

CMS REPORT FOR CONGRESS

**AFFIRMATIVE ACTION IN THE EMPLOYMENT OF PERSONS WITH HANDICAPS  
UNDER FEDERAL CONTRACTS: SECTION 503 OF THE REHABILITATION ACT**



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**AFFIRMATIVE ACTION IN THE EMPLOYMENT OF PERSONS WITH HANDICAPS  
UNDER FEDERAL CONTRACTS: SECTION 503 OF THE REHABILITATION ACT**

**SUMMARY**

Section 503 of the Rehabilitation Act of 1973, P.L. 93-112 as amended, requires every employer doing business with the Federal Government under a contract for more than \$2,500 to take affirmative action to employ and advance in employment qualified individuals with handicaps. Federal contractors are required to make reasonable accommodation for the special needs of qualified persons with handicaps. Certain exceptions to the affirmative action requirements may be made in cases where the accommodation of an individual with a handicap would present an undue hardship on a Federal contractor, or where an issue of national security may prevent such accommodation. Specific requirements apply to larger contractors. This program is administered by the Office of Federal Contract Compliance Programs in the Department of Labor.

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**AFFIRMATIVE ACTION IN THE EMPLOYMENT OF PERSONS WITH HANDICAPS  
UNDER FEDERAL CONTRACTS: SECTION 503 OF THE REHABILITATION ACT**

**PERSONS WITH HANDICAPS COVERED BY SECTION 503**

The affirmative action requirements of section 503 apply to all qualified persons with handicaps. That is, the person must be qualified to perform the duties of the job with reasonable accommodation to the physical and mental limitations of an employee or applicant. If the contractor can demonstrate that the accommodation of a person with a handicap would impose an undue hardship in terms of business necessity or financial cost, section 503 would not be applicable.

An "individual with handicaps" is defined (under section 7(8) of the Rehabilitation Act) as any person who has a physical or mental impairment which substantially limits one or more of such persons's major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include communication, ambulation, self-care, socialization, education, employment, and transportation. This term does not include a person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, due to use of these substances, would constitute a threat to the property or safety of others. The term also does not include persons with infectious diseases whose disease would constitute a threat to the

health or safety of other persons or whose disease prevents the individual from performing the duties of the job. 1/

FEDERAL CONTRACTORS COVERED BY SECTION 503

Section 503 applies to all Federal contracts and subcontracts over \$2,500 for the furnishing of supplies or services (including construction). These contracts are required to contain a provision requiring that, in employing persons to carry out the contract, the contractor will take affirmative action to employ and advance in employment qualified individuals with handicaps. These provisions also apply to any subcontract in excess of \$2,500 entered into by a contractor in carrying out the contract. The regulation implementing section 503 states that agencies may not procure less than usual quantities to avoid affirmative action requirements. 2/ Section 503 does not apply under certain conditions, as set forth in the regulation. These affirmative action requirements do not apply to individuals recruited outside the United States to work on contracts performed outside the United States. Also, affirmative action requirements apply only to workers employed under Federal contracts with State or local governments, not to such State or local governmental entities as a whole. Similarly, affirmative action requirements may be waived (at the request of the contractor) for any contractors' facilities which are separate and distinct from activities related to the performance of the Federal contract. Affirmative action requirements may also be waived when so indicated by special circumstances related to national security.

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1/ P.L. 100-430 section 6(b)(3) specifies that the term "individual with handicaps" as defined under the Rehabilitation Act does not apply to an individual solely because that individual is a transvestite.

