

Disability Discrimination

The Office of Civil Rights (OCR) manages the Department of Commerce's Equal Employment Opportunity (EEO) Complaint Process and other EEO programs. This fact sheet includes basic information about employment discrimination based on disability, which is prohibited by the Rehabilitation Act of 1973.

Q. What protections do Commerce employees and job applicants have from discrimination based on disability?

A. The Rehabilitation Act makes it unlawful to discriminate in employment against a qualified individual with a disability. It also protects employees from discrimination based on their family, business, social or other relationship or association with an individual with a disability. In addition, the Rehabilitation Act requires federal agencies to provide reasonable accommodation for the known disabilities of qualified employees and job applicants unless such accommodation would impose an undue hardship on the agency's operation of its program.

To be protected, a person must be a "qualified individual with a disability" as defined by the Rehabilitation Act and implementing regulations.

Q. Does the Americans with Disabilities Act (ADA) apply to federal employees?

A. No. The standards used to determine violations of the

Rehabilitation Act are the same standards applied under the employment provisions of the ADA (Title I). However, the ADA itself does not apply to Federal employment.

Q. Who is an "individual with a disability?"

A. An **individual with a disability** is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

A **major life activity** is a function that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, seeing, hearing, walking, breathing, speaking, learning, sitting, standing, lifting, reaching, and working.

An **impairment substantially limits a major life activity** if it prevents a person from performing an activity or sig-

nificantly restricts their ability to perform the activity.

The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather, on the effect of that impairment on the life of the person. The same types of impairments often vary in severity and often restrict different people in different ways depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling, or many other factors. The effects of measures to correct or mitigate an impairment must also be taken into account when judging whether a person is substantially limited in a major life activity. Thus, whether an individual has a disability is an individualized inquiry.

Q. When is an employee or applicant with a disability "qualified" under the Rehabilitation Act?

A. A **qualified individual with a disability** is a person who:

- has the skills, experience, education, and other requirements of the job the individual

holds or is seeking, and

- can perform the essential functions of the position with or without reasonable accommodation.

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Factors to consider in determining if a function is essential include:

- whether the position exists is to perform that function,
- the availability of other employees to perform the function, and
- the degree of expertise or skill required to perform the function.

Q. Is a person who has been certified as a disabled veteran automatically covered under the Rehabilitation Act?

A. No. An individual who has a record of a disability under other laws or regulations is not necessarily covered by the Rehabilitation Act. Other laws may define the term “disability” differently. An individualized inquiry is still necessary when an individual has been certified as having a disability for other purposes, such as veterans pro-

grams, state vocational and rehabilitation programs, or disability retirement programs.

Q. Are individuals who use drugs illegally protected by the Rehabilitation Act?

A. No. Anyone who is currently using drugs illegally is not protected by the Rehabilitation Act and may be denied employment or fired on the basis of such use. The law does not prevent employers from testing applicants or employees for current illegal drug use, or from making employment decisions based on verifiable results.

Q. What kinds of discriminatory practices are prohibited?

A. It is illegal to discriminate based on disability in job application procedures, hiring and firing, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Discriminatory practices also include:

- harassment based on disability;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discrimina-

tory practices;

- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of people with disabilities; and

- denial of reasonable accommodation for a disability. It is unlawful to deny reasonable accommodations to qualified individuals with a disability unless doing so would create an undue hardship for the employer. For more information on reasonable accommodation, see Department Administrative Order 215-10.

Q. How can I raise a claim of disability discrimination in the EEO complaint process?

A. The first step is to see an EEO Counselor. To preserve your right to file a formal complaint, you must do this within 45 days of the action you believe is discriminatory or when you first knew or should have known of the possible discrimination. Contact your bureau EEO Officer to initiate counseling. Your EEO Counselor will explain the EEO Complaint Process and can also give you information about other possible avenues of redress for your claim.

Published September 2003