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**Although the exact number varies from report to report, currently there are more than 49 million Americans with a disability.**

**Notwithstanding the prevalence, approximately 67% of all individuals with disabilities still remain unemployed.**

**The Rehabilitation Act was created in order to help individuals with disability become and stay employed.**

### **Introduction**

People with disability have rights under numerous laws, such as Worker's Compensation, Social Security Disability leave, and the Family Medical Leave Act. This Guide focuses on employee's rights under the Rehabilitation Act of 1973, an anti-discrimination law. This Guide should be used in conjunction with AFGE's EEO Guide to Fighting Discrimination in the Federal Government.

The Rehabilitation Act of 1973 is a federal civil rights law that prohibits the federal government from discriminating against applicants and employees with disabilities. The language of the Rehabilitation Act can be found in the Code of Federal Regulations at Part 1614.203. The text uses the term "handicap" for individuals with disabilities. The Rehabilitation Act was created in order to help individuals with disability become and stay employed.

In short, the Rehabilitation Act requires that no agency employee shall discriminate against a qualified individual because of the disability of such individual, or perceived disability of such individual, in regard to job application procedures, hiring, assignments, evaluations, leave, advancement, discipline, layoff/recall, discharge, compensation, job training, and other terms, conditions, and privileges of employment.

Additionally, the Rehabilitation Act requires an agency to provide a reasonable accommodation that does not cause the agency undue hardship when requested by a qualified employee with disability.

The Rehabilitation Act also requires federal agencies to develop an affirmative action program for the hiring, placement and advancement of persons with disability. In part, it created "appointments under special authorities" which provides an alternate process for the hiring of individuals with disabilities. Once hired under an authority, the individual with disability is required to demonstrate their ability to successfully perform the essential duties of the position with accommodation.

***Not everyone is protected under the Rehabilitation Act.*** The Rehabilitation Act only protects qualified applicants and qualified employees from discrimination if he or she has:

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a record of an impairment, or
- (3) been regarded as having an impairment.

**Years after the Rehabilitation Act of 1973 was passed, the Americans with Disabilities Act (ADA) was enacted. The ADA prohibits discrimination against people with disability in the private sector. The language of the ADA was based on the Rehabilitation Act. Therefore, the two Acts are very similar. As a result, case law that interprets the ADA almost always applies to the Rehabilitation Act even if it is not specifically mentioned in the case.**

### **Recent United States Supreme Court Cases**

The Rehabilitation Act and later ADA are difficult to understand and interpret. As a result, they have been a source of controversy. Recently, the Supreme Court resolved some of the conflicts. Not all civil rights advocates are pleased with the recent rulings. They believe that it will be harder to prove that one is disabled and therefore deserving of an accommodation under the Rehabilitation Act.

#### **Cleveland v. Policy Management Systems, (1999)**

The Supreme Court holds that filing for and receiving disability benefits (SSDI) does not automatically disqualify one from pursuing a request for an accommodation at the employment site. Since accommodations are not considered by the SSA when it determines whether one is disabled, writing on a SSA form that one is completely disabled does not conflict with the EEO statement that one is capable of working if one receives an accommodation for the disability.

#### **Sutton v. United Air Lines, (1999)**

The Supreme Court holds that “mitigating measures,” such as corrective eye glasses, contact lenses, &/or medications, should be taken into account when deciding whether a person is disabled. The Court also holds that the existence of a physical standard/ criteria for a job does not, in and of itself, violate the law protecting individuals with disabilities.

#### **Murphy v. United Parcel Service, (1999)**

The Supreme Court, using the new Sutton v. United Air Lines standard, holds Murphy’s high blood pressure is not a disability because when medicated the high blood pressure does not substantially limit him in any major life activity.

#### **Albertsons, Inc. v. Kirkingburg, (1999)**

The Supreme Court, using the new Sutton v. United Air Lines standard, holds that Kirkingburg’s monocular vision is not a disability because his body has learned to compensate for his impairment. Therefore, his impairment does not substantially limit his ability to see, even though his method of seeing is significantly different than other people’s. Additionally, an employer may rely on a government standard regarding vision, even when the employee qualifies for an experimental waiver program offered by the government.

The Rehabilitation Act protects **qualified** applicants and qualified employees from discrimination on the basis of

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### Qualified Individual

**A qualified individual is one who, with or without reasonable accommodation, has the required education and work experience and can perform the essential functions of the position without endangering the health and safety of the individual or others.**

One is not qualified when...

- ◆ one does not have the required education, experience, license, or certificate
- ◆ one does not have the required education or experience because of his or her disability
- ◆ one is an individual with disability who requires an accommodation in order to perform the position's essential functions but is not willing to accept a reasonable accommodation offered by the employer
- ◆ one is an individual with disability but does not mitigate the disability. For example, the individual refuses to take medication, use corrective lenses, or use prosthetics
- ◆ there is no reasonable accommodation
- ◆ the only reasonable accommodation that exists is an undue hardship for the employer

The Rehabilitation Act protects **qualified** applicants and qualified employees from discrimination on the basis of

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### **Essential Job Function**

Every job has aspects to it that are “essential” and collateral. An essential job function is a job duty or skill that is vital to the performance of the job. Essential job functions change from position to position.

For example, a receptionist’s main responsibility might be to answer the phones at the main switch board, however, every once and a while the receptionist is asked to sort mail. As a result, answering the phone would be the essential function and sorting mail would (probably) be collateral.

In order to determine whether a job function is essential, ask whether it is:

- Listed in the job description or CBA as an essential job function or as a critical element of a rating scheme, typically before the position is advertised
- A duty that the individual actually does as part of the position
- A duty that other individuals in the work place could perform without disturbing the flow of work in the office
- A duty that if removed would fundamentally change the position
- Has consequences if not performed
- The reason the position exists
- The most time consuming function of the job

There are some duties that do not apply to the above listed factors but have been held by some courts as essential job functions. For example, job attendance has been held by *some* courts to be an essential job function.

The Rehabilitation Act protects qualified applicants and qualified employees from **discrimination** on the basis of

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### **Discrimination**

#### Disparate Treatment

Disparate means different or unequal. Disparate treatment occurs when a supervisor or coworker treats an individual with a disability differently than he or she would treat an individual who is not disabled because of the disability. For example, a supervisor who never offers overtime to an employee with diabetes because the supervisor assumes that the employee needs to go home to take an insulin shot.

#### Disparate Impact

The disparate impact analysis challenges a facially neutral rule or policy that has an adverse impact against the disabled and is not job related. An example of a facially neutral rule that may discriminate against individuals with learning disabilities or hearing disabilities is a policy that requires all grounds keeping employees to take written tests about grounds keeping even though the job responsibilities will not include writing. As opposed to other forms of discrimination based on disability, one need not prove knowledge of disability in a disparate impact case.

#### Harassment

Harassment is unwelcome conduct (including speech) that references one's disability in an annoying, offensive, imitating, taunting or irritating manner. Harassment is often repetitive or persistent.

#### Failing to Engage in Interactive Process and/or Reasonably Accommodate

When one believes oneself to be disabled, it is one's right to request a reasonable accommodation. It is then the agency's duty to engage in an interactive process in order to determine whether the individual is disabled under the Rehabilitation Act and if so, the reasonable accommodation that will be offered. If the agency fails to engage in an interactive process or fails to reasonably accommodate it has violated the Rehabilitation Act.

