including all sources thereof) relied upon by the contractor in reaching the adverse employment decision that there was a risk of HIV transmission.
- (6) The basis for any conclusion reached by the contractor that reasonable accommodation could not satisfactorily reduce the risk of contagion.
- (7) The contractor's policies, formal or informal, relating to employment of individuals with HIV-related conditions.
- (8) Whether, and to what extent, the adverse employment decision was based upon a blanket policy or upon individualized assessment of the person involved.

Once these and other relevant facts have been established, the CO must determine, applying the principles discussed above, whether the person's condition posed a direct health or safety threat or prevented successful job performance; e.g., was there an unacceptable risk of HIV contagion, and was no accommodation reasonable possible.



***APPENDIX E: COMPLAINT INVESTIGATION INDEX***

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