MANUAL FOR EXTERN SUPERVISORS
INTRODUCTION

Quality practical training is essential to the College of Law’s mission to form and educate future lawyers. Externships are an integral part of our experiential learning program. Through externships, students gain skills needed to be successful attorneys—from improving their research, writing, and drafting proficiencies to developing their interpersonal communication skills, strategic decision-making, and understanding and integrating the values of the profession. Equally important, for most students, externships are the first real opportunity they have to appreciate, in real time, what it means to be a lawyer.

In any externship program, the quality of a student’s experience is directly related to the quality of the supervision provided -- by both the law college and the supervising attorney or judge. The relationship between the student and his or her placement is a dynamic one; we hope that this manual will assist you in effectively mentoring an extern and help establish a mutually beneficial relationship between you, your extern, and the College of Law.

This manual reflects the ABA and Federal Fair Labor Standards requirements for the conduct of externship programs, articulates the standards we expect our extern supervisors to follow, and highlights some best practices in extern supervision. Where applicable, we also make note of the requirements of Arizona Supreme Court Rule 38(d).

We recognize and appreciate the demands on your time and understand that supervision of a law student adds to your duties and responsibilities. As we work to develop meaningful and exciting externship placements, we hope you will offer us your suggestions and feedback.

Thank you for your interest and willingness to supervise an extern!
 SECTION I: EXPERIENTIAL LEARNING

In bygone days, legal education in the United States was accomplished solely through experiential learning -- i.e., learning by doing. New lawyers typically joined the profession after “reading law” as apprentices working for practicing attorneys. When the first law schools were formed over one hundred years ago, legal education gradually evolved into a primarily academic pursuit heavily based on the case method. Analyzing case decisions, typically using the Socratic method of teaching, does a wonderful job of teaching students to “think like lawyers,” and was probably a necessary innovation as law became broader and more complex.

But reliance on case studies through the Socratic method alone is not without a downside. Responding to desires for additional skills training and instilling a sense of social justice in law students, experiential learning reclaimed some of its original importance when many law schools added clinical education courses during the late 1960’s and early 1970’s. The first clinical legal education program at the College of Law was set up in 1968 by David Wexler.

Today, in our in-house clinical programs, students, supervised by law professors, represent a limited number of clients in specialized areas of the law. At the same time, Professor Tom Mauet and others teach trial skills in a variety of simulations. However, our in-house resources are limited. And students cannot see the inner workings of a law office from inside the Law College. So we have also begun to restore the apprenticeship component to legal education with programs variously referred to as externships, internships, or field placements. These programs often provide the only opportunity law students have to see and work with lawyers as they practice on a day-to-day basis, serving live clients in an education-focused, yet real-world, setting.

In an externship, the field-placement supervisors -- indeed all staff at the field-placement site -- play a critically important role in a student’s education. In a real way,
the field-placement supervisors are an extension of the law school’s teaching faculty. Law school administrators and professors partner with field-placement supervisors to ensure a quality educational experience. In some cases, the law college will have a class associated with the placement. In others, there may be a more ad hoc arrangement.

In all externships, however, the people at the field placement have the most important role. You are the ones working one-on-one with students, providing feedback and insight and assessing their growth as young lawyers. Students at a placement site will learn much in at least four important areas:

➢ Developing Lawyer Skills. Placement sites vary. But at each site, placements should offer opportunities for students to gain an understanding of some of the basic competencies required for legal practice and to begin developing those skills. At some placements, students may expand their legal analysis, research, and drafting skills. At others, the focus might be on negotiation skills, client communication skills, or courtroom demeanor.

➢ Understanding Legal Systems and Institutions. Externships give students opportunities to analyze and assess legal institutions and systems. These include not only your organizations but also other legal institutions within and with which you interact on a regular basis. Your placement will help students to learn the mission of your firm, government agency, court, or non-profit entity and to see how your organization accomplishes its mission within the legal community.

➢ Growth of Students’ Self-Evaluative Skills. In an externship, students encounter, maybe for the first time, experiences that we cannot easily duplicate in a classroom – e.g., the pressure of real world responsibility, how to accept critique from a colleague or supervisor, how to improve their decision-making, time management, and interpersonal communication skills. Your placement will also allow students to apply what they have learned in the classroom to actual practice. It will help them see the big picture and give meaning and context to all those hours of study.