The Rehabilitation Act protects qualified applicants and qualified employees from *discrimination* on the basis of

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### **Discrimination**

#### Model Analysis for Disparate Treatment

- ◆ Establish Protected Status
  - ◆ Identify the physical or mental impairment, and
  - ◆ Identify the substantial limitation to a major life activity, or
  - ◆ Identify the record of impairment, or
  - ◆ Identify the behavior that shows complainant is regarded as disabled
- ◆ Establish that Agency knows of the Complainant's disability or record of impairment
- ◆ Establish that Complainant is Qualified
- ◆ Establish that Complainant is able to perform the essential job functions with or without reasonable accommodation
  - ◆ Identify essential job functions
  - ◆ Identify reasonable accommodations needed to perform job functions
- ◆ Establish that Complainant was treated differently from individual who is NOT disabled, does not have a record of impairment, or is not regarded as disabled
  - ◆ Are compared employees in the same work unit or the same chain of command?
- ◆ Present any evidence of direct discriminatory intent and/or harassment.
- ◆ Rebut Agency reason for treating Complainant differently than other similarly-situated employees who are not disabled
- ◆ Present any evidence that Agency's reason for its treatment of the Complainant is a smoke screen or lie

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### **Discrimination**

#### Model Analysis for Failing to Engage in the Interactive Process or Reasonably Accommodate

- ◆ Establish Disability
  - ◆ Identify the physical or mental impairment, and
  - ◆ Identify the substantial limitation to a major life activity
- ◆ Establish that Agency knows of Complainant's disability
- ◆ Establish that Complainant is Qualified
- ◆ Identify Essential Job Functions
- ◆ Establish when and that Complainant asked for an Accommodation
- ◆ Establish Interactive Process or Lack Thereof
  - ◆ Identify accommodation suggestions made by Complainant
  - ◆ Identify action, if any, agency took to identify possible accommodations
  - ◆ Establish whether agency considered Complainant's accommodation suggestions
  - ◆ Establish whether agency identified possible accommodations
  - ◆ If the agency identified an accommodation, does it enable the Complainant to perform the essential functions of the job?
- ◆ Establish whether the Agency actually provided an Accommodation
- ◆ Identify a reason, if any, that Agency gave for its refusal to engage in the interactive process and/or accommodate
- ◆ Establish that the accommodation did not cause undue hardship
  - ◆ overall size of agency division
  - ◆ type of operation
  - ◆ nature and cost of accommodation



The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

- (1) a ***physical or mental impairment*** which substantially limits one or more major life activities,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### Physical Impairments

“... 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, genito-urinary, hemic and lymphatic, skin and endocrine ...”

Section 1630.2 of the EEOC Regulations (29 Code of Federal Regulations 1630.2[h])

#### Examples

- ◆ Epilepsy
- ◆ Person who walks with an artificial leg
- ◆ HIV+
- ◆ Diabetes
- ◆ Cardiac Conditions
- ◆ Asthma
- ◆ Arthritis

### Mental Impairments

“... Any **mental or psychological disorder**, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities...”

Section 1630.2 of the EEOC Regulations (29 Code of Federal Regulations 1630.2[h])

#### Examples

- ◆ ADD
- ◆ Clinical Depression
- ◆ Clinically diagnosed Stress Disorders (PTSD)
- ◆ Downs Syndrome
- ◆ Schizophrenia

The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

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- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### **Neither a Physical Nor Mental Impairment**

- ◆ Pregnancy
- ◆ Pre-disposition to illness
- ◆ Personality traits or quick temper
- ◆ Lack of education
- ◆ Pyromania
- ◆ Kleptomania
- ◆ Left-handedness
- ◆ Currently using illegal drugs
- ◆ Age
- ◆ Exhibitionism
- ◆ Stress due to general work pressures
- ◆ Sexual behavior disorders
- ◆ Temporary problems such as sprains or common cold

### **Drug Addiction and Alcoholism**

Past drug addiction and alcoholism are impairments which are specifically protected under the Rehabilitation Act. An individual who has a past drug addiction is one who completed or recently participated in a rehabilitation program.

Current drug users are not protected under the Rehabilitation Act. Further, the Rehabilitation Act does not excuse individuals to come to work under the influence of alcohol from disciplinary action.

The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

- (1) a physical or mental impairment which *substantially limits* one or more major life activities,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

### **Substantial Limitations**

A substantial limitation is one where the individual is significantly unable to perform a **particular activity that effects every aspect of one's life, a class of jobs, or a broad range of jobs** as compared to an average person with similar training, skills and abilities. The limitation may not be narrow, it must effect the individual entirely and significantly.

#### ***Factors to determine "substantially limits"***

- ◆ nature and severity of impairment
- ◆ length of time impairment will or is expected to last. Intermittent and temporary disabilities are typically not considered substantially limiting
- ◆ impact for that individual
- ◆ geographical area in which the person may reasonably expect to find a job the number and types of jobs using similar knowledge & training from which the individual is disqualified within the geographical area
- ◆ the number and types of jobs in the area that do not involve using similar knowledge & training from which the individual is also disqualified due to the impairment
- ◆ **mitigating measures:** are there any corrective devices such as medication, lenses, or therapy which reduce the effect of the limitation?

The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

- (1) a physical or mental impairment which substantially limits one or more **major life activities**,
- (2) a record of impairment, and
- (3) being regarded as having an impairment.

**Major Life Functions**

<b>Basic Functions of Life: Speaking, Walking, Learning</b>	<u>Davidson v. Midelfort Clinic, Ltd.</u> 133 F.3d 499 (7 <sup>th</sup> Cir. 1998)
<b>Bending and Twisting</b>	<u>Heintzelman v. Runyon</u> , 120 F.3d 143 (9 <sup>th</sup> Cir. 1997)
<b>Elimination of Bodily Wastes</b>	<u>Ryan v. Grae &amp; Rybicki, P.C.</u> 1988 WL 50127 (2 <sup>nd</sup> Cir. 1988)
<b>Reading</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Working</b>	<u>Runnebaum v. NationsBank</u> , 123 F.3d 156 (4 <sup>th</sup> Cir. 1997)
<b>Caring for one's self</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Seeing</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Performing Manual Tasks</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Interaction with Others</b>	EEOC Guidance, Notice 915.002 (March 1997); <i>but see</i> <u>Soileau v. Guilford</u> (1 <sup>st</sup> Circuit)(concept so "elastic" as to "make it unworkable as a definition.")
<b>Breathing</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Hearing</b>	EEOC Guidance, Notice 915.002 (March 1997)
<b>Sitting, Standing, Lifting, and Reaching</b>	<u>Snow v. Ridgewater Medical Center</u> 128 F.3d 1201 (8 <sup>th</sup> Cir. 1997)
<b>Everyday Mobility</b>	<i>But see</i> <u>Reeves v. Johnson</u> (2 <sup>nd</sup> Cir. 1998)(mental illnesses limiting employee from traveling over bridges & through tunnels not a major life activity) & <u>Bancalé v. Cox Lumber</u> (F1 1998)(night blindness doesn't limit major life activity)

The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a *record* of impairment, and
- (3) being regarded as having an impairment.

