Federal Contract Compliance Programs, Labor  Pt. 60–741, App. A

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in §60–741.2(r), an individual with a disability is qualified if he or she satisfies all the skill, experience, education, and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is qualified within the meaning of section 503 if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job’s essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide reasonable accommodation for applicants and employees of whose disabilities the contractor has actual knowledge. As stated in §60–741.42, as part of the contractor’s affirmative action obligation, the contractor is required to invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability both prior to an offer of employment, and after an offer of employment but before he or she begins his/her employment duties. That invitation also informs applicants of the contractor’s reasonable accommodation obligation and invites individuals with disabilities to request any accommodation they might need. Moreover, §60–741.46(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not

or any matter contained in the regulations in this part may necessitate a revision of a collective bargaining agreement, the labor organizations which are parties to such agreement shall be given an adequate opportunity to present their views to OFCCP.

(b) OFCCP shall use its best efforts, directly or through contractors, subcontractors, local officials, vocational rehabilitation facilities, and all other available instrumentalities, to cause any labor organization, recruiting and training agency, or other representative of workers who are employed by a contractor to cooperate with, and to assist in, the implementation of the purposes of the act.

§ 60–741.83 Rulings and interpretations.

Rulings under or interpretations of the act and this part shall be made by the Director.

APPENDIX A TO PART 60–741—GUIDELINES ON A CONTRACTOR’S DUTY TO PROVIDE REASONABLE ACCOMMODATION

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on title I of the Americans with Disabilities Act, as amended (ADA), set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent “free-standing” source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See §60–741.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under section 503, like reasonable accommodation required under the ADA, is a part of the nondiscrimination obligation. See EEOC appendix cited in this paragraph. Affirmative action is unique to section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor shall make an inquiry of an employee with a known disability who is having significant difficulty performing his or her job.
have to be the “best” accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term “undue hardship” refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor’s business. The contractor’s claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source (e.g., a State vocational rehabilitation agency) or if Federal, State, or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the individual with a disability must be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. The definition for “reasonable accommodation” in §60–741.2(s) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are a number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the individual with a disability in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate State vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1–800–669–4000 (voice) or 1–800–669–6820 (TTY)), the Job Accommodation Network (JAN)—a service of the U.S. Department of Labor’s Office of Disability Employment Policy (1–800–526–7234 (voice) or 1–877–781–9403 (TTY)), private disability organizations, and other employers.

6. With respect to accommodations that can permit an employee with a disability to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For those visually impaired, such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, Braille writers, talking calculators, magnifiers, audio recordings, and Braille or large print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids, and TTY machines. For persons with limited physical dexterity, the obligation may require the provision of telephone headsets, mechanical page turners, and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter, or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by individuals with disabilities—including areas used by employees for purposes other than the performance of essential job functions—such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots, and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in §60–741.2(s) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified individual with a disability cannot perform to another position. Accordingly, if a clerical employee is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, i.e., those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor...
that has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind individual with an assistant to perform that duty. If, however, the assistant would be performing an essential function of the job for the individual with a disability. Job restructuring may also involve allowing part-time work schedules. For instance, flexible or adjusted work schedules could benefit individuals with disabilities who cannot work a standard schedule because of the need to obtain medical treatment, or individuals with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the individual’s current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider known applicants with disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A reasonable amount of time should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned individual with a disability at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not disabled. It should also be noted that the contractor is not required to promote an individual with a disability as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to those with vision or hearing impairments (e.g., by making an announcement available in Braille, in large print, or on audio tape, or by responding to job inquiries via TTY); (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations (e.g., extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her disability to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices); and (4) ensuring applicants with disabilities are not required to perform job-related examinations (e.g., having a computer test, and permitting an applicant, regardless of the nature of his or her disability to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices).

APPENDIX B TO PART 60–741—DEVELOPING REASONABLE ACCOMMODATION PROCEDURES

As stated in §§60–741.21(a)(6) and 60–741.44(d), the development and use of written procedures for processing requests for reasonable accommodation is a best practice. This Appendix provides guidance contractors may wish to use should they decide to adopt this best practice. As stated in the regulations, contractors are not required to use written reasonable accommodation procedures, and the failure to use such procedures will not result in a finding of violation.

1. Designation of responsible official. The contractor should designate an official to be responsible for the implementation of the reasonable accommodation procedures. The responsible official may be the same official who is responsible for the implementation of the contractor’s affirmative action program. The responsible official should have the authority, resources, support, and access to top management that is needed to ensure the effective implementation of the reasonable accommodation procedures. The name, title, office, and contact information (telephone number and email address) of the responsible official should be included in the reasonable accommodation procedures, and should be updated when changes occur.

2. Description of process. The contractor’s reasonable accommodation procedures should contain a description of the steps the contractor takes when processing a reasonable accommodation request, including the process by which the contractor renders a final determination on the accommodation request. If specific information must be provided to the contractor in order to obtain a reasonable accommodation, the description should identify this information. For example, the contractor’s reasonable accommodation procedures may state that to obtain a reasonable accommodation, the contractor must be informed of the existence of a disability, the disability-related limitation(s) or workplace barrier(s) that needs to be accommodated, and, if known, the desired reasonable accommodation. The description