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**Federal Programs Advisory Service
2120 L Street, N.W., Suite 210
Washington, D.C. 20037**

Making Accommodations Decisions

Edited by Darla Fera
Managing Editor
Handicapped Requirements Handbook

**Federal Programs Advisory Service
2120 L Street, N.W., Suite 210
Washington, D.C. 20037
(202) 872-1766**

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Preface

Making Accommodations Decisions is designed to assist organizations that, by virtue of their federal contracts and/or financial assistance, must make accommodations for handicapped workers and applicants for employment. It focuses exclusively on the accommodations process, without commenting on whether an establishment, or portion thereof, is covered by federal requirements.

Every employer should determine whether and what part of its work force is subject to the two federal statutes that establish the accommodation obligation—sections 503 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§793 and 794). Making this determination may be difficult at the present time, since issues regarding handicapped employment have been the subject of conflicting judgments in federal courts. Agency rules require compliance throughout an organization in receipt of a federal contract of \$2,500 or more (under section 503), and throughout an organization in receipt of federal financial assistance (under section 504). But judicial challenges that are still unresolved question, among other things, whether only those employees and applicants involved under a particular federal contract should be covered by section 503, and whether section 504 should cover employment at all.

Again, ***Making Accommodations Decisions*** does not address these complex legal issues regarding coverage; it begins with a presumption that the work force in question, or portion thereof under consideration, is covered by federal requirements.

Making Accommodations Decisions

Employers often question the proper way to make decisions about accommodating handicapped workers and applicants for employment. As with other management decisions, the accommodation decision requires careful planning and an established decision-making structure. Ideally, decision makers will be identified, certain information will be compiled, and some institutional policy issues will be resolved before any accommodation question is raised.

The following seven-step narrative describes the considerations in making accommodations decisions. These steps are illustrated in the chart contained in Appendix I of this booklet.

I. Review Responsibilities, Required Skills And Selection Criteria For All Jobs In The Employer's Work Force

The first step in any accommodation process is a review of all relevant job descriptions and actual job functions. Employers covered by section 503 are required to conduct such a review of job requirements under current Labor Department rules. Employers covered by section 504 must identify the "essential functions" of each job before they can judge whether a particular handicapped person is "qualified" to perform a particular job. Knowing in advance the "essential" and "nonessential" functions of each job will facilitate judgments regarding whether a handicapped person, with or without accommodation, is "qualified" for employment. The "Position Description Form" (included at Appendix III of this booklet) can assist employers in completing this task.

Federal regulations prohibit discrimination in recruitment policies and practices and the criteria used to select employees for entrance into or advancement within the work force. Job applications should be revised to eliminate questions other than those pertinent to required job skills and a

person's ability to perform essential job functions with or without accommodation. Tests and other job selection criteria must be validated against actual job requirements and justified by business considerations if they tend to screen out handicapped workers or applicants. Employers must ensure that all employment tests are adapted for use by persons who have handicaps that impair sensory, manual or speaking skills (unless a test purports to measure sensory, manual or speaking skills).

Both section 503 and 504 regulations contain provisions relating to preemployment inquiries and the use of preemployment medical examinations. Whenever an employer inquires into an applicant's or employee's physical or mental condition or conducts a medical examination, information obtained in this manner shall be kept confidential. For an outline of the provisions relating to the use of preemployment inquiries and medical exams, readers are referred to the chart at Appendix IV of this booklet.

II. Develop A Mechanism For Soliciting Accommodation Requests

After the review of job requirements is complete, the employer should develop and implement a method for soliciting from employees and applicants voluntary indications of handicapped status and requests for accommodations. Since sections 503 and 504 obligate employers to take positive steps to accommodate a worker's or applicant's handicap, channels must exist for a handicapped person to bring the handicap to the attention of the employer and request an accommodation. If an individual does not ask to be accommodated, the employer should not force accommodations on the individual. On the other hand, if there are job performance problems that appear to be related to a handicap, an employer may suggest accommodations to an obviously handicapped employee.