### **Record of Impairment**

Prohibits discrimination against one who is not substantially limited in a major life activity but has a history of, been misclassified as, or misdiagnosed as having an impairment that substantially limits one or more major life activities.

### **Examples**

- ◆ Protects people with a history of debilitating illness or mental illness whose illnesses are either cured, controlled, or in remission.
- ◆ Protects people who have on their (school) record an erroneous classification of mental retardation or learning disabled.
- ◆ Protects people who have special education classes on their (school) record special from negative assumptions made as a result of the record
- ◆ Protects people who were hospitalized for drug addiction but have been successfully rehabilitated and are not currently using illicit drugs.

The Rehabilitation Act protects qualified applicants and qualified employees from discrimination on the basis of

- (1) a physical or mental impairment which substantially limits one or more major life activities,
- (2) a record of impairment, and
- (3) being **regarded as** having an impairment.

### Regarded As Impaired

Prohibits discrimination against one who is not substantially limited in a major life activity but are perceived to have such a limitation than one is regarded as disabled.

### Examples

- ◆ The individual may have an impairment that is not substantially limiting but is treated by the employer as substantially limiting.
- ◆ The individual has an impairment that is substantially limiting only because of the attitudes of others towards the condition.
- ◆ The individual has no impairment at all but is regarded by an employer as having a substantially limiting impairment.
- ◆ The individual has no impairment at all but is **associated** with someone who has a disability and therefore discriminated against.

**An agency shall make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified individual... unless the agency can demonstrate that the accommodation would impose an undue hardship on the operations of its programs**

### **Reasonable Accommodation**

The Rehabilitation Act requires an agency to provide a reasonable accommodation when requested by a qualified employee with disability. In order to determine what accommodation is reasonable, the agency and individual with disability need to engage in an **interactive process**. During that process, the parties should make an **individualized assessment** of the accommodation that will best fit that particular individual. Information provided by the individual with disability, medical health professionals, and/or an accommodation specialist can be used to make an individualized assessment. In general, a reasonable accommodation is one that is effective. A reasonable accommodation need not be the best accommodation available as long as it is effective.

One of the greatest myths that prevents employers from reasonably accommodating is that accommodation is too costly. In fact, most reasonable accommodations are not difficult to implement and not costly. A study by Sears Co. reviewing the reasonable accommodations provided by them between 1978 and 1992 revealed that approximately 69% of the accommodations cost nothing, 28% cost less than \$1,000, and only 3% cost more than \$1,000.

On March 1, 1999, The EEOC issued **Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act**. Remember that although the Guidance is about the ADA it still applies to the federal sector. The Guidance is written in the form of 46 questions and answers and includes a resource list at the end. While this Guidance in and of itself is not binding upon the courts, it is a valuable tool to use when presenting before the EEOC. Further, some of its Guidance is in line with rulings from court (on the flip side, some of the Guidance is exactly opposite of what some Courts have ruled). The Guidance can be viewed and/or downloaded from the internet. The address is: [www.EEOC.gov](http://www.EEOC.gov).

**An agency shall make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified individual... unless the agency can demonstrate that the accommodation would impose an undue hardship on the operations of its programs**

### **REQUESTING AN ACCOMMODATION**

The Rehabilitation Act requires an agency to make reasonable accommodation only when the agency knows of the physical or mental limitations. From this language, it has been inferred that the individual with disability must request an accommodation. It is the employee's responsibility to ask for an accommodation and provide medical documentation to support the request. Otherwise, the agency would not have knowledge of the need. Only one exception has been recognized by the EEOC and the courts: if an employee is mentally retarded, then the agency is to initiate reasonable accommodation even though the employee has not initiated reasonable accommodation.

The 1999 EEOC Guidance on Reasonable Accommodation (1999 Guidance) emphasizes the notion that there are no set of magical words one must say in order to request an accommodation. Further, the 1999 Guidance prohibits employers from requiring a written request or specifying that the request be given to a specific official or office. Instead, the request must simply reference a medical condition, and ask for a change.

#### **Notwithstanding the 1999 Guidance, AFGE RECOMMENDS:**

- (1) Put the accommodation request in writing**
- (2) Inquire if there is any agency form or Office that handles accommodation requests. If yes, follow the agency procedures for requesting accommodation**
- (3) Reference a medical impairment/condition**
- (4) Ask for a change**
- (5) Provide doctor's letter that explains that this is more than a passing condition, in other words, that it substantially limits a major life function.**



**An agency shall make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified individual... unless the agency can demonstrate that the accommodation would impose an undue hardship on the operations of its programs**

### **REQUESTING AN ACCOMMODATION**

**If the agency claims accommodation has not been requested...**

**Then remember that the request must simply reference a medical condition & request change.**

**Look for some statement such as:**

- ◆ **I need six weeks off for treatment for my back**
- ◆ **I want to keep working for you but don't know if I can with this medical problem, do you have any suggestions?**
- ◆ **I have a doctor's note here stating that I may not be able to ...**
- ◆ **I cannot do that because of the medication I'm taking...**
- ◆ **I did that because of my diabetes, I'll make sure it doesn't happen again...**
- ◆ **I'm allergic to latex and it has been bothering me since they painted the walls. Is there anything that can be done?**

**Recognize accommodation requests !!!**

**Reasonable accommodation may include, but shall not be limited to:**

- (i) Making facilities readily accessible and usable; and**
- (ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters and other similar actions.**

## **LEAVE**

A reasonable accommodation may include a modified work schedule such as leave. The leave accommodation may be paid sick or annual leave, or unpaid leave under leave of absence provisions or the Family Medical Leave Act (FMLA).

One obstacle to the leave accommodation is that many courts have held that attendance is an essential job function. Therefore, some courts have held that the need for too much or indefinite leave is either unreasonable or makes one unqualified. Another obstacle is that even if leave is approved as a reasonable accommodation, employers may penalize for lack of productivity as a result of the leave granted.

The 1999 EEOC Guidance on reasonable accommodation has taken the stance that attendance is not an essential function of the job and therefore, too much leave or a request for indefinite leave is not unreasonable nor does it make one unqualified. Further, the guidance prohibits penalization due to leave granted as an accommodation, even if productivity suffers as a result of the leave taken.

## **FAMILY MEDICAL LEAVE ACT**

A 1999 survey reported that more than 60% of employers feel uncertain regarding the interaction, if any, between the Rehabilitation Act/ADA and the Family Medical Leave Act (FMLA).

The FMLA permits eligible Federal employees entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one's or one's family member's "serious health condition." The FMLA definition of serious health condition is not the same as the Rehabilitation Act's definition of disability.

A reasonable accommodation for leave under the Rehabilitation Act does not have a 12 week ceiling. However, the Agency is allowed to consider an employee's FMLA leave in determining whether additional leave under the Rehabilitation Act is reasonable or an undue hardship.

**When a non-probationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation ... an agency shall offer to reassign the individual...**

**1614.203(g)**

### **REASSIGNMENT**

If no other accommodation is reasonable, the agency should consider reassignment as a reasonable accommodation unless reassignment presents the agency with an undue hardship.

