

Introduction

The purpose of the laws that protect individuals with disabilities is to provide qualified individuals with equal access to employment opportunities and to enjoy the same benefits and privileges of employment that are held by people without disabilities.

In this unit, you will learn about:

- The Rehabilitation Act of 1973 (Rehabilitation Act) and the Americans with Disabilities Act (ADA).
- Behaviors that constitute discrimination based on disability.
- Key terms and definitions associated with discrimination based on disability.
- Appropriate supervisory actions given a series of field-specific case studies in discrimination based on disability.

The Law in a Nutshell



Section 501 of the Rehabilitation Act prohibits employment discrimination against Federal employees with disabilities. The Rehabilitation Act, as amended, requires Federal agencies to make reasonable accommodations for the known physical and mental limitations of qualified employees or applicants with disabilities. It also incorporates many of the requirements of Title I of the ADA, which prohibits employment discrimination on the basis of disability in both the public and the private sectors.

The Rehabilitation Act and the ADA prohibit discrimination in all employment practices including job application procedures, hiring, firing, advancement, compensation, training, retaliation, and other privileges of employment. The Rehabilitation Act and the ADA also prohibit harassment based on disability.

Key Definitions



- **Individual With a Disability.** An individual with a disability under the Rehabilitation Act and the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities that an average person can perform with little or no difficulty.
 - 4 Physical impairment: Includes disorders of the sense organs (talking, hearing, etc.), motor functions, and body systems such as respiratory, cardiovascular, reproductive, digestive, urinary, skin, and endocrine systems.
 - 4 Mental impairment: Includes most psychological disorders and disorders such as organic brain syndrome and learning disabilities. It specifically excludes various sexual behavior disorders, compulsive gambling, pyromania, and disorders due to the current use of illegal drugs. If these issues surface, contact Security, the Office of Human Resource Management, the Equal Rights Officer, and/or the Office of the General Counsel for assistance.
 - 4 Major life activities: Includes bathing, performing manual tasks, walking, seeing, hearing, breathing, speaking, learning, and working. In addition, the Supreme Court has ruled that persons infected with HIV are individuals with a disability.
 - 4 Substantially limits: The severity and duration of impairment determines whether it substantially limits a major life activity. Impairment must last for several months and significantly restrict a major life activity. The person must also have a record of such impairment or is regarded as having such impairment.
- **Qualified Individual With a Disability.** A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the job position, and who, with or without reasonable accommodation, can perform the essential functions of the position.

Key Definitions (Continued)



- **Reasonable Accommodation.** Like most employers, FEMA is required to provide reasonable accommodation to qualified employees and applicants with disabilities. Reasonable accommodation is making an effort to manage a disabled employee's work or workplace to meet his or her special needs. Listed below are examples of what does and does not constitute reasonable accommodation.

Reasonable Accommodation Is:	Reasonable Accommodation Is <u>Not</u>:
<ul style="list-style-type: none"> ▪ Making existing facilities readily accessible to and usable by persons with disabilities. ▪ Job restructuring such as shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability, or altering when and/or how a job task is performed. ▪ Modification of work schedules such as adjusting arrival or departure times, providing periodic breaks, etc. ▪ Providing additional unpaid leave. ▪ Acquiring or modifying equipment or devices. ▪ Adjusting or modifying examinations, training materials, or policies. ▪ Providing qualified readers or interpreters. 	<ul style="list-style-type: none"> ▪ Eliminating a primary job responsibility to accommodate the person with a disability. ▪ Lowering production standards that are applied to all employees (although the employer may have to provide reasonable accommodation to enable an employee with a disability to meet them). ▪ Providing personal use items such as eyeglasses, hearing aids, prosthetic limb, wheelchair, or similar devices. ▪ Allowing for the violation of uniformly applied conduct rules. ▪ Changing a person's supervisor (although supervisory methods such as method of communicating assignments can be altered).

Key Definitions (Continued)



- **Undue Hardship.** An employer never has to provide any accommodation that causes undue hardship, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but also to accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature and structure of the agency's work. Every request for accommodation should be evaluated separately to determine if it would impose undue hardship, taking into account:
 - 4 The nature and cost of the accommodation needed.
 - 4 The overall financial resources, the number of persons employed, and the effect of expenses and resources on the operation.
 - 4 The impact of the accommodation on the agency's work.
 - 4 The impact of the accommodation on other employees' ability to work.

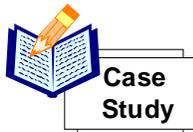
It is important to include the Equal Rights Office early on in any issues associated with accommodation or undue hardship.

Case Studies in Disability Discrimination

Instructions:

On the following pages are a series of real-world situations that you are likely to encounter on the job. After you complete each case study, review the appropriate answer(s) that follow each case study.