The section 503 rules include at Appendix B suggested language for requesting information from employees and applicants about handicaps and necessary accommodations. (Appendix B is reproduced at Appendix V of this booklet.) Information received in response to these standard inquiries must be kept separate from an individual's other personnel records and held confidential except from those with a legitimate need to know about the person's condition, for whom specific exemptions are granted in the rules (see chart at Appendix IV of this booklet). Information gathered from employees and applicants can be factored into decisions concerning whether an individual is "handicapped" and "qualified" for a particular job, but must *not* be used in a manner that results in discrimination against qualified handicapped individuals.

III. Determine Whether An Applicant Or Employee Who Requests Accommodation Is "Handicapped" Under The Law

When a request for accommodation is received from an applicant or employee, before responding, the employer should verify that the person is legally entitled to such accommodation. A person is "handicapped" within the meaning of sections 503 and 504 if he or she:

- (1) has a mental or physical 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.

"Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

The judgment whether any given person is "substantially limited" depends on the nature and severity of that person's handicapping condition. Temporary disabilities arguably are not "substantially" limiting within the meaning of either statute.

If an individual's handicap cannot be verified or its substantiality ascertained by ordinary observation, an employer may ask for medical verification of the existence of a handicapping condition.

A person whose condition does not come within the statutory definition of a "handicap" need not be considered for an accommodation. "Physical or mental impairments" that fall within discrimination prohibitions *include*: (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic

brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

IV. Determine Whether The Handicapped Person Is "Qualified" For The Job

Only "qualified" handicapped individuals are protected from discrimination by sections 503 and 504. Handicapped persons who with reasonable accommodation can perform the essential functions of the job are "qualified." An accommodation need not be made if it requires the employer to modify essential job requirements; in such an instance, it would not be discriminatory to deny employment or advancement to a handicapped person who, despite accommodation, cannot perform essential job functions (i.e., is not "qualified").

For example, if a blind individual is applying for a job for which typing at 65 words per minute has been determined to be an "essential job function," and the applicant cannot meet this requirement despite accommodation, the person need not be hired. However, if typing at 65 words per minute is a requirement related to a job function which, in terms of time and effort, could be construed as "nonessential," the applicant, with accommodation (e.g., shifting job duties), could be determined to be "qualified."

V. Decide Whether The Accommodation Required Is "Reasonable" Or Would Impose An Undue Hardship

Employers are prohibited from denying "reasonable" accommodations to handicapped persons who, with accommodation, would be able to perform essential job functions effectively. The nature and scope of any accommodation needed or requested must be analyzed to determine if, in the context of the employer's operations, it is "reasonable." Accommodations need not be made if they impose an "undue hardship" on the employer.

Examples of accommodations presented in the section 503 and 504 rules include providing aids or interpreters, modifying physical facilities to ensure accessibility, restructuring jobs and modifying work schedules. Any or all of these suggested accommodations may be reasonable or unreasonable depending on the facts of a given case.

Using the same example of the blind person applying for a position for which typing 65 words per minute is "essential," it may be "reasonable" to dictate letters for transcription and/or provide a typewriter with brailled keys, if such actions would render the applicant "qualified." Such accommodations might be "reasonable" for a larger employer with greater capability to modify procedures and/or adapt old or purchase new equipment; the same accommodations might impose an "undue hardship" on a smaller employer with limited capabilities of this nature.

The federal rules identify cost and business necessity as two factors relevant to defining what constitutes an "undue hardship" sufficient to relieve the employer of the obligation to accommodate a handicapped individual.

Thus, if a particular accommodation is expensive and an employer's financial resources are limited, the cost of the accommodation may constitute an "undue hardship." In addition, if a compelling business interest justifies the way a program is operated, an accommodation that

would require changes in the program's operation might be viewed as imposing an undue hardship on the employer.

An example may help in distinguishing the reasonableness of an accommodation from the hardships it may impose. Assume the police forces of two adjacent towns decided, for reasons of efficiency in responding to a major emergency, to combine their dispatch and communications facilities at one location. After considering several sites, police officials decided to locate the facility in a vacant bomb shelter in one of the two town halls. The bomb shelter was chosen primarily because it could remain operational in almost any major disaster. The shelter has no windows and only one entrance at the bottom of a long flight of stairs.