- ◆ Offer reassignment to a position that is
- ◆ vacant
- ◆ funded
- ◆ in the same commuting area
- ◆ serviced by the same appointing authority
- ◆ *at the same grade or level*
- ◆ the essential functions of which the individual could perform with or without reasonable accommodation

If such a position does not exist, then the agency should offer reassignment to a position that is

- ◆ vacant
- ◆ funded
- ◆ in the same commuting area
- ◆ serviced by the same appointing authority
- ◆ *at the highest grade or level below the employee's current grade or level*
- ◆ the essential functions of which the individual could perform with or without reasonable accommodation

The 1999 EEOC Guidance regarding reasonable accommodation notes that an employee who is being reassigned as an accommodation need not be the “best qualified” for the vacant position, but merely “qualified.”

**American Foundation for the Blind, National Technology Center**

15 West 16th Street, New York, NY 10011. 212-620-2080 (Mon-Fri, 8:30 -4:30)

The Center has a database of 1,200 blind and visually impaired people who use adaptive equipment in various jobs. Employers are welcome to call for information. The Center also evaluates high-tech products.

**American Council of the Blind**, 1155 15th Street, NW, Ste. 720, Washington, DC 20005

(202) 467-5081 (800) 424-8666 (202) 467- 5085 (Fax) www.acb.org

**National Braille Press** , 88 St. Stephen Street Boston, MA 02115

(617) 266-6160 (800) 548-7323 (617) 437-0456 (fax)

**VISION IMPAIRMENT**

**Remember, the degree and type of vision impairment may vary from person to person. Therefore, consult your employee regarding simple solutions that work!**

- ◆ Provide breaks so that employee with service animal can take animal outside for the bathroom.
- ◆ Dot of silicon on a knob, switch, or button permits a person to align controls on a machine.
- ◆ Wide felt-tip marker may make file folder labels readable.
- ◆ Braille labels
  - ◆ On file cabinets
  - ◆ On door plates
  - ◆ On the soft drink machine
- ◆ Different size strips of masking tape identify parts bins for production employees.
- ◆ Computers can be modified to provide enlarged screen display, synthesized voice, or braille output.
- ◆ Optical scanners, also known as "reading machines," scan printed material and "read it" into a computer or voice synthesizer. Some scanners require only adding a card and an external monitor.
- ◆ Braille scanners
- ◆ Machines which magnify printed materials (closed circuit televisions) permit a person who has some usable vision to read memos and books and fill out forms.
- ◆ Review any adaptive equipment annually to ensure that it is still working well. Determine if it needs upgrading to keep the employee competitive.
- ◆ Modified or Braille office forms

**Hearing loss affects approximately 10% of the U.S. population.**

**American Deafness and Rehabilitation Association**

P.O. Box 21554  
Little Rock, AR 72225  
501-663-7074 (V/TTY)

**Gallaudet University**

**National Information Center of Deafness**

800 Florida Avenue, NE  
Washington, DC 20002  
202-651-5051

**National Association of the Deaf**

814 Thayer Avenue  
Silver Spring, MD 20910  
301-587-1789 TTY  
301-587-1788 (voice)

**American Speech-Language-  
Hearing Association**

10801 Rockville Pike  
Rockville, MD 20852  
800-638-8255 (V/TTY)

**Association for Late-Deafened Adults** P.O. Box 641763, Chicago, IL 60664, 312/604-4192

**Registry of Interpreters for the Deaf, Inc.,**

8719 Colesville Road Suite 310  
Silver Spring, MD 20910  
301/608-0050 V/TTY

**HEARING IMPAIRMENT  
DEAF OR HARD OF HEARING**

- ◆ Provide breaks so that employee with service animal can take animal outside for the bathroom.
- ◆ Note-takers for meetings.
- ◆ Amplification or Assisted listening devices (ALDs) such as FM, infrared, loop systems, and/or closed-captioning decoders in meeting and training sessions.
- ◆ Sign classes for hearing workers.

- ◆ Professional interpreters made available as needed for job interviews, performance reviews, group meetings, and other situations. Make sure interpreters speak language of deaf or hearing impaired individual (ASL, SignEnglish).
- ◆ Written notes and company memos expressed in a level of English appropriate to the reading abilities of particular deaf and hearing impaired employees.
- ◆ If reading ability necessitates extra time, provide workers with written information in advance.
- ◆ Rearranging rooms for good visual communication
  - ◆ choosing quiet room thereby eliminating background noise
  - ◆ adequate light level within a room
  - ◆ small distance from a speaker
  - ◆ arrange the work station in a way that the worker can readily see when someone is entering their office or work-site
- ◆ Text telephones (TTs, TDDs, or TTY)
- ◆ Computer assisted real time transcription
- ◆ Send around memorandum asking people to be aware of their personal habits that may serve as barriers to comfortable speech-reading
  - ◆ hands in front of mouth
  - ◆ not directly facing employee
  - ◆ chewing while talking
- ◆ Utilizing E-mail and/or FAX machines for intra and interoffice communication and communication with customers
- ◆ Provide visual or tactile pagers for communication, instructions, and as an alerting system

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- ◆ Provide visual and auditory alerting devices on telephones and fire alarm systems
- ◆ Try real-time captioning for meetings and training sessions (simultaneously captioning as speaker speaks)
- ◆ Caption video training materials
- ◆ Appoint "communication cops" at meetings (one person who monitors the meeting to ensure that only one person speaks at a time)
- ◆ Modified alarms or phone ringers

**Bazon Center for Mental Health Law**

1101 15th Street, NW  
Suite 1212  
Washington, DC 20005  
(202) 467-5730

**Center for Mental Health Services, Community Support Program**

Parklawn Building  
5600 Fishers Lane  
Rockville, MD 20857  
(301) 443-3653

**Center for Psychiatric Rehabilitation**

Boston University  
730 Commonwealth Ave. Boston, MA 02215  
(617) 353-3550

**National Alliance for the Mentally Ill**

[www.nami.org](http://www.nami.org)

**MENTAL ILLNESS**

- ◆ schedules which incorporate flex-time, part-time positions or job sharing
- ◆ time off for scheduled medical appointments or support groups
- ◆ the use of break time according to individual needs rather than a fixed schedule
- ◆ physical arrangements (such as room partitions or an enclosed office space) to reduce noise or visual distractions
- ◆ extending additional leave to allow a worker to keep his or her job after a hospitalization
- ◆ allowing and providing private space for workers to phone supportive friends, family members, or professionals during the work day
- ◆ joint meetings between the employer, supervisor, and job coach or other employment service provider.

