



## Equal Employment Opportunity: Obligations of Federal Employers Section 501 of Rehabilitation Act

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### Background on the Rehabilitation Act of 1973 and Section 501

The Rehabilitation Act of 1973, like the Americans with Disabilities Act (ADA), is a federal civil rights law that forbids certain employers from discriminating against job applicants and employees with disabilities. Section 501 of the Rehabilitation Act (“Section 501”) applies to federal executive agencies and the U. S. Postal Service, and requires agencies to pursue affirmative action for people disabilities, including epilepsy.

### Provisions of Section 501

Section 501 requires federal agencies and the U. S. Postal Service to provide accommodations to job applicants or employees who are considered “qualified individuals with disabilities.” A qualified individual with a disability is a person with a physical or mental impairment that substantially limits one or more major life activities, has a history of the impairment, and is perceived as having said impairment. This individual has the skill and experience to perform the essential duties of a job, with or without reasonable accommodation. Under Section 501, federal agencies and the U.S. Postal Service are required to comply with the same rules as private employers under Title I of the ADA, including providing reasonable accommodations.

### Affirmative Action under Section 501<sup>1</sup>

On January 3, 2017, the Equal Employment Opportunity Commission issued a final rule, effective January 3, 2018 to amend regulations related to the implementation of Section 501 of the Rehabilitation Act. The final rule requires federal agencies to adopt employment goals for people with disabilities and sub-goals for people with targeted disabilities, provide personal assistance services to certain employees, and meet other requirements to increase the number of people with disabilities in the federal workforce. The new regulations

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<sup>1</sup> “Affirmative Action for People with Disabilities in Federal Employment”, Equal Employment Opportunity Commission, 2017.



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require: 1) targeted recruitment programs to employ people with disabilities; 2) reasonable accommodations and comprehensive written reasonable accommodation procedures; 3) ensuring accessibility, which includes physical accessibility and providing job applicants and employees with notice of their rights regarding accessibility to electronic and information technology; 4) personal assistance services, which involves help with activities of daily living (e.g., eating, using the restroom) using a professional provider (personal assistance services are not a reasonable accommodation or medical service, but they are an affirmative action obligation and must be provided unless it presents an undue hardship); 5) adopting employment goals of having people with disabilities make up 12% of an agency's workforce and people with targeted disabilities, including epilepsy, be 2% of an agency's workforce; and 6) recordkeeping the number of people with disabilities who apply, are hired, and transition to competitive service. These records must be made available to the EEOC, along with the annual Affirmative Action Plan citing the agency's progress regarding the goals. If an agency fails to take the appropriate steps to meet the affirmative action goals in their Affirmation Action Plan, the EEOC will disapprove its Affirmation Action Plan and will report the disapproval to Congress.

### **Reasonable Accommodations**

Reasonable accommodations are modifications or adjustments to a work environment or position that allows an employee with a disability to perform the essential duties of a job. Accommodations vary in form and can include a modified work schedule, time off from work, or special aids or devices to assist an employee with a disability. For an employee with epilepsy, an accommodation may include a consistent work shift, a rest area to allow the employee to recover from a seizure, installation of a safety device around a piece of machinery, or a safety mat around an employee's work station. The request for a reasonable accommodation can be made verbally or in writing. An employee is not required to make the request in writing, but this is the



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best option, for recordkeeping purposes. Some employers may require an employee and his doctor complete a specific form to confirm that there is a medical condition that qualifies the employee to receive an accommodation.

Employers only need to provide those accommodations that do not impose an “undue burden,” i.e., a significant expense or difficulty to the employer. Whether a particular accommodation will impose an undue burden depends on a variety of factors, including the employer’s size, the type of facility, the number of employees, the employer’s budget, and the nature and cost associated with providing needed accommodation. An employer is not required to provide accommodations that fundamentally alter the job requirements or the nature of the services offered by the employer.

### **Filing a Discrimination Complaint**

Applicants or employees who believe they have been discriminated against by a federal agency have the right to file an administrative complaint with the agency. The first step is to contact an Equal Employment Opportunity (EEO) counselor at the agency within 45 days of the discriminatory action. An employee will be given the choice to participate in EEO counseling, or in an alternative dispute resolution (ADR) process, (e.g., mediation), to resolve the dispute. If the issues are not resolved through counseling or ADR, the employee can file a formal discrimination complaint through the agency’s EEO office. After the complaint is filed, the agency has 180 days to complete its investigation. After the investigation is completed, the employee will have the option of requesting a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge or ask the agency to issue a determination as to whether discrimination occurred. A dissatisfied complainant may appeal to the EEOC’s Office of Federal Operations within 30 days of receiving the agency’s final decision. EEOC will review the case and provide a decision.



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An applicant or employee must go through the administrative process before filing a lawsuit. A lawsuit may be filed in an appropriate federal court: (1) within 90 days of receipt of the final action where no administrative appeal has been filed; (2) after 180 days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken; (3) within 90 days of receipt of EEOC's final decision on an appeal; or (4) after 180 days from the filing of an appeal with EEOC if there has been no final decision by the EEOC.

If you believe you have been discriminated against, it is important to follow each step of this complaint process. If you do not, your case may be dismissed from court at a later date. For information on obtaining a referral to an attorney that handles federal employment cases, please visit the website for the Jeanne A. Carpenter Epilepsy Legal Defense Fund, [www.epilepsylegal.org](http://www.epilepsylegal.org), or call the Epilepsy and Seizures 24/7 Helpline toll free at 1-800-EFA-1000 (1-800-332-1000). For general information about epilepsy visit our website at [www.epilepsy.com](http://www.epilepsy.com) or call the Epilepsy & Seizures 24/7 Helpline. Alternatively, you may contact the EEOC at (800) 669-4000 (voice) or visit the agency's website at [www.eeoc.gov](http://www.eeoc.gov).

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