

The Experience of the United States with Employment and Right to Work Protections—Quick Reference Guide

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This paper provides examples of the implementation of U.S. disability policy pertaining to employment. A more detailed description is provided in the attached policy paper.

Legislation

Under the Rehabilitation Act of 1973, federal entities and groups receiving federal funds cannot discriminate based on a disability. The Rehabilitation Act also requires affirmative action in the hiring, placement, and advancement of people with disabilities. The Americans with Disabilities Act (ADA) of 1990 strengthened the Rehabilitation Act by extending the non-discrimination principles to private entities and state and local governments. Title I of the ADA is specifically dedicated to employment and is based largely on the Rehabilitation Act. Title I pertains to employers with 15 or more employees, and the prohibition on discrimination applies to job application, procedures, hiring, firing, advancement, compensation, job training, and other terms and conditions of employment. Title I defines a person with a disability as an individual who (i) has a physical or mental impairment that substantially limits one or more major life activities; (ii) has a record of such impairment; or (iii) is regarded as having such an impairment.

In order for an employee with a disability to receive protection under Title I, he or she must be a qualified worker who can perform the essential functions of the job with or without reasonable accommodation. Reasonable accommodations may include, but are not limited to, (1) making existing facilities used by the employees readily accessible to and usable by persons with a disability – for example, employee restrooms; (2) job restructuring, modifying work schedules, or reassignment to a vacant position; (3) acquiring or modifying equipment or assistive devices, adjusting or modifying tests, training materials, or policies; and (4) providing sign language interpreters or readers for individuals who are blind or have low vision. Under the ADA, an employer is required to make reasonable accommodations for a worker with a disability so long as the action does not require significant difficulty or expense when considered in light of factors such as the size of the company, financial resources, and the nature and structure of the operation. Moreover, the employer is not required to lower production standards in order

to make an accommodation, nor is he or she obligated to provide personal use items such as hearing aids or glasses.

- Technical Assistance**

The Equal Employment Opportunity Commission (EEOC) is charged with enforcing Title I of the Americans with Disabilities Act and provides technical assistance in order to inform employers and employees about their rights and obligations under the law. Technical assistance is offered through a variety of methods, including compliance manuals, an extensive website, a telephone hotline, and training seminars for employers and employees.

- Enforcement**

Upon receiving a complaint against an employer for an ADA violation, EEOC will investigate the complaint, attempt conciliation, and if necessary, file a suit in federal court.¹ If the EEOC decides not to pursue an action against the employer, the agency may issue a right to sue letter, which allows an individual to bring a private action in the courts. Court remedies for suits against private employers include back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other remedies that will make an individual “whole.”

Other Initiatives

National and local governments are uniquely positioned to promote positive employment practices for people with disabilities in several ways. U.S. federal government has had a long history of employment promotion for people with disabilities. The federal government has a number of proactive policies to attract, hire, and retain individuals with disabilities and although far from perfect, it has resulted in many years of being a good employer. Some of the initiatives the U.S. government has undertaken are:

- The Office of Personnel Management is the Federal Government’s employment and personnel agency, which is in a good position to ensure hiring, retention, and promotion of people with disabilities. Most federal jobs are competitive appointments, but the federal government also has hiring options for people with disabilities called excepted service appointing authorities. These special schedules, Schedule A and Schedule B, permit federal employers to appoint individuals with severe physical, cognitive or psychiatric disabilities, or who have a history of such disabilities, to positions for up to two years.

- The Workforce Recruitment Program (WRP), coordinated through the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP) and the Department of Defense, provides summer work experience, and in some cases full-time employment, for individuals with disabilities with federal agencies. Another federal program, Computer Electronics Accommodations Program (CAP), provides assistive technology for persons with disabilities working in the

¹ Complaints filed against the federal government by federal employees are resolved under a different system. See http://www.access.gpo.gov/nara/cfr/waisidx_03/29cfr1614_03.html for more information.

federal government. These accommodations include screen reader and voice input computer programs.

- The Job Accommodation Network (JAN), also administered by ODEP, provides technical assistance concerning job accommodations. JAN maintains a database, which includes information on how certain accommodations can be accomplished.

- Flexible Work Schedules: The Federal Government also promotes flexible work options for employees, which may often constitute a reasonable accommodation. One of the most effective work options is telecommuting, which allows individuals to work from home. The New Freedom Initiative that was announced by President George W. Bush in 2001 expands telecommuting by providing matching funds to states to guarantee low-interest loans for individuals with disabilities to purchase computers and other equipment necessary to work at home.