**United Cerebral Palsy Association**

800-USA-5UCP (voice)

202-913-7197 (TTY)

www.ucpa.org

**MUSCUTO SKELETAL &/OR AMPUTEE**

- ◆ redesign of employees' workstations
- ◆ redesign of equipment or tools (e.g., lifting aids)
- ◆ access to the building in which employees work
- ◆ assignment of other employees to assist disabled workers
- ◆ reassignment of disabled employees to alternate vacant positions
- ◆ flexibility of the work schedule
- ◆ consult with technical experts such as ergonomists and physical therapists regarding workplace accommodations
- ◆ Keyguards, alternative keyboards, single switch scanning display, Morse code interface, trackballs, head mounted pointers, screen displayed keyboards,

**MOBILITY: CANE, CRUTCH, WHEELCHAIR**

- ◆ Designate parking spaces close to the entrance
- ◆ Maintain pathways without abrupt level changes or steps
- ◆ If ramps are used to provide access, make sure they are appropriately graded and have handrails
- ◆ Make sure the doors wide enough (36 inches) and easy to open (i.e., not excessively heavy, easy to grasp handles, or automatic)
- ◆ Ascertain that all of the offices that employee will need to access -- including the personnel office -- are in accessible locations
- ◆ Provide (alternate) accessible bathroom & public telephone
- ◆ Place a reachable cup dispenser near the water fountain, make fountain accessible
- ◆ Verify that elevators are accessible to all persons with disabilities (e.g., control panels lower than 54



inches from the floor, raised symbols or numbers on the control panels)

**Learning disabilities such as attention deficit disorder, and hyper-activity disorders affect 3-10% of the American work force.**

### **ADD & HYPERACTIVITY**

- ◆ Flex-time, breaks, and/or working from home in order to (1) have less-distracting environment, & (2) allow for mobility and exercise.
- ◆ Permit the use of head-phones or a white noise machine to muffle sounds.
- ◆ Rearrange facilities: face desk away from the line of traffic, use private offices or conference rooms for periods of time.
- ◆ Supply a beeper to sound at regular intervals to remind individual to come back "to task." Supply (mechanical or other) program that will sound to announce important meetings and/or deadlines
- ◆ Allow for work at a particular task for briefer intervals, and shift to a new task when individual finds his or her attention wandering.
- ◆ Require employee with ADD to check schedule and list of previous commitments before additional commitments/responsibilities are accepted.
- ◆ Team employee with ADD with another employee who has strong planning, organizational and attention skills.
- ◆ Assign tasks that include productive movement -picking up the mail, talking to a colleague, walking to a meeting the long way.
- ◆ Reduce paperwork requirement if paperwork is not an essential function of the job, or assign assistant to help in paperwork production and filing.
- ◆ Provide close supervision and/or structure deadlines to prevent procrastination and poor time-management.
- ◆ Meet weekly or daily to ensure employee with ADD or Hyperactivity stays on track.
- ◆ Appoint "communication cops" at meetings: a person who monitors the meeting to ensure that only one person speaks at a time, that no monologues take place, that people do not interrupt one another, and that if individual is too blunt then he or she is prompted to restate him or herself.

**Learning Disabilities  
Association of America**  
4156 Library Road  
Pittsburgh, PA 15234  
(412) 341-1515

**National Center for Law & Learning Disabilities**  
P.O. Box 368  
Cabin John, MD 20818  
(301) 469-8308

## LEARNING DISABILITY

- ◆ Adjust method of communication based on their need:
  - ◆ Written?
  - ◆ Spoken?
  - ◆ Demonstration?
  - ◆ Combination thereof?
  
- ◆ Difficulty with visual perception (understanding visual information) or reading
  - ◆ Color code files to help distinguish similar objects from each other
  - ◆ Change icons on computer so that they do not look similar
  - ◆ Talking computers
  - ◆ Talking calculators
  - ◆ Tapes
  - ◆ Extra time reading
  - ◆ High light pertinent information
  - ◆ Graphic presentations (diagrams, flow charts)
  
- ◆ Difficulty with auditory perception (understanding information through hearing)
  - ◆ See accommodations for hearing impaired
  - ◆ If individual takes notes, make sure he or she is finished taking notes before you continue
  
- ◆ Difficulty writing
  - ◆ Work with supervisor on an outline of the assignment
  - ◆ Computer software which checks spelling and grammar
  - ◆ Arrange for another person to proofread work
  
- ◆ Difficulty with Time Management
  - ◆ See accommodations about ADD
  - ◆ Flextime
  - ◆ Buzzers, computer software with reminder features, detailed scheduling

- ◆ Offer reminders
- ◆ Distractions & Restlessness
  - ◆ See accommodations about ADD
  - ◆ Turn telephone off and return calls later
  - ◆ Short breaks

## PAST DRUG USER AND ALCOHOLICS

- ◆ a modified work schedule to permit an employee to pick up her daily methadone dosage or to attend an out-patient relapse prevention counseling session
- ◆ job restructuring to relieve an employee of particular marginal tasks that may compromise recovery or be inappropriate in the early stages of recovery
- ◆ temporary reassignment of an employee in a safety-related position to a vacant non-safety sensitive position while he or she completes treatment.
- ◆ unpaid leave to permit an individual with a current alcohol impairment to attend an in-patient treatment program. If an employer provides paid leave to individuals who are obtaining medical treatment for a disability, then the employer must provide the same benefit to an individual who is obtaining treatment for an alcohol problem.
- ◆ Not a reasonable accommodation:
  - ◆ Failing to comply with other federal laws and regulations that relate to drug and alcohol use, such as the Drug Free Workplace Act and standards established by the Department of Transportation, Department of Defense, and the Nuclear Regulatory Commission relating to testing safety-sensitive employees for drug/alcohol use.
  - ◆ Waiving drug test regulations for jobs directly affecting safety.
  - ◆ Waiving regulations that require employees holding safety-sensitive jobs to comply with restrictions on off-duty drug and alcohol use.
  - ◆ Waiving regulations that give employers the right to determine when individuals who have tested positive for drug or alcohol may return to work in the safety-related position.

**An agency shall make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified individual... unless the agency can demonstrate that the accommodation would impose an undue hardship on the operations of its programs**

### **UNDUE HARDSHIP**

An undue hardship is an action that is excessively costly, extensive, difficult or disruptive. Factors to consider regarding undue hardship:

- ◆ the nature and cost of the accommodation,
- ◆ the type of business operation, including the composition, functions and structure of the workforce,
- ◆ the impact that the accommodation would have on the specific facility and on the agency as a whole, and
- ◆ the Union's CBA, see below.

### **COLLECTIVE BARGAINING AGREEMENT**

Sometimes, a requested accommodation conflicts with the Unions collective bargaining agreement (CBA) . For example, a newly hired employee with breathing impairment may request that he or she be given a parking spot in the lot nearest the entrance. However, if the CBA indicates that only individuals with 15 years seniority are entitled park in that lot, then the requested accommodation conflicts with the CBA.

**The courts that have addressed this issue have held that if the requested accommodation conflicts with the CBA, then the requested accommodation is either unreasonable or an undue hardship.**

The 1999 EEOC Guidance on reasonable accommodation disagrees with the courts. The EEOC suggests that the Union and the employer both have a duty to participate in a reasonable accommodation and should try to negotiate in good faith an exception to the CBA when such a situation arises.

**An agency may not conduct a pre-employment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is an individual with disability or as to the nature or severity of a disability.**

**An agency may, however, make preemployment inquiry into an applicant's ability to meet the essential functions of the job....**

### **Pre-Offer Inquiries**

May...

