

Section 503 Of The Rehabilitation Act—Working with Federal Contractors on Employment Outcomes

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Learning Outcomes

1. Participants will name one method of finding Federal Contractor job qualifications.
2. Participants will provide two techniques for increasing interaction with Federal Contractors.
3. Participants will list three new Section 503 requirements for employers with federal contracts over \$10,000.

Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) at 41 CFR Part 60-741

Section 503 prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities.



Section 503

The Final 503 Rule was published in the Federal Register on September 24, 2013, and became effective on March 24, 2014
<http://www.dol.gov/ofccp/regs/compliance/section503.htm>.



Why did the Office of Federal Contract Compliance Programs (OFCCP) revise its Section 503 regulations?

OFCCP compliance reviews were increasingly finding 503 violations.

The 1973 compliance framework was not effective.

Employers with federal contracts or subcontracts will now have greater accountability and reporting requirements across employment processes.

The Final Rule strengthens the affirmative action provisions of the regulations to aid contractors in their efforts to recruit, hire and improve job opportunities for individuals with disabilities.

Invite applicants to voluntarily self-identify as a person with a disability

The invitation should come at the pre-offer stage of the hiring process and upon receiving a job offer.

Existing employees should also be invited to voluntarily self-identify on a regular basis.

OFCCP clearly states that all self-identification information must be kept confidential.

http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary_Self-Identification_of_Disability_CC-305_SD_Edit1.24.14.pdf

Voluntary Self-Identification of Disability

Voluntary Self-Identification of Disability

Form CC-305
OMB Control Number 1250-0005
Expires

Why are you being asked to complete this form?

Because we do business with the government, we must reach out to, hire, and provide equal opportunity to qualified people with disabilities.¹ To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for a job, any answer you give will be kept private and will not be used against you in any way.

If you already work for us, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our employees to update their information every five years. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

How do I know if I have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition.

Disabilities include, but are not limited to:

- Blindness
- Deafness
- Cancer
- Diabetes
- Epilepsy
- Autism
- Cerebral palsy
- HIV/AIDS
- Schizophrenia
- Muscular dystrophy
- Bipolar disorder
- Major depression
- Multiple sclerosis (MS)
- Missing limbs or partially missing limbs
- Post-traumatic stress disorder (PTSD)
- Obsessive compulsive disorder
- Impairments requiring the use of a wheelchair
- Intellectual disability (previously called mental retardation)

Please check one of the boxes below:

- YES, I HAVE A DISABILITY (or previously had a disability)
- NO, I DON'T HAVE A DISABILITY
- I DON'T WISH TO ANSWER

Your Name

Today's Date

Self Identification

EEOC ADA regulations, at 29 C.P.R. § 1630.15(e), provide that no employer is liable for a violation of Title I of the ADA for an action that it is required to take by another federal statute or regulation.

Private employers who are federal contractors can invite their employees to voluntarily self-identify as individuals with disabilities without otherwise violating the ADA's disability-related inquiry provision because they are required under Section 503 of the Rehabilitation Act to engage in affirmative employment efforts.

Reaffirm that although the definition of disability is broad, only those individuals who are qualified and can prove discrimination are entitled to relief.

The ADA, as amended by the ADAAA, retains without amendment the existing definition of the term “disability.” The term “disability” means, with respect to an individual—

Prong 1 A physical or mental impairment that substantially limits one or more major life activities of such individual (Prong 1);

Prong 2 A record of such an impairment ; or

Prong 3 Being regarded as having such an impairment.

The ADAAA makes changes in several significant ways regarding how key words and phrases in the definition are construed. The purposes of the ADAAA are to:

- Make it easier for an individual to establish he or she has a disability, thereby obtaining protection against discrimination under the ADA. No extensive documentation is required to show that an individual is protected by the law.
- Move the focus of the law from the threshold issue of whether an individual has a disability to the primary issue of whether the individual has been subjected to discrimination on the basis of disability.

What other changes does the Final Rule make to the definitions section of the regulations?

The terms "individual with a disability" and "qualified individual with a disability" are changed to "disability" and "qualified individual," respectively, in accordance with the ADAAA.

Aligns the Regulations with ADA Amendments Act of 2008

- Revises the definition of disability to align with the ADAAA that supports broad coverage of those with disability and where disability does not require extensive analysis.
- Requires that contractors engage in the interactive process to identify effective reasonable accommodations.

How can Vocational Rehabilitation Programs Benefit?

VR counselors and placement specialists can identify individuals for jobs with federal contractors.

The new regulations require federal contractors and sub-contractors to be more inclusive of individuals with disabilities in the workplace, and stipulate documenting outreach and recruitment activities.

VR agencies might establish agreements with selected federal contractors to assist with disability awareness activities and provide referrals when contractors are seeking applicants.

VR agencies should increase awareness of the variety of resources available to assist contractors with accessibility, accommodations and other disability and rehabilitation support services.