2/ 41 C.F.R. 60-741.2

**REQUIREMENTS REGARDING CONTRACTS OF \$50,000 OR MORE**

Certain Federal contractors with large contracts are required to have in place a written affirmative action program within 120 days of the start of a contract. Every Government contractor that has 50 or more employees and has a Federal contract of \$50,000 or more (or contracts which total at least \$50,000 in any 12-month period) must maintain a written affirmative action program. This affirmative action program must set forth the contractor's policies, practices, and procedures regarding affirmative action and must be reviewed and updated annually. This document is to be made available for inspection to any employee or applicant upon request. Federal contractors with these larger contracts are required to invite all applicants and employees who believe themselves covered by section 503 to identify themselves to the contractor. The regulation states that the contractor should seek the advice of the handicapped applicant or employee regarding proper placement and appropriate accommodation.

Federal contractors with contracts in excess of \$2,500, but with less than 50 employees and contracts of less than \$50,000, are not required to maintain a written affirmative action program. However, these smaller Federal contractors are required to take affirmative action to employ and advance in employment qualified individuals, and the affirmative action agreement (discussed below) is required to be included in each contract.

**AFFIRMATIVE ACTION AGREEMENT**

The regulation sets forth an affirmative action "clause," or agreement, that is required to be included in each Federal Government contract. 3/ The

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3/ 41 C.F.R. 60-741.3

agreement includes a statement that persons with handicaps will be treated without discrimination based on their physical or mental handicap in all employment practices including employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor must agree to place a notice in a conspicuous place available to employees and applicants stating the contractor's obligations under the law to take affirmative action and to protect the rights of persons with handicaps. Labor unions with which the contractor has a collective bargaining agreement are to be notified that the contractor is bound by the terms of section 503. The provisions of the affirmative action agreement are also required to be included in any subcontract in excess of \$2,500, unless such subcontract is exempt.

#### AFFIRMATIVE ACTION POLICIES, PRACTICES, AND PROCEDURES

All Federal contractors with contracts over \$2,500 are to comply with the policies, practices, and procedures set forth in regulation, including the following: 4/

- Contractors are required to maintain personnel procedures to help assure that known applicants and employees with handicaps are considered for job vacancies and promotions and that qualified persons with handicaps are not screened out of the selection process.
- Contractors must make reasonable accommodation to the physical and mental limitations of employees or applicants with handicaps, unless the contractor can demonstrate that the accommodation would impose an undue hardship in terms of business necessity or financial cost.
- Recruitment activities should include efforts to locate qualified persons with handicaps through State employment

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4/ 41 CFR 60-741.5



agencies, State vocational rehabilitation agencies, sheltered workshops, college placement offices, organizations for individuals with handicaps, and other places that may have information regarding eligible persons with handicaps.

- Contractors are required to encourage internal support for affirmative action activities by making managers, supervisors, and other employees aware of affirmative action policies.

#### ENFORCEMENT AND COMPLAINT PROCEDURES

An individual alleging noncompliance with section 503 may file a complaint with the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor. 5/ If the contractor has in place an internal review procedure, the OFCCP may refer the case to the contractor, if the complainant agrees. If a complaint cannot be resolved internally, the OFCCP is required to investigate. A finding of noncompliance with the requirements regarding section 503 can result in sanctions, including withholding of payments on Federal contracts, cancellation of the contract, and debarment of a contractor from receiving future Federal contracts.

In addition to complaint investigations, the OFCCP conducts contract compliance reviews to evaluate the written affirmative action plans of the larger contractors and compare them with the employment practices of the contractors. Since 1978, the OFCCP has completed nearly 11,000 section 503 complaint investigations. 6/ (Data are not available on the number of section 503 contract compliance reviews completed.) These complaint investigations resulted in the award of over \$8 million in back pay for approximately 1,500

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5/ Executive Order 11758 assigned responsibility for implementation of section 503 to the Department of Labor.

6/ Data in this paragraph are from August 4, 1988, correspondence to Mary F. Smith from Annie Blackwell, Director, Division of Policy, Planning and Review, Employment Standards Administration, Office of Federal Contract Compliance Programs, Department of Labor.

employees with handicaps. In FY 1987, the OFCCP completed investigations of 836 complaints and granted 147 handicapped complainants a total of \$1.2 million in back pay.