One of the town's dispatchers is confined to a wheelchair and is a "qualified handicapped individual" under sections 503 and 504. Given the dispatcher's history of successful performance in the job, it is clear the only accommodation necessary is one that would give her access to the new facility. The town hall in question already has an elevator that runs from the ground floor to the upper stories of the building. The town's engineer estimates that it would cost approximately \$15,000 to extend the elevator down one floor into the basement. Would this be a reasonable accommodation? Would it impose an undue hardship on the towns?

The combined budgets of the two towns certainly would evidently permit an expenditure of the size in question, so the accommodation is "reasonable" from a financial viewpoint. If the sole consideration is financial, it might be difficult to argue that the cost of the elevator extension alone would constitute an undue hardship. However, whether the nature of the proposed accommodation would impose an undue hardship on the operation of the dispatch office is another question. As the police might argue, the breach in the security of the dispatch office that would result from the elevator extension might compromise severely the very reason the particular bomb shelter site was chosen. If the physical security of the office is jeopardized, the achievement of the police departments' objectives may be impossible. In such a case, the elevator extension, by its very

nature, would appear to present an example of an undue hardship (and, therefore, not be a "reasonable accommodation), even though it is not unreasonable on its face. The employer, therefore, could legally refuse to provide the accommodation.

Finally, in determining the "reasonableness" of an accommodation, employers must focus carefully on whether the accommodation will assist the handicapped worker or applicant in his or her effective completion of "essential" job functions. Again, if the handicapped person is not "qualified" as a result of the accommodation, it need not be made and the person need not be hired or advanced. Also, handicapped persons cannot be denied employment or advancement when an accommodation related to a "nonessential" job function would impose an undue hardship. If a costly accommodation is not related to an "essential" job function, and a handicapped person would therefore be capable of performing essential functions without accommodation, less costly alternatives (e.g., shifting job duties or making minor modifications in job positions) should be considered for performing nonessential job duties.

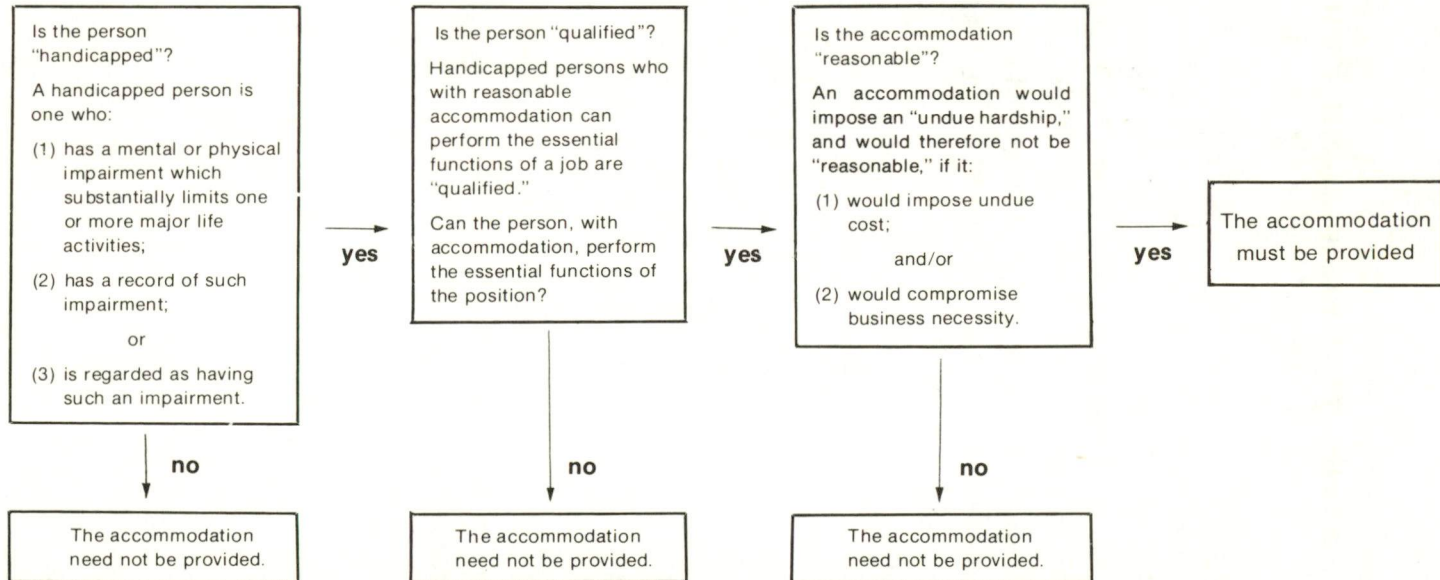
VI. Implement And Monitor The Effectiveness Of The Accommodation

