

Legal Requirements

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What is Section 504?

Are there other federal statutes I need to be aware of?

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Section XII: Legal Requirements

Key Words and Terms

Direct Threat

Section 504 of the Rehabilitation Act

Federal Statutes

What laws govern national and community service programs on the inclusion of people with disabilities?

Civil rights laws affect almost every area of American life and require that equal opportunity be provided. In terms of persons with disabilities, several federal laws ensure equal opportunity and non-discrimination. National service programs are obligated under federal law to ensure non-discriminatory environments and practices and procedures for qualified persons with disabilities. In most cases, if a program is truly open to the full inclusion of persons with disabilities and to the creation of a respectful and inclusive service environment, that program is likely to be in legal compliance.

This section is intended to provide you with a brief overview of key areas of the federal laws that apply to service programs. More in-depth and specific information can be found by contacting the resource organizations listed, as well as the Corporation for National and Community Service Training and Technical Assistance provider on disability issues. There are two federal disability laws that are specifically relevant to national and community service programs: Section 504 of the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990 (ADA).

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 states that “[n]o otherwise qualified individual with a disability in the United States . . . shall,

solely by reason of [her or] his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .”

Section 504 applies to any entity that receives federal assistance, including grant funds, services of federally sponsored participants, or federally subsidized training. While some entities, such as tribal governments or religious organizations, may be specifically exempted from certain federal nondiscrimination requirements, Section 504 does not include any such exemptions. The bottom line is that any entity that applies for and receives assistance from the Corporation must certify that it will comply with Section 504.

Programs and activities covered by Section 504 must be accessible to persons with disabilities, and recipients must provide reasonable accommodations to allow a qualified person with a disability to receive services, participate in the entities’ programs, or perform the essential function of a position. Section 504 does not require grantees to take any action that would result in a “fundamental alteration” in the nature of a program or activity or that would cause an “undue financial or administrative burden.”

The Corporation has published regulations at 45 CFR Part 1232 specific to Section 504 requirements for entities that receive Corporation assistance. You should familiarize yourself with these rules, which include provisions on the selection and supervision of employees and service participants, reasonable accommodation, and program accessibility (regulations are available at www.nationalservice.org.)

Under Section 504 and Corporation regulations, there are two different standards for making your facilities accessible to individuals with disabilities. For older facilities (existing as of May 30, 1979), a grantee is not required to make structural changes if other methods may achieve compliance and “when viewed in its entirety” the program or activity is readily accessible to, and usable by, individuals with disabilities.

Facilities constructed or altered for the use of any grantee after May 30, 1979, must be readily accessible to, and usable by, individuals with disabilities. For these newer facilities, the more flexible “when viewed in its entirety” standard does not apply. This can be complex and sometimes difficult to determine. If you are unsure of which standard to use, please refer to the resources provided in this Handbook.

Are there other federal statutes I need to be aware of?

Both national service laws, the National and Community Service Act (NCSA) and the Domestic Volunteer Service Act (DVSA), prohibit an individual with responsibility for the operation of a grantee’s projects from discriminating on the basis of a disability against a qualified individual with a disability who is a participant or staff member.

The Americans with Disabilities Act, or ADA, is perhaps the most well known federal statute that extends civil rights protections to persons with disabilities. The ADA, enacted in 1990, prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. While an entity that receives Corporation assistance may be subject to the ADA, compliance with the ADA is not a condition of receiving assistance from the Corporation. This Handbook focuses on the requirements under Section 504, which generally are stricter than requirements under the ADA.

Are there other legal requirements I should be aware of?

State and Local Laws

Many states and localities have enacted laws that include additional requirements related to the inclusion of persons with disabilities. You should check with state and local government agencies to learn about other requirements.

Exclusions

There are some specific conditions that are specifically excluded from

coverage under Section 504. These are: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs. The phrase physical or mental impairment does not include homosexuality or bisexuality; these are not considered disabilities.

Temporary Disabilities

Many people experience temporary disabilities, such as a broken arm, a sprained ankle or severe seasonal allergies. They are not protected under Section 504 or the Americans with Disabilities Act. If a program is truly inclusive, however, it will be natural to accommodate persons with temporary disabilities, although not required by law.

“Direct Threat”

In some cases, supervisors may be concerned that an individual with a disability may pose a “direct threat” to themselves or others because of their disability. In order to ensure compliance with the law, these cases must always be approached with caution.

“Direct threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. Any determination of “direct threat” to health or safety must be based on individualized assessment of the individual’s present ability to safely perform the essential functions of the position. In determining whether an individual would pose a “direct threat,” the factors the program must consider include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The imminence of the potential harm.

The risk must be evaluated and based on reasonable medical judgment that relies on the most current medical knowledge and/or on the

Direct Threat
It is strongly recommended that you always call the Training and Technical Assistance Provider or the resources listed in this Handbook when faced with this kind of situation.

best available objective evidence. Prior to excluding an individual, a clear determination must be made that the risk cannot be eliminated or reduced to a level below that of “direct threat” by the provision of reasonable accommodations.

Drug Use

A person who is addicted to drugs is sometimes protected under Section 504 because addiction sometimes results in a substantial limitation of major life activities. A person who has a past history of addiction to illegal substances who is successfully participating in a drug rehabilitation program is protected, as is a person perceived to have a drug addiction. However, an individual who is currently using illegal substances is not protected under the statutes. This includes persons currently using illegal substances (e.g., using heroine, cocaine, methamphetamine, or marijuana) as well as persons currently illegally using legal substances (e.g., use of someone else’s prescription drug, underage use of alcohol, or sniffing glue, cleaners, or solvents to “get high”).