Placements should provide opportunities for active learning through experience, feedback, and reflection. Placements should, therefore, stimulate development of self-evaluative skills and the ability to learn from experience.

➢ Professional Identity. Finally, and perhaps most importantly, your externship will help socialize your intern into the profession. Students’ professional identities will be modeled, in part, upon what they see in their externships.
They see how things really work – or don’t. They see confidentiality in an entirely new light. They observe what good lawyers do – and don’t. They can start the process of deciding what kind of lawyer they want to be.

Placements should offer a forum from which students will consider their professional roles and the responsibilities that accompany those roles – including compliance with relevant ethical rules and the professional values that extend beyond the written rules.

We thank you for your willingness to become directly involved in the externs’ education. We ask that you choose assignments that will stretch their legal skills and that you provide feedback that will allow them to learn from their experiences. To further foster meaningful reflection, we hope that you will discuss with them professional mores and the things that drive you to perform excellently as a professional. Finally, we ask that you act as mentors and role models, helping the externs develop their own internal sense of professional commitment, responsibility, and identity.

SECTION II - LEARNING FROM EXPERIENCE:

*In theory there is no difference between theory and practice. In practice there is.*

_Yogi Berra_

Learning from experience is critical for your externs to increase and hone the knowledge, skills, and attributes (referred to collectively as “competencies”) that they will need to become new attorneys and to effectively perform the work needed to excel in the practice of law.

You, as the placement supervisor, are the lynchpin in creating that learning opportunity. You provide much-needed guidance, insight, feedback, and assessment. You can help our students see both the big and little things that you have learned from your experience that has made you successful at what you do. We also hope that the investment you make in developing your extern will serve your organization as the student’s competency and ability to take on progressively more complex tasks grows.

Our overriding goal is that our students learn how to learn from experience. We want them to learn how to write a better paragraph. But we also want them to be able to reflect about what they just did so that they begin the life-long process of teaching
themselves to become better lawyers and better persons. The truth is that no law school can teach them the full range of skills that practicing lawyers need. However, we can teach them how to make the most of every learning opportunity.

Your willingness to share your time, your observations and your thoughts will go a long way towards teaching them the life-long skill of learning from their experiences. And trust us on this – after all, we are teachers – you may learn a thing or two, yourself, as you become a great mentor.

Skills:

Many have attempted to articulate the critical skills needed to practice law. One law teacher divides skills into three dimensions:

1. **Cognitive Skills**: Recall, understanding substantive law, applying facts to the law, problem solving.
2. **Performance skills**: Legal writing, oral argument, time management, negotiation, interviewing, counseling clients.
3. **Affective skills**: How students feel about their competency, client relations, and professional values such as confidentiality and client loyalty. Where do they see themselves fitting in?

While no list is exhaustive, students should have an opportunity to observe and hone a wide range of skills during their externships. To facilitate this development we suggest a set of ten key competencies. The first five competencies relate to the legal skills essential to the substantive practice of law. These break down as follows:

1. **Knowledge of the Law**—researching and finding the law, knowing general substantive and procedural law, developing subject-matter expertise.

2. **Marshalling Information**—fact finding, questioning and interviewing, collecting and reviewing documents, e-discovery, organizing and categorizing information.

3. **Analysis**—critical review, reasoning, problem solving, understanding what facts mean, understanding what the law means, and applying the law to the facts.
4. **Expression**—persuasive or objective oral and written communication of analysis, positions, opinions, arguments, and recommendations to clients.

5. **Practice Skills**—executing practice-specific tasks such as taking depositions, arguing motions, and trial tactics; or, in transactional work, negotiating, drafting agreements, conducting due diligence, and counseling clients.

   The other five competencies relate to the intrinsic professional skills that underlie a successful practice. These are:

1. **Professionalism**—maintaining integrity and honesty, diligence, civility, ethics, confidentiality, diversity, mistake management.

2. **Client service**—building client relationships, understanding the client’s interests and needs, providing advice and counsel, and building trust.

