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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

GENERAL COUNSEL

July 18, 2000

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus *RGD*
General Counsel

SUBJECT: Two Proposed Executive Orders Entitled, Respectively, "Increasing the Number of Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," and Two Proposed Memoranda Entitled, Respectively, "Employing People with Significant Disabilities to Fill Federal Agency Jobs that can be performed at Alternate Worksites, including the Home" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination"

Attached are two proposed Executive orders entitled, respectively, "Increasing the Number of Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation" and two proposed memoranda entitled, respectively, "Employment of People with Significant Disabilities to Fill Federal Agency Jobs that can be performed at Alternate Worksites, including the Home" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination," that were prepared by the White House Office of Domestic Policy.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning these proposals. If you have any comments or objections, they should be received no later than close of business Wednesday, July 19, 2000. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposals.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List
Two Proposed Executive Orders and
Two Proposed Memoranda

cc:

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Honorable Bob Nash
Director of Presidential Personnel

Executive Order

DRAFT
7-18-2000
11:00 a.m.

REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES
TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

By the authority invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that grants: (1) reasonable accommodations for individuals with disabilities in the application process for Federal employment; (2) reasonable accommodations that enable Federal employees with disabilities to perform the essential functions of a position; and (3) reasonable accommodations that enable Federal employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures for to Facilitate the Provision of Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. The procedures are applicable to all employees with disabilities within the agency who request a reasonable accommodation. The agency may, in its discretion, establish different procedures for different components of its agency. and applicants

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a

reasonable accommodation request form, the form must be provided as an attachment to the agency's written procedures.

2. Specify to whom the request must be submitted and from whom the individual will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

8. Provide that reasonable accommodation denials should be in writing and specify the reasons for denial.

9. Insure that systems of record keeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation.

~~10. State that~~ Employees have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

Sec. 2. Submission of agency reasonable accommodation procedures to the EEOC.

Within one year, each agency shall submit its procedures to the EEOC for comment. Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. Collective Bargaining Obligations.

In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law.

Sec. 4. Judicial Review.

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

Sec. 5. Implementation.

The Presidential Task Force on the Employment of Adults with Disabilities shall be responsible for developing and implementing guidance to effectuate the provisions of this order.

THE WHITE HOUSE,

DRAFT
7-18-2000
11:00 a.m.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home

Cutting edge telecommunications technology has recently made it possible for customer service "call/contact" centers to transmit voice and data to employees who are located at work sites other than the call/contact centers, employers' headquarters, or other centralized locations. Individuals employed as customer service representatives can work from their homes or any other accessible off-site location just as if they were working in the call /contact centers themselves. Technology also allows other types of work activities, such as the processing of insurance claims and financial transactions, to be carried out from such alternate work stations. ~~Because of this technology, many of these customer service center and other work activities may operate more efficiently at off-site work stations.~~

The unemployment rate of individuals with significant disabilities is among the highest of disadvantaged groups in the nation. These individuals are an important untapped resource of talent and skills, and a key element in the capacity to sustain our historic economic growth. The increasing use of off-site work stations to carry out significant and competitive work activities provides a critical new source of employment opportunities for individuals with significant disabilities.

It is in the interest of the Federal government to utilize the skills of people with significant disabilities by recruiting them for appropriate off-site, home-based employment opportunities with Federal agencies, including employment as home-based customer service representatives linked to Federal customer service call /contact centers.

To harness the power of new technologies to promote Federal sector employment of people with significant disabilities and improve federal customer service representation. I direct executive departments and agencies as follows:

(a) Each head of an executive department or agency operating customer service call /contact centers shall ~~conduct a Basic Feasibility Study~~ to identify positions that can be relocated to home-based or other off-site facilities, and be filled by qualified individuals with significant disabilities. This ~~Basic Feasibility Study~~ shall be completed and submitted to the Secretary of Labor within 90 days of this memorandum.

(b) Each head of an executive department or agency shall ~~also conduct an Expanded Feasibility Study~~ to identify the appropriateness of using home-based and other off-site positions to carry out other specific work activities, such as the processing of insurance

claims and financial transactions, that could be accomplished by individuals with significant disabilities. This ~~Expanded Feasibility Study~~ shall be completed and submitted to the Secretary of Labor no later than 90 days from the date of this memorandum.

(c) If the head of a department or agency determines it is feasible and appropriate to establish home-based positions pursuant to the feasibility studies conducted under paragraphs (a) and (b), such head shall develop a Plan of Action and Implementation Guidelines that encourages the recruitment and employment of individuals with significant disabilities for such positions

(d) The Plan of Action and Implementation Guidelines conducted and procedures established pursuant to this section shall be submitted to the Secretary of Labor within 120 days from the date of this memorandum. The implementation of the approved plans will be coordinated through the Secretary of Labor and the Director of the Office of Personnel Management. GSA

(e) In implementing this memorandum, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent permitted by law.

(f) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

THE WHITE HOUSE,

I don't care if
there are letters to the

DRAFT

7-18-2000

11:00 a.m.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination.

As we draw near the tenth anniversary of the Americans with Disabilities Act, we have much to celebrate. This landmark civil rights law has increased opportunities for employment, education, and leisure for millions of Americans. Our country is stronger as a result.