- *If your answer is correct, review the learning points associated with the case study and move on to the next case.*
- *If your answer is wrong, review the relevant material indicated, and try again. In addition, review the Director's Policy on Access to Agency Programs by Persons with Disabilities (no. 2-93) in Appendix A.*



CASE STUDY ONE: DIFFICULTY HEARING

One of your DAE staff members is a 73-year-old woman named Miriam who has a great deal of experience working on disasters and with disaster victims.

You notice that when you talk to Miriam, she often needs to have words repeated, and leans forward to listen and to read your lips. She has worn a hearing aid for years, but it seems that her hearing has gotten worse over time. Other than the hearing problem, Miriam is healthy and vigorous.

One of Miriam's team members informs you in confidence that Miriam is having difficulty working in the field in the current disaster. The affected area includes many immigrants from different cultures, and Miriam cannot understand those with heavily accented English. Some disaster victims were embarrassed or offended when she could not understand them, and they now have a poor impression of FEMA because of their interaction with Miriam. Team progress in these neighborhoods has been slowed by the communication difficulties.

As Miriam's supervisor, how would you handle this situation?

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Case Studies in Disability Discrimination (Continued)



Answer to Case Study One: Difficulty Hearing

As Miriam's supervisor how would you handle this situation? Your answer is correct if it contains these elements:

- Investigate to determine if the allegations are true.
- Provide performance counseling. Advise Miriam of her performance deficiencies and reiterate performance expectations.
- If Miriam mentions her hearing problem or any other way in which she might be disabled, you must then begin exploring whether there is any reasonable accommodation that would be appropriate.
- Contact the ERO for advice and assistance.

If your answers were incorrect, return to pages 2.6 and 7.1 through 7.4 for review.

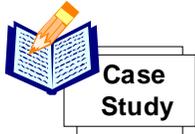
Learning Points



- 4 You cannot assume that an employee has a disability unless it is very obvious (e.g., blindness, in a wheelchair). In this case, unless the employee tells you that she is disabled or is seeking a reasonable accommodation, you must treat her as you would any other employee, i.e., provide performance feedback and counseling.
- 4 If an employee either tells you that she is disabled or is seeking an accommodation, discuss with the employee reasonable accommodation options available that would permit the employee to perform the essential functions of the job. In this particular case, an essential job function is communicating with disaster victims.
- 4 If Miriam requested a stronger hearing aid, FEMA would not be responsible for providing it because under the Rehabilitation Act and the ADA, it is considered a personal use item. However, other reasonable accommodation options may be viable.
- 4 The determination of what constitutes a “reasonable accommodation” is complex and decided on a case-by-case basis. You should therefore always contact the ERO for guidance.

Note: If Miriam was transferred and replaced by a younger, less qualified employee, Miriam could allege that she was a victim of age or disability discrimination.

Case Studies in Disability Discrimination (Continued)



CASE STUDY TWO: CARRYING SOME BAGGAGE

You have been interviewing local hires for a position that will require the new hire to work with disaster victims. This local hire worked for FEMA during one previous disaster four years ago. Her FEMA file shows that during the previous disaster, she was released because she came to work intoxicated several times and her performance was erratic.

In discussing the position with the local hire, she states that since she last worked for FEMA, she has recognized she is an alcoholic and has been through a residential treatment program for alcoholism. She has had only one relapse during the four-year period (it lasted four days), and that was more than two years ago.

Of all the candidates you have interviewed, the local hire is the most experienced and qualified person for the job you have open.

Should you offer the job to the local hire or look for a similarly qualified candidate who does not present a potential risk to the Agency?

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Case Studies in Disability Discrimination (Continued)



Answer to Case Study Two: Carrying Some Baggage

Should you offer the job to the local hire or look for a similarly qualified candidate who does not present a potential risk to the Agency? Your answer is correct if it contains these elements:

- Alcoholism has been classified as an illness and qualifies the applicant for protection under the Rehabilitation Act and the ADA. Therefore, you should hire her because she is the most qualified candidate for the job. It would be appropriate to emphasize the Agency's concern that she properly performs her job.

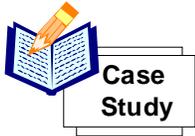
If your answer was incorrect, return to pages 2.6 and 7.1 through 7.4 for review.

Learning Points



- 4 Alcoholism is protected under the ADA; however, active alcohol consumption on the job is not.
- 4 Once again, always base your decisions on job-related criteria.
- 4 Consult with your ERO for guidance.

