

EMPLOYMENT OF THE HANDICAPPED

BASIC PROVISIONS:

The Rehabilitation Act of 1973 is a Federal law which provides for equal employment opportunity for the physically and mentally handicapped. It is enforced by the Department of Labor. Under this law, it is illegal to discriminate against a physically or mentally handicapped person for non job-related reasons.

If the handicap precludes the person from performing the job duties, denial of such job opportunity would not be considered discrimination. This law applies to employers if they are government contractors or subcontractors.

Federal laws regarding employment of qualified handicapped persons are relatively new. The laws prohibiting discrimination on the basis of handicap are similar to laws against discrimination based on race, sex, and national origin and yet there are significant differences. There are no numerical hiring goals to achieve but, an employer is required to take steps to accommodate a handicapped worker unless such accommodation poses an undue hardship on the locality.

SECTION 503 & SECTION 504:

Under Section 503 of the Vocational Rehabilitation Act of 1973, every employer doing business with the Federal government under a contract for more than ~~\$2,500~~ ^{\$10,000} must take 'AFFIRMATIVE ACTION' to hire handicapped persons.

Section 504 of this Act requires nondiscrimination in the employment of qualified handicapped persons in every program or activity receiving Federal financial assistance. Covered agencies include local and state governments, schools, colleges, hospitals, social service agencies and many other types of institutions and establishments.

Q. Who's handicapped?

A. A handicapped person is anyone who:

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

This definition also includes alcohol and drug addicts, the

mentally ill, and mentally retarded because these are medically treatable. The disabled veteran is a person who has a 30 percent or more disability rating from the Veterans Administration, or who was discharged or released from active duty for a service-connected disability.

- Q. Who is a 'qualified' handicapped person?
- A. A qualified handicapped person is one, who with reasonable accommodation, can perform the essential functions of the job in question. It can also be a handicapped person who meets the essential normal eligibility requirements.
- Q. What is a reasonable accommodation?
- A. There are still many unanswered questions regarding what 'reasonable accommodation' to an individual's handicap entails. HOW REASONABLE IS REASONABLE? A simple definition of 'reasonable accommodation' is any necessary adaption made to enable a qualified handicapped person to work.

This includes making facilities used by all employees accessible to handicapped people (ramps, restroom adaptations, wider aisles, etc.). Some of these changes are relatively inexpensive such as using paper cups at water fountains rather than installing ones at a lower height. It also includes making 'modifications in jobs, work schedules, equipment or work area' (simplifying a job so a retarded person can fill it; changing work hours so a paraplegic person doesn't have to to fight traffic; teaching sign language to a supervisor of a deaf worker; or recruiting a volunteer reader for a blind person.).

Such modifications need not be made if they would impose an undue hardship on the recipient. In determining whether an accommodation would impose such a hardship on the operation of a recipient's program, factors to be considered include the size of the recipient's program with respect to the number of employees, type of facilities, and size of budget, type of operation including structure of workforce; and nature and cost of the accommodation needed.

Identification of the Handicapped:

Handicapped conditions can basically be divided into two categories -- the obvious and the hidden. Obviously handicapped persons include the paraplegic, quadriplegic, or blind person. Those persons

with hidden disabilities include the person with epilepsy, the diabetic, the mentally ill, the person with a heart condition, or the person with a history of cancer.

A handicapped person needs to be identified as such in order to be eligible for the protection of Sections 503 and 504. All handicapped job applicants and employees who want to be covered by the affirmative action should be asked to identify themselves to the contractors or employer.

They should be told:

- (1) The information is to be given voluntarily;
- (2) It will be kept confidential;
- (3) Refusal to give it will not subject the person to any kind of adverse treatment.

One exception to the general rule is when identification of the handicapped is required under Section 504. That is when an employer is voluntarily undertaking to increase the number of handicapped persons he employs.

Handicap Notice:

Job applicants and employees should be given this kind of notice:

- 'If you have a handicap and would like to be considered under the affirmative action program, please tell us. This information is voluntary...It will be kept confidential, except that
- (1) Supervisors and managers may be informed regarding work restrictions or accommodations, and
 - (2) First aid people will be informed regarding possible emergency treatment.'

Also, ask the handicapped person about any special skills or methods that can be worked out to assist in performing the job satisfactorily, as well as any special adaptations needed because of the handicap.

To be covered or not to be covered: it's up to the handicapped person. It's the individual's choice whether to use the designation of a handicap in seeking employment or advancement in employment.

Pre-employment Examinations:

Section 503 allows the employer to require a pre-employment medical examination. The results, however, can be used only to determine suitable placement of a person in a proper job.

Section 504 prohibits the employer from giving a pre-employment

medical examination to handicapped individuals, unless it is given to all and can be proven job-related.

The employer can ask whether the person can perform tasks related to a job.

Example: An epileptic cannot be asked about the condition. If driving is a part of the job, he may be asked if he holds a driver's license.

A medical examination may be given under Section 504 after an offer of employment has been made. If this exam reveals a disqualifying condition, the offer may be withdrawn.

ACCESSIBILITY:

All programs and activities must be readily accessible to handicapped persons by August 3, 1977, except that where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible, and by June, 1980. A transition plan must be developed by December 3, 1977, which describes the obstacles, establishes priorities for achieving accessibility, describes the details of how changes will be made, outlines a time schedule, indicates who will be responsible for implementation, and describes how interested persons, including handicapped persons, will be involved in making the transition plan.

ENFORCEMENT POWERS:

Debarment from right to bid on contracts. Withholding of progress payments. Termination or suspension of existing contracts. Filing suit in court to compel compliance under contract to rehire, promote, etc.