3. **Leadership**—communicating, influencing others, creative problem solving, collaborating, building consensus, envisioning, planning, mentoring, and making sound, ethical choices.

4. **Management**—communicating, giving feedback, planning and implementing tasks, organizing and managing one’s own work, working effectively as part of a team, organizing and managing others, and running the “business” side of the practice of law.

5. **Business Development**—developing strategic relationships, networking, and marketing the office.

   Your list may be very different from ours. The point is not that we have the best list. The point is that we hope you will think about and identify the skills that have made you a successful lawyer. We are counting on you to help our students develop those skills in your placement.
SECTION III - TECHNIQUES FOR EFFECTIVE EXTERN SUPERVISION

The best supervision is both structured and informal. Learning is enhanced when students have clear and challenging assignments, specific learning goals, and timely and ongoing feedback and assessment. But students also learn in the moment – during informal conversation – when you share an insight or an experience. “Here’s why I didn’t ask that question.” “Did you notice how the other side kept deflecting questions about their finances?”

The key is to create learning opportunities through quality, planned work assignments but also to recognize informal learning opportunities when they present themselves.

1. Develop Articulated Learning Goals:

Learning goals set the stage. They create a clear framework of expectations and will help avoid frustrations you and the extern may both feel if you are not on the same page. Articulated learning goals will also help you select better and more appropriate work assignments. They will also guide your feedback and critique.

The faculty supervisor may have already had a discussion with the student which identifies specific learning goals. However, your input is essential to help select realistic learning goals that fit within your legal practice setting. At the beginning, try and take a few moments with the student and the faculty supervisor to establish and agree on three or four specific learning goals that will inform the structure of the student’s experience.

2. Address Ethical Concerns Up Front:

Students have had a class in professional responsibility. But, while it is one thing to learn the rules, it is quite another to adhere to them in practice. It is imperative that you, the student, and the faculty supervisor have a clear understanding about the parameters of confidentiality, identifying conflicts of interests, and loyalty to your clients. [Those, in and of themselves, may be major learning goals for the student].
3. Adequately Define and Explain Work Assignments:

Work assignments are an especially effective professional-development tool, especially when the assignments build on a solid foundation in the basics and progressively increase in complexity and responsibility.

Even if multiple people are assigning work, it is often helpful to channel assignments through a single person. That person should review the proposed work before it is assigned, ensure that externs do not have too much or too little work, and monitor that an extern is receiving a variety of assignments.

Assignments should:

> first and foremost, be the kind of legal work that lawyers do
> include an adequate description of the work required, including the desired form for the finished product, i.e., an overview outline, a detailed memo with copies of cases, a draft order, an oral briefing, a declaration, etc.
> provide a sufficient factual and contextual background
> clearly explain the purpose or objectives of the assignment
> provide a realistic time frame for completion (generally triple the amount of time you think it might take you)
> suggest available office or library reference materials ("I'd start with the Rutter Guide to orient yourself to...; a sample motion format can be found at...")
> include whether you will be available for questions along the way and, if not, whom the extern should consult and how (e-mail, phone, in-person, etc.).

4. Provide Quality Critique:

Feedback and evaluation provide the most meaningful (if occasionally uncomfortable) opportunities for professional development. Students need to receive constructive, timely, and specific feedback on an ongoing basis. It is important for the feedback to be both corrective and positive so students can build on what they are doing well and develop in the areas that are weak. Coaching and mentoring (formal or informal one-on-one intensive relationships, whether long or short-term) are essential but need to have a specific focus. Most students succeed when a single key skill they want to
improve, such as writing, oral advocacy, or time management, is identified. Mentoring should start where the student is and move him or her along the development continuum to the desired goal.

Externs should receive timely feedback on every completed assignment from the assigning attorney or judge. One supervision model suggests that supervision should be **FAST:**
- **Frequent**—weekly meetings work well to assure the frequency of feedback
- **Accurate**—describe actions or behaviors that can be addressed, not the person
- **Specific**—pinpoint discrete identifiable points to be replicated or improved upon
- **Timely**—if too much time passes, externs are likely to repeat their mistakes

You may be reluctant to critique an extern’s work, but externs need, deserve, and actually **want** honest feedback. Without feedback, externs often assume that “no news is good news,” and will continue to repeat the same errors unless they are given specific suggestions regarding how to improve.