Case Studies in Disability Discrimination (Continued)



CASE STUDY THREE: DISRESPECTFUL BEHAVIOR

A manager has a lot of physical problems, due mostly to her age. Her speech is somewhat disorganized, her equilibrium is off, and she has some visual impairment. Over the last few weeks, she has become the object of practical and derogatory jokes in the DFO. The nature of the jokes has deteriorated over time from good-natured fun to hostile and vindictive. As a result, the manager's effectiveness has decreased because of the disrespect accompanied with the jokes.

The manager approaches the ERO with her complaint.

Does the branch chief have a legitimate EEO complaint? Why or why not?

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Case Studies in Disability Discrimination (Continued)



Answer to Case Study Three: Disrespectful Behavior

Does the manager have a legitimate EEO complaint? Why or why not? Your answer is correct if it contains these elements:

- Yes, the manager can claim discrimination based on physical disability under the Vocational Rehabilitation Act. Employees are harassing her because of her physical disabilities and it is impacting her performance.

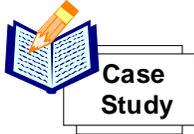
If your answers were incorrect, return to pages 2.6 through 2.8 and 7.1 through 7.4 for review.

Learning Points



- 4 Supervisors and managers should be sensitive to situations that get out of hand.
- 4 When supervisors and managers observe this type of behavior, they should immediately tell employees to stop and educate them on the legal ramifications of their behavior. Advise employees that discipline can be imposed for discriminating activities.
- 4 Supervisors and managers who fail to act timely and appropriately in this type of situation may be subject to discipline.

Case Studies in Disability Discrimination (Continued)



CASE STUDY FOUR: A QUALIFIED LOCAL HIRE

A supervisor is interviewing local hires for a position that will require the new hire to spend a great deal of time in the field. One of the applicants for the job comes to the interview in a wheelchair. During the interview, the supervisor finds that the applicant's experience and knowledge would make him an excellent candidate for the job. Neither the supervisor nor the applicant discusses that the applicant is in a wheelchair.

The supervisor interviews several more candidates and decides to hire an applicant who has slightly less experience than the applicant in the wheelchair. The supervisor thinks this person will do a fine job and that the applicant in the wheelchair is probably "overqualified" for the job anyway. The supervisor is concerned that the more qualified applicant would have difficulty "getting around in the field."

The applicant in the wheelchair discovers that another person was hired for the job. He personally knows this person because they live in a small community. The applicant goes to the ERO in the DFO and claims he has been discriminated against because he is in a wheelchair. He also claims that the person hired in his place is less qualified than him, citing that he has less education and experience than he does.

Does the applicant in the wheelchair have a legitimate case of discrimination? Why or why not?

What should the supervisor have done differently in this situation?

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Case Studies in Disability Discrimination (Continued)



Answer to Case Study Four: A Qualified Local Hire

Does the applicant in the wheelchair have a legitimate claim of discrimination?
Your answer is correct if it contains these elements:

- The applicant has a legitimate discrimination claim if he can perform the essential functions of the job (i.e., working in the field) with or without reasonable accommodation, particularly if he is the most qualified candidate.

What should the supervisor have done differently in this situation? Your answer is correct if it contains these elements:

- During the interview, he should have asked the applicant about his ability to perform the essential functions of the job.
- The supervisor should have consulted with the ERO before making a hiring decision.

If your answers were incorrect, return to pages 2.2 through 2.4, 2.6, and 7.1 through 7.4 for review.

Learning Points



- 4 A good job interview should always seek to determine whether applicants are able to perform the essential functions of the job. A job interview that does not seek this information is vulnerable to attack as being discriminatory.
- 4 Always work from the assumption that an applicant can perform the job, unless you have clear evidence that this person is unable to perform.
- 4 All placement decisions should be made solely on the basis of job-related criteria.
- 4 If there is more than one qualified candidate, the most qualified candidate should receive the job.
- 4 A “qualified individual with a disability” is entitled to a “reasonable accommodation” unless it would pose an “undue hardship” on FEMA. Each of these phrases in quotes requires careful legal and policy analysis on a case-by-case basis. Therefore, you should always consult with the ERO before making judgments about whether a particular person is “disabled” or whether a requested accommodation is unreasonable.

Summary and Transition



In this unit, you completed case studies on discrimination based on disability. You were also presented with the correct answers to and learning points drawn from each case study.

Congratulations, you have completed the course units!

If you've conscientiously worked your way through the unit information and case studies in this guide, you should now have a reasonable working knowledge of the types of EEO actions you are (or will be) expected to make as a supervisor or manager in the field.

As you can see, EEO isn't really hard. And it isn't a mystery.

EEO is a rational, sensible approach to good management practices. And being familiar with EEO laws and guidelines will make you a better and more effective manager or supervisor.

Now, you are ready to complete the FINAL EXAMINATION that is located in Appendix D of this Guide.

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