Outreach and recruitment of qualified individuals with disabilities

The purpose of this data collection is to provide contractors with useful information about the extent to which their outreach and recruitment efforts are effectively reaching people with disabilities. Also the final rule requires contractors to invite **incumbent employees** to self-identify on a regular basis.

The final rule requires contractors to maintain several **quantitative measurements and comparisons** for the number of individuals with disabilities who apply for jobs and the number of individuals with disabilities they hire in order to create greater accountability for employment decisions and practices.

Section 503 regulations require contractors to?

- **Step up data collection and tracking.** Make changes in data collection obligations around applicants, employees who are hired, and the number of job openings versus the number of jobs filled.
- **Communicate with subcontractors.** Use an equal opportunity clause (based upon mandated language) in subcontracts.
- **Participate in compliance reviews.** Provide OFCCP with documents needed for a complete compliance check or focused review. Also, upon request, be able to inform OFCCP of formats used to collect this data.

Reasonable Accommodation

Reasonable Accommodation is any change in the work environment or in the way things are customarily done that enables a person with a disability to enjoy equal employment opportunities (EEOC).

The final 503 rule also clarifies that the nondiscrimination obligation to **make reasonable accommodation** includes contractors' use of **electronic or online job application systems** and requires that contractors ensure equal access to job opportunities.

OFCCP's final rule **strengthens** the affirmative action requirements established in Section 503 of the Rehabilitation Act of 1973

For the first time, a **7 percent workforce utilization goal** for individuals with disabilities. This goal is not a quota or a ceiling that limits or restricts the employment of people with disabilities. Failing to meet the goal alone, is not a violation of the regulation and will not lead to a fine, penalty, or sanction.

The final rule requires contractors to invite applicants to **voluntarily self-identify** as an individual with a disability at the **pre-offer stage** of the hiring process as well as the **post-offer stage** (current policy).

Policy shared with Subcontractors

The final rule specifies that the contractor **must** send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

Written Affirmative Action Program

- The final rule reaffirms that the requirement to develop a written affirmative action program applies to every Government contractor that has 50 or more employees and a contract of \$50,000 or more.

The program for people with disabilities under Section 503 may be integrated into or kept separate from other affirmative action programs.

7% workforce utilization goal for individuals with disabilities

This affirmative action goal is not a quota, but rather a management tool to help the contractor make decisions about how it recruits and hires potential employees. The 7% goal will apply to each job group or to the entire workforce if there are fewer than 100 employees.

Utilization Analysis

The final rule requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce.

Records & Formats

The final rule requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation.

Investigative Procedures

These evaluations are to determine whether federal contractors are complying with their obligations to ensure nondiscrimination. They also determine whether contractors are taking affirmative action to employ, promote, train, retain and provide reasonable accommodation to certain protected veterans and individuals with disabilities, respectively.

TYPES OF COMPLIANCE EVALUATIONS:

OFCCP may conduct a compliance evaluation that consists of one, or any combination of, the following investigative procedures: compliance review, offsite review of records, compliance check, and focused review.

A Desk Audit maybe an onsite review, and offsite analysis.

However, the regulations do not require an onsite review or offsite analysis in all cases. Depending on the circumstances or the results of the desk audit, a compliance review may: close after the desk audit, continue with an onsite review, or continue with an offsite analysis of the information gathered during or pursuant to the onsite review.

How to best prepare

Qualified Individuals

Learn about Federal Contractor job qualifications, where these jobs are located and what you need to do?

Preparing federal contractor job applications and federal job security clearance will require time and energy.

The National Association of Government Contractors may help:

<http://web.governmentcontractors.org/careers/>

Federal Contractors & Service Providers

Prepare potential job-seekers for federal contracting employment by working together.

Gain an understanding of each other.

Develop communication and collaboration activities. Examples: computer recycling and disability awareness trainings.

Federal contractors and service providers should educate their own workforce on the ADA-AA definition of disability and the new 503 requirements. The ADA network offers free training.

Supporting Placement Efforts

The Council of State Administrators of Vocational Rehabilitation – The National Employment Team (CSAVR-NET). CSAVR-NET www.rehabnetwork.org. CSAVR-NET has developed the Talent Acquisition Portal® (TAP) a centralized, national talent pool of candidates with disabilities. Business can access qualified candidates with disabilities based on their skill sets, education, experience, geographic availability <https://tapability.org/>. The WRP is a government-wide program co-sponsored by the Department of Defense and the Department of Labor to increase employment of people with disabilities in the federal workforce by providing a pipeline of qualified and highly motivated candidates. The WRP.jobs portal for non-federal employers is a pilot project developed through an innovative partnership between EARN and <http://www.directemployers.org/>. To access WRP.jobs, employers can visit www.AskEARN.org and click “Request WRP Candidates” to register.