

ADA Audio Conference Series June 17, 2014

This session is scheduled to begin at
2:00pm Eastern Time

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1

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2

Listening to the Webinar, *continued*

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Blackboard Collaborate Mobile App (Available Free
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3

Captioning



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- ▶ Once selected you will have the option to resize the captioning window, change the font size and save the transcript.

4

Web Tour



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5

Submitting Questions



- ▶ If you are listening by phone you will be instructed by the Operator on how to ask a question.
- ▶ Via Webinar platform you may type and submit questions in the Chat Area Text Box or press Control-M and enter text in the Chat Area. You will not be able to see the question after you submit it but it will be viewable by the presenters.
- ▶ If you are connected via a mobile device you may submit questions in the chat area within the App
- ▶ Questions may also be emailed to webinars@ada-audio.org

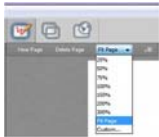


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5

Customize Your View

- ▶ Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”



6

Customize Your View *continued*

- ▶ Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or “stretch/shrink”. Each panel may be detached using the ☰ icon in the upper right corner of each panel.

7

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 - Scroll down to “General”
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 - For Screen Reader User – Set preferences through the setting options within the Activity Window (Ctrl+ slash opens the activity window)

9


Technical Assistance




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1. **In webinar platform:** Send a private chat message to the host by double clicking "Great Lakes ADA" in the participant list. A tab titled "Great Lakes ADA" will appear in the chat panel. Type your comment in the text box and "enter" (Keyboard - F6, Arrow up or down to locate "Great Lakes ADA" and select to send a message); or
2. **By Email** webinars@ada-audio.org; or
3. **Call** 877-232-1990 (V/TTY)


8



Section 503:
OFCCP's Revised Regulations



Naomi Levin, Branch Chief for Policy
Office of Federal Contract Compliance Programs
Department of Labor



What is OFCCP?

- Federal civil rights agency in the Department of Labor with jurisdiction over federal contractors and subcontractors
- Enforces three laws prohibiting employment discrimination and requiring AA:
 - Executive Order 11246
 - Section 503 of the Rehabilitation Act
 - Vietnam Era Veteran's Readjustment Assistance Act of 1974 (VEVRAA)

12



What does OFCCP do?

- Conducts compliance evaluations
- Conducts complaint investigations
- Provides technical assistance
- Engages in outreach and public education

13

The New Regulations


- Strengthen the regulations to aid contractors in the recruitment and hiring of individuals with disabilities and facilitate compliance with the law
- Increase contractor accountability for complying with affirmative action obligations
- Update non-discrimination regulations in accordance with the ADAAA

14

Need for Data in 503 Rules


- Data needed to foster contractor accountability
- Executive Order 11246 as a model

15


Key Changes

- Establishes 7% utilization goal
- Requires annual documentation of several quantitative comparisons for the number of IWDs who apply for jobs and the number of IWDs hired
- Requires contractors to conduct written assessment of the effectiveness of outreach and recruitment efforts
- Requires contractors to self-audit employment practices, document its actions, and make changes if AAP found deficient

16


Expanded Self-ID Provisions

- Requires contractors to invite applicants/employees to voluntarily self-identify as an individual with a disability

17

Self-ID Invitation Requirements

- **Pre-offer:** invitation to voluntarily self-identify as an individual with a disability
- **Post-offer:** invitation to voluntarily self-identify as an individual with a disability
- **Employees:** invitation to all employees in first year; and every five years thereafter; at least one reminder in intervening years
- All invitations must be made using form posted on OFCCP's Web site

18



Contact Information


- Office of Federal Contract Compliance Programs (OFCCP)
- Call us - (800) 397-6251
- TTY: (877) 889-5627
- Email us - ofccp-public@dol.gov
- Visit our website - www.dol.gov/ofccp

19

Employer Compliance with the ADA and the New OFCCP Section 503 Regulations

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Distinguishing Between Section 503 of the Rehabilitation Act and Title I of the ADA

- Title I of the ADA is enforced by the U.S. Equal Employment Opportunity Commission and **applies to private employers with 15 or more employees, as well as to state and local government employers.**
- Employers covered by both the ADA and Section 503 must comply with both laws.
- In some instances, Section 503 requires contractors to take actions not required of other employers. Taking actions required under Section 503 does not violate the ADA.

21

Disability-Related Inquiries and Medical Examinations

1. **General rule - pre-offer:** No disability-related inquiries or medical exams at the application stage

- Narrow Exceptions: May ask all applicants whether they will need reasonable accommodation for application process
- May ask particular applicant if he needs a reasonable accommodation and, if so, what type, where applicant has known disability that employer reasonably believes will require accommodation
- May invite **voluntary self-identification** for affirmative action purposes in accordance with rules set forth in EEOC's Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations (1995)

22

Disability-Related Inquiries for Affirmative Action Purposes

- An employer may invite applicants or employees to **self-identify as individuals with disabilities** for affirmative action purposes, whether because of a federal, state, or local law that requires affirmative action, or because the employer is using the information to benefit individuals with disabilities, provided the employer states clearly that –
 - **answering is voluntary**, any information provided will be kept confidential and used solely in connection with affirmative action obligations or efforts, and
 - refusal to answer will not subject the applicant to any adverse treatment.

