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Policies on Rehabilitation Act of 1973 (As amended)

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.

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(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.



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Title VI, Civil Rights Act of 1964

Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President . Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part

Title VI, Civil Rights Act of 1964

thereof, in which such noncompliance has been so found, or (2) by any means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and had determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 602, shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guarantee

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of --

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship ; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any

application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et. seq.], by the Act of September 20, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 236 et seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq.], or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education

Amendments of 1966 [42 U.S.C. 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.



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Title 8 Texas Human Resources Code

1.3.3 Title 8, Texas Human Resources Code

Title 8 of the Texas Human Resources Code states that the policy of the State of Texas is to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public accommodations available within the state. This law applies to all organizations that receive public funds in the state.

1.3.4 Article 5221K, Texas Commission on Human Rights Act (1983)

The [Texas Commission on Human Rights Act \(TCHR\)](#) addresses employment discrimination based on race, color, religion, sex, national origin, disability, and age.

TCHR functions as an investigative agency under contract with the [U.S. Equal Employment Opportunity Commission \(EEOC\)](#). The EEOC empowers TCHR to investigate and conciliate complaints of employment discrimination. In the event that conciliatory efforts fail, TCHR has the authority to file civil actions against both public and private employers.

1.3.5 Americans with Disabilities Act (ADA)

The Americans with Disabilities Act of 1990, 42 U.S.C. 12101-12213, Public Law 101-336, requires that all government agencies purchase products and services only from providers who comply with the intent and language of the ADA.



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Texas Commission on Human Rights

OPM Connect, Inc. is committed to following the guidelines in compliance with the Texas Commission on Human Rights are as follows:

The Texas Commission on Human Rights was established by the state legislature when the Texas Commission on Human Rights Act passed on June 26, 1983, authorizing the agency to enforce the law and handle complaints filed under the commission and/or deferred by the United States Equal Employment Opportunity Commission of discrimination in certain employment transactions. Besides investigating and resolving complaints of employment discrimination, the commission also provides technical assistance to employers for equal opportunity training. When the Texas Fair Housing Act was passed by the legislature on May 25, 1989, the commission was further empowered to enforce its provisions. Consequently, the agency was authorized to protect citizens against housing discrimination on the basis of race, color, national origin, sex, religion, familial status, and mental or physical disability. This act, according to the United States Department of Housing and Urban Development, is substantially equivalent to Title VIII of the Civil Rights Act of 1969, as amended. Along with investigating and resolving complaints of housing discrimination, the commission also provides technical assistance to housing providers. Since the state's antidiscrimination laws are similar to certain federal laws, such as the Age Discrimination in Employment Act and the Americans with Disabilities Act, the commission has a statutory and contractual link with EEOC and HUD, and both provide federal funds to the commission to cover a portion of the costs of processing complaints. The Texas Commission on Human Rights is made up of six members who serve six-year terms and who are appointed by the governor with senatorial advice and consent. One member serves as chair, designated as such by the governor; one member represents industry, one represents labor, and the remaining four are appointed at large



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Americans with Disabilities Act (1990)

(a) General rule

OPM Connect, Inc. shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term “discriminate” includes—

- (1)** limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- (2)** participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);
- (3)** utilizing standards, criteria, or methods of administration—
 - (A)** that have the effect of discrimination on the basis of disability; or
 - (B)** that perpetuate the discrimination of others who are subject to common administrative control;
- (4)** excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (5)**
 - (A)** not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
 - (B)** denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

Americans with Disabilities Act (1990)

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(b) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Pre-employment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).



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Workplace and Education Guidelines for HIV/AIDS and other Communicable Diseases

POLICY

It is the intent of OPM Connect, Inc. to comply fully with the applicable provisions of the Americans with Disabilities Act, the Texas Labor Code, Chapter 21, the Texas Health and Safety Code, Chapter 85, the Centers for Disease Control and Prevention (CDC) the Office of Safety and Health Administration, TCADA Rules for Contract and Licensed Providers and the Texas Department of Health regarding duties of state agencies and state contractors with respect to HIV/AIDS and other communicable diseases.

OPM Connect, Inc. recognizes the need for increased awareness and understanding of HIV/AIDS and infection control of communicable disease in order to address employee concerns in the workplace. ABC also recognizes its obligations and commitment to provide and maintain a safe and healthy environment for all employees and clients.

