

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 an 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 employees and job applicants unless such accommodation would impose an undue hardship on the agency's operation of its program.

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

A. Yes. The standards used to determine violations of the Rehabilitation Act are the same standards applied under the employment provisions of the ADA (Title I). The

ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009.

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

A. An individual who

(1) has a physical or mental impairment that substantially limits one or more of that person's major life activities;

(2) has a record of such an impairment; or,

(3) is regarded by the covered entity as an individual with a disability. An individual covered only under the "regarded as" prong is not entitled to reasonable accommodation.

Q. When is someone substantially limited in a major life activity?

A. To determine whether an individual is "substantially limited" in any major life activity, the Equal Employment Opportunity Commission provided the following rules of construction to make this

determination: 1) the term substantially limits shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the ADA; 2) an impairment is a disability if it substantially limits (rather than significantly restricts, as in the past) the ability of an individual to perform a major life activity as compared to most people in the general population; 3) whether an impairment substantially limits a major life activity should not demand extensive analysis; 4) to make the determination of whether an impairment substantially limits a major life activity requires an individualized assessment; 5) nothing prevents the presentation of scientific, medical or statistical evidence to compare an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population; 6) except in the cases of ordinary eyeglasses or contact lenses, the determination of whether an impairment substantially limits a major life activity is to be

made without regard to the ameliorative effects of mitigating measures; 7) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; 8) an impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment; and, 9) the six-month transitory part of the “transitory and minor” exception to “regarded as” coverage does not apply to the actual disability and the record of a disability prongs.

Q. What is a reasonable accommodation?

A. A Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- acquiring or modifying equipment or devices,
- job restructuring (without eliminating essential functions),

- part-time or modified work schedules,
- adjusting or modifying examinations, training materials or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities,
- Reassignment (as a last resort) to a vacant position.

The U.S. Department of Commerce is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability. Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those available to other employees.

Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings). If an employee with a disability needs a reasonable accommodation in order to

gain access to, and have an equal opportunity to participate in these benefits and privileges, then the employer must provide the accommodation unless it can show undue hardship.

Q. When is an employee or applicant with a disability “qualified” under the ADAAA?

A. Consistent with the ADAAA, the final regulations now refer to “individual with a disability” and “qualified individual” as separate terms. The term “qualified,” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.

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

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

A. No. Illegal drug use is not a “disability” for which the Rehabilitation Act requires reasonable accommodation. Anyone who is currently using drugs illegally 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. Can a covered entity require that an individual use a mitigating measure?

A. No. A covered entity cannot require an individual to use a mitigating measure. However, failure to use a mitigating measure may affect whether an individual is qualified for a particular job.

Q. What kinds of discriminatory practices are prohibited?

A. It is illegal to discriminate based on disability in job ap-

plication procedures, hiring and firing, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Discriminatory practices also include:

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee; (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicants or employees to discrimination; (3) utilizing standards, criteria, or other methods of administration that have the effect of discrimination on the basis of disability; (4) not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual, unless the accommodation would impose an undue hardship; (5) denying employment opportunities to a job applicant or employee who is otherwise qualified, if such denial is based on the need to make reasonable accommodation; and, (6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criterion is shown to be job related for

the position in question and is consistent with business necessity.

Q. Can a denial of a reasonable accommodation be appealed?

A. Based on DAO 215-10, when an accommodation request is denied, an employee may, within 30 business days, appeal the decision. This appeal for reconsideration should be given in writing to the immediate supervisor or to a supervisor within the employee's chain of command, and must state the reason for the denial. The supervisor must acknowledge receipt of the appeal for reconsideration within 5 business days. The requestor will receive in writing the final decision regarding the appeal within 30 business days after the appeal was filed.

Pursuing this reconsideration of a denial will not change the mandatory time limits for initiating an EEO complaint which is 45 days from the date of the action believed to be discriminatory in nature. See next question for more information on the EEO complaint process.

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

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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.