Undue Financial or Administrative Burden

In a few cases, you may receive requests for accommodations that you believe are unduly disruptive to your program or are too expensive. Under Section 504 and the terms of your grant or agreement with the Corporation for National and Community Service, you must provide accommodation upon request by a qualified individual with a disability, unless doing so is an undue financial or administrative burden to your program. This is a very high standard. Not being easily achievable does not meet this standard. Being difficult to achieve, time-consuming, or costly, does not meet this standard.

In determining undue financial burden, the resources of your entire organization are considered, not just those of your service program. The factors to be considered are:

Example
Undue Administrative Burden:
Extending a term of service for an AmeriCorps*State/ National participant beyond 12 months to allow him or her to complete the required number of service hours. (Note, you may suspend service for a period of time and add this suspension time to the end of the original service term if, for example, a participant is unable to serve due to a medical condition for an extended period.)

- The overall size of your program with respect to number of employees or service participants, and number and type of facilities, and size of your budget.
- The type of operation you have, including the composition and structure of your workforce or service participants, and
- The nature and cost of the accommodation needed.

Policy and procedure changes that violate the provisions of the National and Community Service Act or the Domestic Volunteer Service Act are always an undue administrative burden. Changes, policy changes and changes to handbook provisions are not undue administrative burdens. In other words, you can change your policies but you can never change the legal statutes to make an accommodation.

Disability-Related Inquiries, Medical Examinations, and Requests for Medical Information or Documentation

Specific rules govern making disability-related inquiries or requesting medical documentation or information. Not all health-related inquiries or questions are considered “disability-related.” Only those questions that are likely to elicit the disclosure of a disability are disability-related.

Disability-related inquiry” includes questions like:

- “Do you have (or ever had) a disability?” or “What impairments do you have?”
- “Please provide me medical documentation” (unless in context of a reasonable accommodation request by the employee)
- “How did you become disabled?” or “Have you ever been on workers’ compensation?”
- “Tell me what prescription drugs or medications you’re taking, and what have you taken in the past?”

“Disability-related inquiries” also include actions, such as asking an employee’s doctor, co-worker, family member, or other person about

Example Undue Financial Burden:

A small nonprofit organization, with an annual budget of \$150,000, desires to sponsor an NCCC program to do reclamation of the shoreline at a local reserve. An applicant who uses a wheelchair and is a qualified individual with a disability for the position requires a modified wheelchair to perform the essential functions of the position. The specialized wheelchair that moves on sand and beach costs about \$20,000.

Suggestion: However, the program can rent a modified wheelchair for the applicant for the duration of the project.

an employee's disability/potential disability; asking about genetic information; asking an employee to provide medical documentation about his/her disability (unless in the context of employee's reasonable accommodation request); or monitoring an employee's taking of drugs or medications.

“Non-disability-related inquiry” includes:

- Asking about an employee's well being. Asking “How are you?” “Are you feeling OK?” “Are your allergies bad today?” or “How are you doing [after divorce, death of loved one, etc.]?”
- Asking about non-disability impairments, such as “How did you break your leg?”
- Asking whether he/she has been drinking or asking about current illegal use of drugs.
- Asking for name and phone number of an emergency contact person.

Not all medical or health procedures are considered to be medical examinations. “Medical Exams” include vision tests; blood, urine, and breath analyses to check for alcohol use; blood, urine, saliva, and hair analyses to detect genetic markers; blood pressure screening and cholesterol testing; nerve conduction, range-of-motion or pulmonary tests; psychological tests designed to identify a mental disorder or impairment; and X-rays, CAT scans, MRIs.

“Medical Exams” do not include:

- Tests to determine current illegal use of drugs
- Physical agility and fitness tests (as long as they measure employee's ability to perform actual or simulated service tasks and do not include medical exams [e.g., measuring heart rate or blood pressure])
- Tests to evaluate ability to read labels or distinguish objects (as long as they are part of a demonstration of the ability to perform actual service functions)

- Psychological tests that measure personality traits like honesty preferences, and habits
- Polygraph exams (as long as no disability-related questions are asked)

Disability-related inquiries and medical examinations may not be made prior to making an applicant an offer. The only minor exception to this is discussed in the Inclusive Interviewing and Service Selection section (Section V) of this Handbook. During the service term, such inquiries or examinations are permitted only if they are “job-related and consistent with business necessity” and if they occur under the following circumstances:

- You have a reasonable belief, **based on objective evidence**, that the participant’s ability to perform an essential function will be impaired by a medical condition or the participant will pose a direct threat to the health or safety of self or others due to a medical condition. Under these circumstances, an assessment of the individual and his/her position is **required**. This assessment cannot be based on general assumptions, but must be based on objective evidence available to you prior to making an inquiry or requiring a medical exam.
- The service participant requests a reasonable accommodation. However, you may only make disability-related inquiries and request medical documentation when the disability is not known or obvious. In addition, you may only request documentation on the nature, severity, and duration of the impairment; on the functional limitations on the participant’s specific position; and to substantiate any accommodation need.
- You know or have been given reliable information by a credible third party about the participant’s medical condition; you have observed performance problems; and you can reasonably attribute the problems to the medical condition.
- The service participant requests sick leave; when a participant, who received extended sick leave, requests an extension of the sick leave; or when a participant, who has been on leave for a medical condition, seeks to return to work.