DISCRIMINATION

The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination against people with disabilities including HIV and AIDS in employment, public accommodation, public transport and other situations.

OPM Connect, Inc. complies with the ADA protections of all people with disabilities against discrimination in job application procedures, hiring, promotions, discharge, compensation, job training, and other terms or conditions of employment.

The use of a person's HIV status to decide employment, service delivery, or to deny services to HIV infected individuals is not acceptable. Employees who believe that they have been discriminated against because of HIV or AIDS should contact the human resources (HR)/personnel officer of OPM Connect, Inc. or Equal Employment Opportunity Compliance Officer to discuss the matter, or initiate action through the agency's grievance procedure. Other legal options may also be available.

DESIRE AND ABILITY TO WORK

Pursuant to the ADA, procedures may be adapted to provide reasonable accommodation so that people with disabilities may remain employed and productive for as long as possible. However, all employees are expected to perform the essential functions of their job.

Employers do not have an obligation to provide any accommodation that imposes undue hardship. Specific questions about reasonable accommodation and undue hardship should be directed to the HR/personnel officer of OPM Connect, Inc.

a. PERFORMANCE STANDARDS

While the ADA does protect disabled employees from employment discrimination, all employees, those with and without disability(ies), have the same performance and conduct standards regarding hiring, promotion, transfer, and dismissal.

b. REASONABLE ACCOMMODATION

Requests for reasonable accommodation are decided on a case-by-case basis by the requesting employee's supervisor in connection with the HR/personnel officer, with final approval from the Executive Director. The employee's supervisor and the HR/personnel officer will consider the unique circumstances of the employee's situation. However, all reasonable accommodations must:

- be job related;
- be effective enough to overcome the employee's physical or mental impairment;
- enable the individual to perform the essential functions of the job, and
- not impose an undue hardship on the Commission's operations.

The following options may be considered for people with HIV/AIDS:

- possible assignment or reassignment of job duties;
- working at home;
- leave of absence, and
- flexible work schedules.

CONFIDENTIALITY AND PRIVACY

Employees are not required to reveal their HIV status to their employer. All medical

information provided by an HIV infected employee to medical or management personnel is confidential and private. OPM Connect, Inc. will protect the confidentiality of medical records and information. However, as with other illnesses, once HIV-related symptoms occur which require job accommodation; it is the employee's responsibility to provide medically verified information relating to an employee's ability to be available for or to perform job duties.

Written consent of the employee must be obtained to disclose any confidential information with other staff. Individuals who fail to protect these employee rights commit a serious offense, which may result in dismissal and may be cause for litigation resulting in both civil and criminal penalties.

CO-WORKER CONCERNS

Employees are to be sensitive to the needs of co-workers who have HIV/AIDS. Co-workers are asked to recognize that continued employment for an employee who is ill is often beneficial. Through counseling and education, OPM Connect, Inc. will attempt to alleviate concerns of employees who feel uncomfortable working with a colleague with HIV/AIDS. Employees do not have the right to refuse to work with someone who has any disability.

EMPLOYEE EDUCATION

OPM Connect, Inc. will conduct mandatory education for all new hires and may conduct continuing education as determined by the Executive Director and in accordance with the model educational guidelines promulgated by the Texas Department of Health and the Texas Commission on Alcohol and Drug Abuse (the Commission.) Education will contain the following:

- modes of transmission with regard to HIV, TB, hepatitis and other sexually transmitted diseases;
- methods of prevention;
- high risk behaviors;
- use of standard precautions to prevent transmission of communicable diseases in the workplace; and,
- laws concerning the rights of an AIDS/HIV infected individual.

Education may contain any other relevant scientifically accurate information, methodology, training, or activities which the Commission and OPM Connect, Inc. deems appropriate or necessary.

ASSISTANCE

An employee who wants assistance concerning a disability or a life-threatening illness should contact the HR/personnel officer of OPM Connect, Inc. OPM Connect, Inc. offers the following resources to help employees and managers deal with these issues:

- education and information concerning HIV/AIDS;
- confidential referral to supportive services for employees and dependents affected by life-threatening illnesses; and
- benefits consultation to help employees effectively manage health, leave, and other benefits.