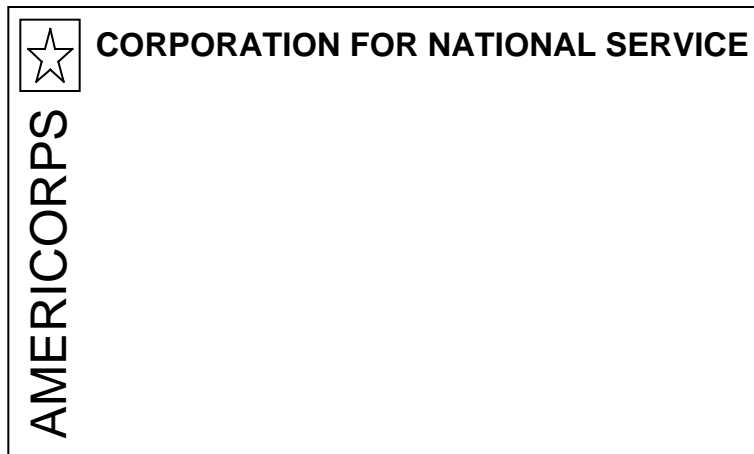


As National Service Program, What Are My Legal Responsibilities Regarding Persons with Disabilities?



**Access: Opening the Doors to Service
Albuquerque, New Mexico, January 25, 2000**

Section 504 of the Rehabilitation Act of 1973

No otherwise qualified disabled individual in the United States . . . shall, solely by reason of his [or her] disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

Rehabilitation Act Applies to:

- Federally conducted programs
- Federally assisted programs
- Federal contractors

Americans with Disabilities Act of 1990

- Title I: employment (for employers with 15 or more employees)
- Title II: state and local government services
- Title III: public accommodations and commercial facilities

ADA Title I: Employment

- Applies substantive 504 employment law which had covered federal agencies since 1973 to all employers
- Uses procedures for private sector cases under Title VII of the Civil Rights Act of 1964

ADA Title II: State and Local Government Services

- Same as Section 504, except:
 - ADA requires public entities to adopt grievance procedures
 - ADA enforcement is through designated federal compliance agencies or Dept. of Justice
 - new construction for purposes of architectural accessibility is after January 26, 1992

ADA Title III: Public Accommodations & Commercial Facilities

Applies to:

- lodgings or establishments serving food or drink
- places of exhibition, entertainment, public display, or of public gathering
- sales, rental or service establishments
- public transportation stations
- places of recreation or exercise
- places of education
- social service center establishments

ADA Title III: Public Accommodations & Commercial Facilities

- for barrier removal, Title III uses “readily achievable” standard, i.e., easily accomplishable and able to be carried out without much difficulty or expense
- new construction for architectural accessibility is after January 26, 1992

ADA Title III: Public Accommodations & Commercial Facilities

- “elevator exemption” if building less than 3 stories or less than 3000 sq. ft. per story
- religious organizations/ entities controlled by religious organizations are exempt
- enforced by DOJ or private law suits & civil monetary penalties for noncompliance may be assessed

Domestic Volunteer Service Act/ National & Community Service Act

An individual with responsibility for the operation of a program/project that receives assistance under this Act/subchapter shall not discriminate against a participant in, or member of the staff of, such program on the basis of . . . disability, if the participant or member is a qualified individual with a disability

Section 504 of the Rehabilitation Act of 1973

- Key Concepts:
 - “Program or activity”
 - “Federal Financial Assistance”
 - “Beneficiary”

“Program or Activity”

All operations of:

- a department, agency or district of a State or local government
- a college, university, local education agency
- an entire corporation or private organization which is principally engaged in providing education, health care, housing, social services, or parks & recreation

‘Federal Financial Assistance’

- federal grants and loans
- detail of federal personnel or other persons paid, in whole or in part, with federal funds
- grant, donation, sale, or lease of federal property
- federal agreement, arrangement, contract with purpose to provide assistance

“Beneficiary”

Anyone who benefits from the federal financial assistance, including:

- service members
- clients served by service members
- members of the public receiving services from organizations with service members

Beneficiary Rights

- Not be subjected to discrimination because of disability
- Receive reasonable accommodation to perform essential job/service elements
- File a discrimination complaint with the Corporation if believe subjected to discrimination (without any requirements to file first with program/project)

Section 504: Compliance

Failure to comply, Corporation must:

1. Attempt voluntary compliance
2. Take action to suspend, terminate, or refuse to grant or continue to grant federal financial assistance

(suspension etc. applies to all federal financial assistance, not just assistance from Corporation)

Persons with Disabilities

- Mobility
- Learning
- Seizures
- Hearing
- Vision
- Emotional
- Disorders, e.g.:
 - kidney disease
 - arthritis
 - heart disease
 - diabetes
 - cancer
 - asthma

Person with a Disability

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment, even though no impairment in fact exists

“Substantially Limits a Major Life Activity”

- walking
- talking
- breathing
- seeing
- hearing
- working

Exceptions to Definition

- Persons currently using illegal substances or illegally using legal substances
- Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identification disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania
- Homosexuality, bisexuality, or pregnancy without complications (not impairments)

“Qualified Individual with Disabilities”

- Disabled persons who can, with or without reasonable accommodation, perform the essential function of the position
 - without posing a direct threat to the safety of themselves or others (based on facts, not stereotypes) -- HIGH STANDARD
 - excludes persons with currently infectious diseases only if the disease presently pose a direct threat under the specific job requirements

Ways to Establish Disability Discrimination

- Direct evidence of discrimination (comments, slurs, stereotypes, presumptions)
- Circumstantial evidence (same analysis as race- or sex-based claims) -- disparate treatment or disparate impact analyses
- Failure to provide reasonable accommodation

Most Important Rules: #1

Do not treat persons differently because of their disability or because you think they need/require/are entitled to special treatment

Most Important Rules: #2

Do not presume someone has a disability based on how he/she looks, acts, or what he/she says

- To be entitled to reasonable accommodation and other protections, he/she must self-identify
- Only then do you provide what is necessary for him/her to do the job/service

Most Important Rules: #3

Do not stereotype or lump all persons with a particular type of disability together

- persons with the same diagnosis may evidence the condition in very different ways and have very different needs
- consider every situation on case-by-case basis

Interview Questions

- “Pre-Offer Stage” -- No questions on existence, nature or severity of a disability allowed
- “After Job Offer Made” -- Only questions asked of all entering the job category may be asked & information must be kept confidential

Not Disability-Related Questions (OK to ask at interviews)

- Can you perform the functions of the job, with or without reasonable accommodation?
- Describe/demonstrate how you would perform the job functions.
- Do you have a cold? How did you break your leg?
- Can you meet the attendance requirements?
- Do you illegally use drugs?

Disability-Related Questions (DO NOT ask at interviews)

- Do you have AIDS? Asthma?
- Do you have a disability which would interfere with your performing the job?
- How many days were you sick last year?
- Ever filed for worker's compensation?
- Ever treated for alcohol problems?
- Ever treated for mental health problems?
- What prescription drugs do you take?

Interview Advice

- Ask all interviewees the same questions
- Ask only job-related questions
- Avoid questions on marital status or dependents

Reasonable Accommodations

- making facilities accessible
- job restructuring
- part-time or modified work schedules
- acquisition or modification of equipment or devices
- providing readers, interpreters, or auxiliary aids

Architectural Accessibility

If buildings built before
May 30, 1979

- “when viewed in its entirety” standard applies
- programmatic accessibility may substitute for architectural accessibility

If buildings built after
May 30, 1979

- “when viewed in its entirety” standard does not apply
- programmatic accessibility may not substitute for architectural accessibility
- must comply with UFAS or ADAAG

Undue Financial or Administrative Burden

- Unduly costly, extensive, substantial or disruptive -- results in significant difficulty or expense -- HIGH STANDARD
- Factors to be considered include:
 - overall size of the program in numbers of service members, facilities and budget
 - type of operation, including composition and structure of service member force
 - nature and cost of removal or accommodation

Questions & Technical Assistance

Corporation's Equal Opportunity Office at (202) 606-5000, ext. 312
(voice); (202) 565-2799 (TDD); or eo@cns.gov

Access AmeriCorps at (202) 776-0404 (voice); (202) 776-0414 (FAX);
or accessamericorps@ucpa.org

Job Accommodation Network (1-800-JAN-7234; 1-800-526-7234);
janweb.icdi.wvu.edu

Access Board at www.access-board.gov

President's Committee on Employment of People with Disabilities at
www50.pcepd.gov

State vocational rehabilitation agencies at www.ssa.gov/work/statevra