Once an accommodation has been made, the employer and the worker should evaluate continually its effectiveness in assisting the employee to perform the job. If the accommodation is not achieving the desired objective, the employer and employee should discuss alternative accommodations.

The fact that an employee is receiving an accommodation should not change the way that employee is treated for purposes of job evaluation or advancement. Accommodations should be designed to provide handicapped employees with equal opportunities to be successful on the job. Neither the employee nor the employer should permit the existence of a handicap to be used as an excuse for either poor job performance or undue criticism. Whether a handicap is physical, mental or emotional, the performance standards and expected behavior on the job should be the same for all workers.

Appendix I: Accommodations Decisions Chart

The first step in any accommodation process is a review of all job descriptions and job functions to determine in particular the "essential" and "nonessential" functions of each position within the organization. After reviewing all positions, the employer should develop and implement a method for soliciting from employees and applicants voluntary indications of handicap status and requests for accommodations. If a request for accommodation is made, the following chart can assist the employer in the decision making process regarding provision of the accommodation.



It should be noted well that federal rules *require* employers to make accommodations that are "reasonable" for persons who are both "handicapped" and "qualified." There are no prohibitions against making accommodations of any nature for individuals who may not be qualified handicapped persons.

- (5) Are you taking "remedial action" or "voluntary action" under section 504 or "affirmative action" under section 503?

_____ no _____ yes

If **no**, describe steps that will be taken to ensure that no preemployment medical exams are conducted and no preemployment inquiries are made as to whether an applicant is a handicapped person or as to the nature or severity of a handicap. (Inquiries related to one's ability to perform a job effectively and safely are permitted.)

If **yes**, discuss your program.

- (6) Does your organization conduct or require any medical exams prior to making offers of employment?

_____ no _____ yes

If **yes**, describe procedures to be taken to make certain that (a) **all** entering employees are subject to medical exams, (b) all offers of employment are conditional based on the results of the exams, (c) the medical results gathered are not used in a discriminatory manner, and (d) all information gathered is preserved confidentially.

- (7) Complete a "Position Description Form" (see Appendix III of this booklet) for each job position in your organization, for use in determining "qualified" applicants and what job accommodations can be made when such are necessary for an applicant or employee.

Appendix III: Position Description Form

The form below may be used by an employer to analyze each job position to determine: (1) whether applicants are "qualified" for employment in the position; and (2) what job sites and equipment may require modifications in the event reasonable accommodation is necessary for an applicant or employee.

TITLE:

JOB OBJECTIVES (Purposes of the position):

ESSENTIAL JOB FUNCTIONS (Functions essential to attaining job objectives):