- ◆ Focus on ability, "explain how you would...?"
- ◆ Ask questions not likely to elicit information about disability
- ◆ Ask how one handles stress related to the job
- ◆ Ask how many Mondays or Fridays other than vacation you were absent last year
- ◆ Ask how many days, other than leave due to illness, you were absent last year
- ◆ Ask whether you have ever taken illegal drugs
- ◆ Whether you drink socially
- ◆ Test for job related physical agility
- ◆ Test to determine illegal drug use
- ◆ **Ask the applicant who has an apparent disability or voluntarily disclosed a disability if he or she can perform the essential functions of the job with or without accommodation**

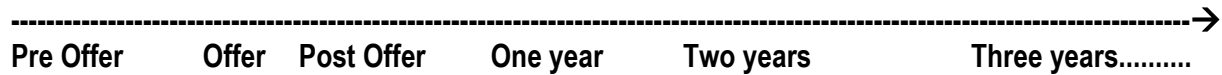
May Not...

- ◆ Focus on inability, "what current or past medical problems might limit your ability to do a job?"
- ◆ Ask about prescription drugs
- ◆ Ask about one's physiological or psychological responses to stress
- ◆ Ask how many days you were off sick last year
- ◆ Ask whether you have been addicted to illegal drugs or alcohol
- ◆ Ask about the amount of alcohol you drink socially...

Unclear...

- ◆ Whether agency may ask for medical releases on applications
- ◆ Whether agency may ask a qualified applicant who is *not disabled* pre-offer inquiries regarding disability:

Traditionally, the courts have said "no." However, at least one Court of Appeals has held that a non-disabled applicant has the right to sue an employer who asked him whether (1) he had ever received Worker's Compensation or Disability Income payments, and (2) he had physical defects which precluded him for performing certain jobs. See Roe v. Cheyenne Mountain Conf. Resort, Inc. (10th Cir. 1997).



**POST OFFER INQUIRY**

An agency can inquire about one's ability to perform a job based on disability once a job offer has been extended *as long* as it inquires of all incumbents. Similarly, the agency can condition a job offer on a health examination that is given in an effort to determine if the incumbent has the current capacity to accomplish the specific duties of the job, with or without reasonable accommodation *as long* as it does so for all incumbents.

Any medical information or history obtained by the agency must be maintained on separate forms and separate files and must be treated as confidential. See section on Confidentiality.

**I'VE BEEN ON THE JOB FOR A WHILE  
AND THE AGENCY JUST ASKED ME ....**

The agency may also inquire about an employee's medical condition if the agency has a reasonable belief based on objective evidence that an employee's ability to perform essential job functions has become impaired by a medical condition or the employee poses a risk to himself, herself, or other employees. An example of objective evidence would be if an employee confided in a co-worker that he or she was considering to commit suicide.

An agency may also ask for an explanation for performance problems and excessive absences, even if the answer elicits information about one's disability.

An agency may inquire about or test for medication (or controlled substances) or alcohol only if it has a reasonable suspicion that medication affects job performance or after an on-the-job incident.



**Qualified individual with handicaps means with respect to employment, an individual with handicaps who, with or without reasonable accommodation, can perform the essential functions of the position in question *without endangering the health and safety of the individual or others...***

### **Safety Concerns**

People who pose a direct threat of significant risk of substantial harm to self or others due to their disability may be lawfully discriminated against if the agency cannot eliminate or reduce the risk to an acceptable level with reasonable accommodation. A slightly increased risk is not enough of a threat to warrant discrimination. Similarly, concern about the degenerative nature of the disability is not sufficient to establish a current safety concern if the current status of the disability does not endanger people on the job. The agency needs to analyze whether the employee poses a direct, significant risk of substantial harm to self or others.

Consider the following factors:

- ◆ Specific Risk Identified
  - What is the Risk? (contagion, injury, etc?)
  - Specific Harm?
  - Duration of Risk
  - Nature and Severity
  
- ◆ Risk must be Current
  - Likelihood that potential harm will occur?
  - Is the harm immediate?
  
- ◆ Objective and Factual Basis
  - Evidence?
  - Individualized?
  - Not speculative!
  
- ◆ No Accommodation is Available
  - Has Agency engaged in an Interactive Process
  - Has an Accommodation been tried? Failed?

Law enforcement (especially positions requiring use of weapons), school bus drivers, and medical professionals beware: the employer may allege that public health and safety is threatened by an accommodation and therefore is not reasonable.

**Many employees have physical or mental impairments they prefer to keep private. An employer need not know of the worker's disability unless a reasonable accommodation is requested.**

**However, if the employee keeps the disability a secret and is later disciplined for poor work performance that results from the disability, the employer need not remove the discipline as an accommodation.**

### **Confidentiality**

Typically, the Rehabilitation Act only covers individuals who are disabled, have a record of disability, or are regarded as disabled. However, at least one Circuit has held that the confidentiality rules of the ADA (and therefore the Rehabilitation Act) protects all applicants and employees.

As a general rule, the Rehabilitation Act requires the agency to keep the request for an accommodation, any medical information obtained and the accommodation(s) made in confidence.

Specifically, any medical information or history obtained by the agency must be maintained on separate forms and separate files and must be treated as confidential. A health care practitioner administering post-offer medical examinations or inquiries may make available the medical information obtained to the person or team of people responsible for the hiring or placement decisions. Once hired, the following individuals may be made aware of the medical information: (1) supervisors and managers may be informed regarding necessary restrictions and accommodations regarding work and policy, (2) first aid and safety personnel may be informed if the disability may require emergency treatment, and (3) government officials investigating compliance with the Rehabilitation Act may be provided with information upon request.

It is inappropriate for the agency to disclose to other employees that an employee with disability has asked or received an accommodation. However, a supervisor may explain to another employee that in order to comply with federal law, a modification has been made for another employee but further disclosure is prohibited by law.

**Almost all of the remedies available for other forms of discrimination are available for discrimination on the basis of disability:**

- ◆ Reinstatement
  - ◆ Hiring
- ◆ Reassignment
  - ◆ Promotion
  - ◆ Training
  - ◆ Seniority
  - ◆ Back pay
- ◆ Attorney's Fees
- ◆ Reasonable Accommodation

**Compensatory damages are available unless the Agency attempted to accommodate in good faith.**

### **I've Been Discriminated Against!**

There are many forms discrimination can take. Sometimes it is difficult to acknowledge or believe that discrimination is occurring. Therefore, the first step to asserting your rights is to recognize the problem.

Some forms of discrimination are due to ignorance. For example, a supervisor who calls an employee who uses a wheelchair "crippled," "deformed" or "confined" might be using this language out of ignorance instead of bad faith. If so, a polite but firm explanation regarding etiquette might take care of the problem.

If the problem is not resolved with a brief discussion, or if one is uncomfortable confronting the offender, gather evidence of the discriminatory behavior. Take notes, make photocopies of documents that exhibit the discrimination, and ask others in the workplace whether they have witnessed or experienced discrimination.

AFGE can help you! AFGE can provide you with information regarding your rights and more detailed information on how to protect your rights. Further, your AFGE representative can guide you through the Equal Employment Opportunity Commission (EEOC) process.

One begins the EEOC process by contacting the agency's EEO counselor within 45 days of the last time you were discriminated against. Although the EEO Counselor is not there to represent you, the counselor may be able to help you get the discrimination to stop. **DON'T MISS THIS DEADLINE!**

For more information regarding the EEOC process, see the most recent edition of AFGE's EEO Workbook "Fighting Discrimination in the Federal Government."