As we celebrate the ADA, we cannot forget that it was built on the solid foundation of ~~section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended in 1978, which prohibits discrimination on the basis of disability in federal programs and activities. One important goal of section 504 is for the federal government to set an example for the rest of the country by being a model employer and providing exemplary service to its customers with disabilities. While this goal remains constant, the nature and structure of government have changed in the decades since the inception of section 504.~~ New agencies have been formed, while others no longer exist. Government is more efficient and doing more with less.

The time has come to reaffirm the federal government's commitment to ensuring that agencies' programs are free from discrimination. The means we use to accomplish our goals should be tailored to the changing nature of government.

I call upon the Department of Justice, the Equal Employment Opportunity Commission, the Interagency Disability Coordinating Council (IDCC), and the Presidential Task Force on Employment of Adults with Disabilities to provide leadership to ensure that all agencies meet a common goal: to ensure that today's federal programs — including programs of employment — continue to be readily accessible to and usable by persons with disabilities.

To meet this goal, I hereby direct all agencies to engage in a Five-Year Plan. Under this Five-Year Plan, agencies will follow guidance to be provided by the Department of Justice and the Equal Employment Opportunity Commission (EEOC) to evaluate agency programs, activities, and facilities for compliance with sections 501 and 504 of the Rehabilitation Act, set targeted goals consistent with priorities developed by the Department of Justice and the EEOC, and implement all actions necessary to achieve those goals, within the next five years. As the initial steps in the Five Year Plan, agencies are directed to do the following:

- make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001; and
- publish by various means, including by incorporation on all agency Internet home

pages, the name and contact information for the office(s) responsible for coordinating the agency's compliance with sections 501 and 504 of the Rehabilitation Act.

I furthermore direct the Department of Justice and the Equal Employment Opportunity Commission, in close consultation with the IDCC and the Presidential Task Force on Employment of Adults with Disabilities, to develop priorities and establish for the Five-Year Plan under which agencies will focus on specific programs or types of programs to ensure that they are readily accessible to persons with disabilities.

I direct the IDCC to coordinate executive agencies' efforts to make the federal government's electronic and information technology accessible to persons with disabilities.

I designate the following persons to participate in the IDCC, in addition to those members set out by statute (29 U.S.C. § 794c):

- The Administrator of the General Services Administration
- The Secretary of Defense

These steps will enable federal agencies to work together as they renew their ongoing commitment to ensure that federal programs do not discriminate against people on the basis of disability.

Nothing in this memorandum is intended in any way to limit the effect or mandate of Executive Order 12250, which conveys certain authorities upon the Attorney General, or Executive Order 12067, which conveys certain authorities upon the Chair of the Equal Employment Opportunity Commission.

This memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE,

U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
WASHINGTON, D.C. 20530

FACSIMILE TRANSMISSION SHEET

DATE: JULY 19, 2000

FROM: *RH* ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

TO: MAC REED
OFFICE OF MANAGEMENT AND BUDGET
FAX: 395-7294

MICHELLE ARONOWITZ
OFFICE OF THE COUNSEL TO THE PRESIDENT
FAX:

NUMBER OF PAGES: 3 (PLUS COVER SHEET)

Mac and Michelle: Comments on EO concerning employment opportunities for individuals with disabilities. As we have mentioned to you already, we believe that there is a constitutional problem with the President mandating the hiring of 100,000 individuals with disabilities. We believe that the redrafted language, although it still poses litigation risks, is legally defensible.

*Mac - We'll send comments on the
other EO and the two memoranda
later this morning.*

R.

Section 1. Increasing the Number of Hires of Qualified Persons With Disabilities. (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field. [Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next five years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, federal agencies shall:]

DRAFT

7-18-2000

Executive Order

11:00 PM

OPPORTUNITY FOR
INCREASING THE NUMBER OF INDIVIDUALS WITH
DISABILITIES EMPLOYED IN THE FEDERAL GOVERNMENT
TO BE

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the opportunities for qualified ~~representation of~~ individuals with disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in § 501 of the Rehabilitation Act of 1973 as amended, it is hereby ordered as

follows:

Federal Employment Opportunities for
Section 1. Increase the Number of Hires of Individuals with Disabilities.

See insert A,
attached.

(a) The Federal Government shall hire 100,000 qualified individuals with disabilities over 5 years into the full range of levels and occupations of the Federal Government. To achieve this goal, all Federal agencies shall:

- (1) use available hiring authorities, consistent with statute, regulation, and prior Executive Orders and Presidential Memoranda;
- (2) expand their outreach efforts, using both traditional and non-traditional methods; and
- (3) increase their efforts to accommodate individuals with disabilities.

(b) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.

l.c. (c) This ~~Order~~ does not require agencies to create new positions or to change existing qualification standards for any position.

Sec. 2. Implementation.

Each Federal agency shall prepare a plan to increase the ~~number of~~ ^{opportunities for} individuals with disabilities ^{to be} employed in the agency. Each agency shall submit that plan to OPM within 60 days from the date of this Order.

Sec. 3. Authority to Develop Guidance.

The Office of Personnel Management shall be authorized to develop guidance on the provisions of this Order to increase the ~~number of~~ ^{opportunities for} individuals with disabilities ^{to be} employed in the Federal Government.

Sec. 4. Judicial Review.

1.c. This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

THE WHITE HOUSE,