23

Disability-Related Inquiries and Medical Examinations (cont'd)

2. **General rule - post-offer/pre-employment:** Permitted as long as required of all entering employees in same job category

- Employers may only withdraw the conditional job offer if the information obtained reveals that the individual is not qualified or would pose a direct threat to health or safety.

24

Disability-Related Inquiries and Medical Examinations (cont'd)

3. General rule - during employment: During employment, all disability-related inquiries and medical exams must be "job related and consistent with business necessity"

Generally, this is where employer has a reasonable belief, based on objective evidence that –

- Employee will be unable to do essential functions due to medical condition; or
- Employee will pose direct threat due to medical condition

25

Disability-Related Inquiries and Medical Examinations (cont'd)

- In addition, employers can obtain medical information from current employees, for example:
 - when the employee has requested a **reasonable accommodation and his or her disability or need for accommodation is not obvious;**
 - when required to do so by another **federal law or regulation** (e.g., DOT medical certification requirements for interstate truck drivers);
 - as part of **voluntary wellness programs;**
 - when undertaking **affirmative action because of a federal, state, or local law that requires affirmative action for individuals with disabilities, or when voluntarily using the information they obtain to benefit individuals with disabilities.**

26

Additional Protections for All Applicants and Employees

All medical information must be kept confidential

- Includes medical information from whatever source
- The fact that someone has requested or is receiving an accommodation is considered confidential medical information
- **Cannot be placed in regular personnel file**
- **Cannot be disclosed verbally or in writing except per narrow specified exceptions:**
 - to supervisors and managers to the extent needed to grant necessary work restrictions or reasonable accommodations
 - to the extent needed by individuals making the employer's decision about reasonable accommodations
 - to personnel providing emergency treatment; to officials investigating compliance with Rehabilitation Act; or for workers' compensation and insurance purposes

27

**Common ADA Compliance Questions
About the New OFCCP Section 503 Regulations**

Use of Form

1. Will a contractor be in violation of the ADA if it uses the new OFCCP "Voluntary Self-Identification of Disability" form in the way required by the Section 503 regulations?
 - Does providing the form to applicants as required by OFCCP violate the general ADA rule prohibiting "pre-offer" disability-related inquiries?
 - Does maintaining the submitted forms in a "data analysis file" as required by OFCCP violate the ADA rule on non-disclosure of confidential medical information?

29

Use of Form

- No. Contractors do not violate the ADA by following required steps under the OFCCP Section 503 regulations to invite voluntary self-identification using the prescribed OFCCP form pre-offer, post-offer, and during employment.
- Contractors also do not violate the ADA by confidentially handling the forms and the information collected as the Section 503 regulations instruct, because the confidentiality requirements are consistent.

30

Recent Ruling

- Associated Builders & Contractors, Inc. v. Shiu, ___ F. Supp. 2d ___, 2014 WL 1100779 (D.D.C. March 21, 2014) (holding that the data collection requirement under the new Section 503 regulations does not violate the ADA).

31

Otherwise comply with pre-offer rules?

2. Are contractors still required to otherwise comply with the ADA prohibitions on pre-offer disability-related inquiries and medical exams?

32

Otherwise comply with pre-offer rules?

- Yes. A contractor is required to adhere to the steps mandated in the OFCCP regulations, but otherwise must comply with all ADA requirements. For example, a contractor would be liable for violating the ADA if it:
 - Makes pre-offer disability-related inquiries on an application form or in a job interview (e.g., asking if the applicant has a disability, what the applicant's medical history is, or what medications are taken)
 - Uses a pre-offer medical examination
 - Discloses confidential medical information (e.g., putting the OFCCP form in regular personnel file, or otherwise disclosing the information on the form or any other medical information about applicants or employees)

33

Non-hire

3. Will a contractor violate the ADA if, for a non-discriminatory and non-retaliatory reason, it does not hire an applicant with a disability?

34

Voluntary Affirmative Action Programs

4. Are employers permitted to continue to develop and implement voluntary affirmative action programs that go above and beyond what OFCCP requires?

35

Voluntary Affirmative Action Programs

- Yes. Nothing in the new OFCCP rules for contractor data collection is intended to negate affirmative hiring programs.
- For questions about a particular program, contractors can refer to section 60-741.46 of the Section 503 regulations for guidance, and consult OFCCP.

36

Contact Information

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37



Thank you for participating in today's
ADA-Audio Conference Session

The next scheduled session is:

"ADA Anniversary Update: 24 Years Later"

July 15, 2014

www.ada-audio.org

877-232-1990 (V/TTY)

38