**“The concept of work as opportunity lies at the very heart of trade union principles. It is what unions have worked for and fought for over decades. The extension of job opportunity to people with disabilities has long been a goal of labor unions. The ADA will serve only to strengthen the bond that already exists.”**

**Lenore Miller  
AFL-CIO Civil Rights Committee**

### **ORGANIZE!**

The National Organization on Disability and the Harris Survey of Americans with Disabilities found that of the 17 million Americans with disabilities of working age (18-64), only 29% are currently working full or part time. Of those who are unemployed, 72% say they would prefer to be working.

Clearly, the Rehabilitation Act and ADA in and of themselves are not enough to combat the barriers to employment faced by individuals with disabilities. Organizing efforts by the Union can help overcome these barriers! A few organizational methods locals may use to further the needs of individuals with disabilities are

- ◆ Including CBA provisions that strengthen the Rehabilitation Act. For example,
  - ◆ a clause that prohibits disability discrimination which defines disability in terms of a worker’s ability to perform bargaining unit work
  - ◆ consequences for the Agency if the Agency fails to meet the time restrictions
  - ◆ a process by which negotiation commences if a requested accommodation would affect the terms of the CBA
  - ◆ a clause allowing parties to extend, by mutual agreement any contractual limits on the amount of leave an employee may take or the amount of time that an employee may be away from work before losing seniority
  - ◆ special transportation provisions
  - ◆ providing employee assistance programs and safeguards for individuals who use the programs
  - ◆
- ◆ Posting fliers, Posters and/or newsletters that contain information about the Rehabilitation Act and Disability Awareness Issues
- ◆ Providing training sessions, lectures, films and/or roundtables about the Rehabilitation Act and Etiquette
- ◆ Including Individuals with Disabilities in negotiations that focus on disability issues

STICKS AND STONES MAY BREAK MY BONES AND WORDS...THEY TOO CAN HURT ME

DO NOT SAY	MAY SAY
<b>handicap*</b>	Individual with a disability
<b>victim suffers from afflicted with, afflicted by...</b>	Person who has ... Person with ... The individual has...
<b>the blind, the deaf, the disabled</b>	People who are blind, People who...
<b>wheelchair bound, confined to a...</b>	Uses a wheelchair
<b>psycho, crazy, maniac, loony</b>	Person with mental illness
<b>gimp, gimpo, gimpy cripple, crippled, The Crippled, crip</b>	Person with physical disability
<b>Mongoloid</b>	Person with Down syndrome
<b>invalid, patient (connotes sickness)</b>	Disability caused by ... Disability resulting from ...
<b>unfortunate, pitiful, poor, deformed challenged, special, courageous</b>	(No replacements)
<b>we have given "so and so" a reasonable accommodation for "so and so's" disability...</b>	"in order to comply with federal law, employer has made a modification for the particular employee, but federal law prohibits the employer from further disclosure."

\* The Rehabilitation Act of 1973 does use the word "handicap" instead of disability. In a 1992 Amendment, the Act was technically altered to change the word disabled for handicap. However, many courts and the regulations still use the word "handicap" when referring to the rights under the Rehabilitation Act.

## ETIQUETTE

- ◆ Treat individuals with disabilities as you treat others:
  - ◆ Use a normal tone of voice when extending a verbal welcome
  - ◆ Offer to shake hands if you would shake hands with a person who is not disabled.
  - ◆ Treat adults in a manner befitting adults. For example, call a person by his or her first name only when extending that familiarity to all others present.
  - ◆ Don't define the individual by the disability. Reference to a disability need not be included, may be insulting, and is not part of the person's name. "Tom, a union steward" (who is blind, if that is necessary or relevant to know); but not "Tom, a blind union steward."
- ◆ Look at and speak directly to a person with disability rather than through a companion.
- ◆ Offer assistance in a dignified manner with sensitivity and respect. Be prepared to have the offer declined. Do not proceed to assist if your offer to assist is declined. If the offer is accepted, listen to or accept instructions.
- ◆ Do not assume that the person cannot do the work because of his or her disability. Ask: this needs to be done, do you foresee problems with accomplishing this task?
- ◆ Don't make medical judgements

## ABBREVIATIONS FOR TEXT TELEPHONES

Users of text telephones have developed an entire etiquette for the use of text telephones. For example, at the end of one's statement and in order to alert the other person to begin, one writes "GA" for go ahead. In order to save time, standardized abbreviations have been developed, for example

- ◆ GA ..... Go ahead
- ◆ SK ..... Stop Keying: conversation has ended
- ◆ CUZ ..... Because
- ◆ HD ..... Hold please
- ◆ PLS ..... Please
- ◆ U ..... You
- ◆ UR ..... Your
- ◆ CD ..... Could
- ◆ Q ..... Question
- ◆ MTG ..... Meeting
- ◆ R ..... Are
- ◆ NBR (or NU) ..... Number
- ◆ OPR ..... Operator
- ◆ CUL ..... See You Later
- ◆ SHD ..... Should
- ◆ TMW..... Tomorrow

## **AMPUTEE**

- ◆ People with limited hand use or who wear an artificial limb can usually shake hands. Shaking hands with the left hand is acceptable. For those who cannot shake hands, touch the person on the shoulder or arm to welcome and acknowledge their presence.
- ◆ Know where accessible restrooms, drinking fountains and telephones are located. If such facilities are not available, be ready to offer alternatives, such as the private or employee restroom, a glass of water or your desk phone.

## **HEARING IMPAIRMENT**

- ◆ Use a normal tone of voice. Do not raise your voice unless requested.
- ◆ Do not shout at a hearing impaired person. Shouting distorts sounds accepted through hearing aids and inhibits lip reading.
- ◆ Speak clearly and do not over pronounce or exaggerate your words.
- ◆ If an interpreter is present, speak to the person who has scheduled the appointment, not to the interpreter. Always maintain eye contact with the person who is hearing impaired, not the interpreter. Make sure interpreter is seated in a place which facilitates conversation, for example, next to an interviewer and opposite the interviewee with hearing impairment.
- ◆ To get the attention of a person with a hearing impairment, tap the person on the shoulder or wave your hand.
- ◆ Look directly at the person and speak clearly, naturally and slowly.
- ◆ Establish if the person can read lips. Not all persons with hearing impairments can lip-read. Those who can will rely on facial expression and other body language to help in understanding. Remember that it is estimated that only four out of ten spoken words are visible on the lips.
- ◆ Show consideration by placing yourself facing the light source. Avoid sitting in front of bright lights or windows that make it difficult to speech read.
- ◆ Do not turn your face/back away from the hearing impaired person.
- ◆ Keep your mouth free from obstructions by keeping your hands, cigarettes and food away from your mouth when speaking. Keep mustaches well-trimmed.
- ◆ To facilitate conversation, be prepared to offer a visual cue to a hearing impaired person, especially when more than one person is speaking.

- ◆ Brief, concise, written notes may be helpful.
- ◆ Be prepared to repeat yourself if requested.
- ◆ Avoid rooms with a lot of background noise. Avoid large groups.