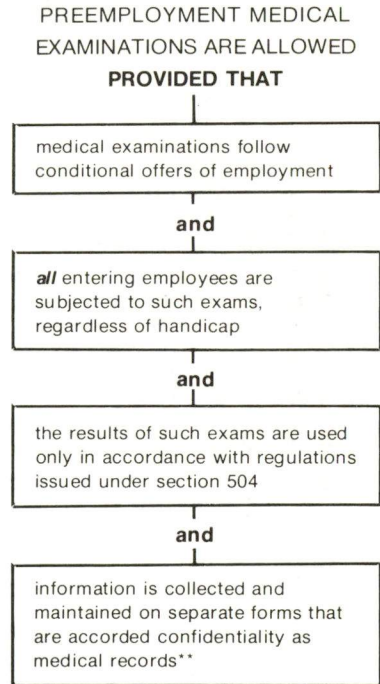
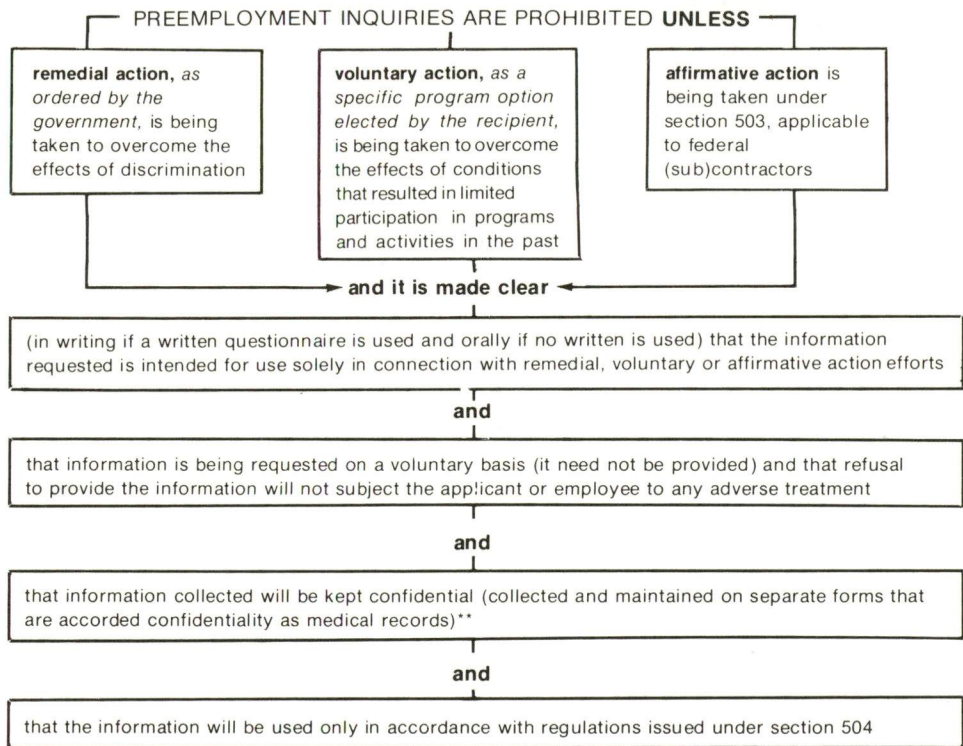
JOB STANDARDS (Minimum qualifications needed to perform essential job functions):

JOB LOCATION (Place(s) where work is performed, including facilities and worksites):

EQUIPMENT (Machines, devices, tools, etc., used in job performance):

Appendix IV: Preemployment Medical Examinations and Inquiries Related To Nature And Severity Of Handicap

Section 504*



* Section 503 requirements in this area are generally consistent with section 504.

** The following exceptions to strict confidentiality are: (1) **Supervisors and managers** may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations; (2) **First aid and safety personnel** may be informed, where appropriate, if the condition might require emergency treatment; and (3) **Government officials** investigating compliance with the act shall be provided relevant information upon request.

Appendix V: Appendix B of the Section 503 Regulations

U.S. Department of Labor

Chapter 60—Office Of Federal Contract Compliance, Equal Employment Opportunity, Department Of Labor

Part 60-741—Affirmative Action Obligations Of Contractors And Subcontractors For Handicapped Workers

Appendix B

This employer is a government contractor subject to section 503 of the Rehabilitation Act of 1973, which requires government contractors to take affirmative action to employ and advance in employment qualified handicapped individuals. If you have such a handicap and would like to be considered under the affirmative action program, please tell us. Submission of this information is voluntary and refusal to provide it will not subject you to discharge or disciplinary treatment. Information obtained concerning individuals shall be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals, and regarding necessary accommodations, (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment, and (iii) government officials investigating compliance with the Act shall be informed.

If you are handicapped, we would like to include you under the affirmative action program. It would assist us if you tell us about (1) any special methods, skills and procedures which qualify you for positions that you might not otherwise be able to do because of your handicap, so that you will be considered for any positions of that kind, and (2) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, or other accommodations.

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