

The Rehabilitation Act of 1973

Sections 501 and 505

EDITOR'S NOTE: The following is the text of Sections 501 and 505 of the Rehabilitation Act of 1973 (Pub. L. 93-112) (Rehab. Act), as amended, as these sections appear in volume 29 of the United States Code, beginning at section 791. Section 501 prohibits employment discrimination against individuals with disabilities in the federal sector. Section 505 contains provisions governing remedies and attorney's fees under Section 501. Relevant definitions that apply to sections 501 and 505 precede these sections. Section 512 of the Americans with Disabilities Act of 1990 (Pub. L. 101-336) (ADA) amends definitions applicable to the Rehab. Act. The Rehabilitation Act Amendments of 1992 (Pub. L. 102-559) further amends the definition of "individual with a disability" and Section 501. These amendments appear in boldface type. In addition, section 102 of the Civil Rights Act of 1991 (Pub. L. 102-166 (CRA) (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to the Rehabilitation Act as enacted appear in italics following each section heading. Editor's notes also appear in italics.

DEFINITIONS

SEC. 706 [Section 7]

For the purposes of this chapter:

(4) (A) The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or other provisions of Federal law.

(8) (B) Subject to subparagraphs (C)..., **(E), and (F)**, the term "individual with a **disability**" means ... any person who

(i) has a physical or mental impairment which substantially limits one or

more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(C) ... (i) [T]he term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use. (ii) Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who --

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

* * *

(E) For the purposes of [section 501] ... -

(i) for purposes of the application of subparagraph (B) to such [section], the term "impairment" does not include homosexuality or bisexuality; and

(ii) therefore the term "individual with a disability" does not include an individual on the basis of homosexuality or bisexuality.

(F) For the purposes of [section 501] ..., the term "individual with a disability" does not include an individual on the basis of - (i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

SEC. 791. *[Section 501]*

(a) There is established within the Federal Government an Interagency

Committee on **Employees who are Individuals with Disabilities** (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Equal Employment Opportunity Commission (hereinafter in this section referred to as the "Commission"), **the Director of the Office of Personnel Management**, the Secretary of Veterans Affairs, and the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services. **Either the Director of the Office of Personnel Management and the Chairman of the Commission shall serve as co-chairpersons of the Committee or the Director or Chairman shall serve as the sole chairperson of the Committee, as the Director and Chairman jointly determine, from time to time, to be appropriate.** The resources of the President's Committees on Employment of People with Disabilities and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with **disabilities**, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with **disabilities** by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with **disabilities** in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of employees **who are individuals with disabilities** are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with **disabilities**.

(c) The Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with **disabilities**, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) The Commission, after consultation with the Committee, shall, on June

30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with **disabilities** by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Commission under subsections (b) and (c) of this section.

(e) An individual who, as a part of an individualized written rehabilitation program under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) (1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of People With Disabilities in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of People with Disabilities, special consideration shall be given to qualified individuals with **disabilities**.

(g) The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

REMEDIES AND ATTORNEYS' FEES

SEC. 794a. [Section 505]

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefore or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the

Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.