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### **INTERVIEW OR MEETING SCHEDULING ETIQUETTE**

- ◆ Scheduler should be very familiar with the travel path in order to provide attendees with detailed information. Consider:
  - ◆ Distance: use specifics such as left a hundred feet or right two yard
  - ◆ weather conditions
  - ◆ physical obstacles such as stairs, curbs and steep hills
  - ◆ additional travel time that may be required
  - ◆ People with disabilities use a variety of transportation services when traveling to and from work. When scheduling an interview, be aware that the person may be required to make a reservation 24 hours in advance, plus travel time. Provide the interviewee with an estimated time to schedule the return trip when arranging the interview appointment.
- ◆ Make sure the place where you plan to conduct the interview/meeting is accessible by checking the following:
  - ◆ Are there handicap parking spaces available and nearby?
  - ◆ Is there a ramp or step-free entrance?
  - ◆ Are there accessible restrooms?
  - ◆ If the room is not on the first floor, does the building have an elevator?
  - ◆ Are there any water fountains and telephones at the proper height for a person in a wheelchair to use?
  - ◆ **If site is inaccessible** (e.g., steps without a ramp or a building without an elevator), inform the person about the barrier prior to the interview/meeting and offer to make arrangements for an alternative site.

### **MOBILITY: CANE, CRUTCH, WHEELCHAIR**

- ◆ Never lean on the person's wheelchair. The chair is part of the space that belongs to the person using it.
- ◆ Never patronize people using wheelchairs by patting them on the head or shoulder.
- ◆ Don't be embarrassed if you happen to use accepted common expressions that seem to relate to the person's disability such as "got to be running along."
- ◆ When talking with a person in a wheel chair for more than a few minutes, sit in a chair in order to place yourself at the person's eye level to facilitate conversation.
- ◆ Enable people who use crutches, canes or wheelchairs to keep them within reach.



- ◆ Be aware that some wheelchair users may choose to transfer themselves out of their wheelchairs (into an office chair, for example) during a discussion that is anticipated to be of length.
- ◆ Know where accessible restrooms, drinking fountains and telephones are located. If such facilities are not available, be ready to offer alternatives, such as the private or employee restroom, a glass of water or your desk phone.

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### **SERVICE ANIMALS**

- ◆ **A service animal is NOT a pet & should not be treated as pets.**
- ◆ Federal law requires businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed, even if there is a posted “no pet” policy and/or sign.
- ◆ A service animal as ANY guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. Service animals can assist by:
  - ◆ Guiding people with vision impairments (seeing-eye-dogs)
  - ◆ Alerting persons with hearing impairments to sounds
  - ◆ Pulling wheelchairs
  - ◆ Carrying and picking up things for persons with mobility impairments
  - ◆ Assisting persons with mobility impairments with balance
  - ◆ Opening doors for individuals in wheelchairs

### **SPEECH IMPAIRMENT**

- ◆ Listen attentively & give your whole attention when you're talking to a person who has a speech impairment.
- ◆ Keep your manner encouraging rather than correcting. Exercise patience rather than attempting to speak for a person with speech difficulty. Stifle any urge to complete a sentence.
- ◆ When necessary, ask short questions that require short answers and/or a nod or a shake of the head.
- ◆ Never pretend to understand if you do not or are having difficulty understanding. Try rephrasing what you wish to communicate, ask the person to repeat what you do not understand, repeat what you understand, or incorporate the statements into the following comments or questions. The person's reactions will clue you in and guide you to understanding.
- ◆ If you have difficulty communicating, be willing to repeat or rephrase a question.
- ◆ Do not raise your voice. Most persons who are speech impaired can hear and understand.

## VISION IMPAIRMENT

- ◆ When greeting a person with vision impairment, always identify yourself and introduce others who may be with you. Example: On my right is Penelope Potts.
- ◆ If the person does not extend their hand to shake hands, verbally extend a welcome.
- ◆ Offer assistance in a dignified manner with sensitivity and respect. Be prepared to have the offer declined. Do not proceed to assist if your offer to assist is declined. If the offer is accepted, listen to or accept instructions.
- ◆ When walking between locations, ask the person with a visual impairment "would you like to take my arm?" If the person wishes, allow the person to take your arm (at or about the elbow.) This will enable you to guide rather than propel or lead the person. Don't insist on helping. Offer to hold or carry packages in a welcoming manner. Example: May I help you with your packages?
- ◆ Don't be embarrassed if you happen to use accepted common expressions that seem to relate to the person's disability such as "see you later," "do you see what I mean?" "would you like to take a look at the work area?" or "I hope to see you again."
- ◆ When conversing in a group, give a vocal cue by announcing the name of the person to whom you are speaking. Speak in a normal tone of voice, indicate in advance when you will be moving from one place to another and let it be known when the conversation is at an end.
- ◆ Do not shout at a person who is blind or visually impaired --he or she can hear you!
- ◆ When offering seating, place the person's hand on the back or arm of the seat. A verbal cue is helpful as well. Do not push the person into a chair.
- ◆ Let the person know if you move or need to end the conversation.
- ◆ Treat individuals with disabilities as you treat others:
  - ◆ If meeting at an unfamiliar location, ask the person if he or she needs directions for (1) driver, or (2) public transportation.
  - ◆ Speak to the person with the visual impairment and not a companion.
- ◆ Do not pet or distract the guide dog. When leading a person using a dog guide, the dog will follow you.
- ◆ Assume that an employee who is blind or visually impaired has the same career aspirations as other employees and provide training, ensuring that materials are accessible to the persons visual limitations.
- ◆ If a performance problem arises, deal with it openly. Do not automatically assume that it is

disability-related. Do not avoid giving feedback. Employees who are blind or visually impaired, as all employees, want to know when they are performing well and when they need to do things differently.

## Checklist

- ☐ **Recognize the Problem**
- ☐ **Gather Evidence of the Discrimination**
- ☐ **Go to AFGE**
  - ☐ **Union Steward**
  - ☐ **Local Women's Coordinator**
  - ☐ **Organize!**
- ☐ **Go to the Agency's EEO Counselor**
  - ☐ **Within 45 days of the discrimination**
  - ☐ **Your Union Representative can come with you!**

## Resources

### **Job Accommodation Network (JAN)**

918 Chestnut Ridge Road, Suite 1  
Morgantown, WV 26506-6080  
800-ADA-WORK or 800-526-7234 (voice/TDD)  
<http://janweb.icdi.wvu.edu/kinder/jan.htm>

### **ADA Disability and Business Technical Assistance Center Hotline**

800-949-4232 (voice/TDD).

### **Presidents Committee on Employment of People with Disabilities**

1331 F Street, N.W.  
Washington, DC 20004  
(202) 376-6200  
<http://www50.pcepd.gov/pcepd/>

### **Equal Employment Opportunity Commission**

800-669-4000 (voice)  
800-800-3302 (TTY)  
800-669-EEOC (publications-voice)  
[www.eeoc.gov](http://www.eeoc.gov)

### **Department of Justice, Civil Rights Division**

800-514-0301 (voice)  
800-514-0383 (TTY)  
[www.usdoj.gov/crt/adahom1.htm](http://www.usdoj.gov/crt/adahom1.htm)

**U.S. Commission on Civil Rights**

Office of Civil Rights Evaluation

COMPLAINTS REFERRAL

624 9th St., NW

Washington, DC 20425

202-376-8513 or 1-800-552-6843 (voice)

202-376-8116 (TDD/TTY)

Refers cases to the appropriate agency.

**Eastern Paralyzed Veterans Association**

**Publications Hotline**

800-444-0120

Publications are offered in Spanish.