- **Lead with the positive**—the goal is to highlight a particular success (be it a paragraph or an aspect of a presentation) so that it can be reinforced and replicated. Recognition of something that was well done can be a powerful motivator.
- **Provide a limited number of suggestions** for improvement at any given time. Too much at once can be overwhelming and discouraging.
- **Plan what you want to communicate** in terms of content and the manner in which you will say it.
- **Check for understanding** by posing a question or comment that allows the extern to show he/she can incorporate the suggestions going forward.
- **Remain open** to the possibility of improvement. Occasionally an extern’s work does not measure up, and a natural inclination may be to give the extern less demanding work. However, the extern’s placement with you has an educational purpose; allowing the opportunity to demonstrate learning is critical to the extern’s professional development. Externs are encouraged to engage with you in a collaborative supervision mode, not a passive one.

We suggest that you encourage externs to assess their own work, to identify and discuss what they found challenging, and to suggest their ideas as to how the work could be improved.
Don’t underestimate the power of self-critique. We offer the following rubric to students in one of our in-house clinical programs:

Planning is everything; reflection is learning

Everything we do -- whether it is interviewing our clients, telephoning a case manager, talking to a doctor, or advocating in court -- will go much more smoothly and productively if we plan it. Try these four simple steps:

Step (1) Before undertaking any task, ask and answer the following question: “What am I trying to accomplish?” Then, define your actions and goals according to the answer.

Step (2) Review your plans and ask yourself: “Will this help accomplish my goal?” If you are still on track, go for it. If not, revise your plans.

Step (3) Once you’ve completed your task, ask yourself the following: “Did I accomplish what I set out to do? Why or why not?” File that answer under “Something I learned today.” Don’t forget this step. This is where real learning takes place.

Step (4) After completing the first three steps, ask yourself the “big picture” question: “What did I learn today that will help me as a person and as a lawyer?” This step is where real insight takes place.

A bit of anticipation and preparation will add greatly to the externship experience for all involved. What follows are some quick suggestions that will be useful as you prepare for and work with your externs.

5. Some Specific Suggestions:

Be Prepared for the Extern’s Arrival - Orient Yourself, Your Office, and the Extern

Before the extern arrives:

- Determine what desk, telephone, and computer the extern will use.
- Gather office keys, restroom keys, copier codes, computer passwords, and office manuals that the extern might need.
- Determine for whom the extern will be completing assignments. If the extern has more than one supervisor, designate one who will provide oversight, help prioritize assignments, and serve as the point of contact with the school.
- Determine which support staff the extern can rely upon if needed.
- Request an office e-mail account, if appropriate.
- Prepare a first assignment and gather the files, samples, and other materials the extern will need to get started. Externs are anxious to provide meaningful assistance from day one!
- Plan ahead for the extern to shadow supervisors at upcoming hearings, meetings, or conferences.

• First day orientation:
  - Provide an office tour and staff introductions.
  - Tell the extern how to contact his/her supervisors, including providing cell phone numbers if appropriate.
  - Explain the office’s mission and structure, and discuss any broader issues that are critical to serving the mission or client population.
  - Explain the role that externs play in furtherance of these issues.
  - Give the extern the first assignment.
  - Have an express conversation about confidentiality; if your office uses a confidentiality agreement with externs discuss it and have the extern sign it. Remind externs of the confidentiality policy often.
  - Brief the extern about office protocols regarding attendance, punctuality, security, safety emergency procedures, filing systems, routing of phone calls, dress code, computer usage, Lexis/Nexis, etc..
  - Invite the extern to upcoming staff or client meetings or other events.
  - Schedule a time within the first few days to have a conversation with the extern in which the goal is simply to get to know one another. As in any work situation, time spent establishing a cordial working relationship with your extern will help make it easier for you to understand each other’s work style and meet each other’s expectations.

  c. Within a week:
  - Faculty supervisors should require externs to establish learning goals for the semester with measurable objectives to serve as a guide to the externship. Whether or not your extern has been asked to draft learning
goals, you may want to meet with him/her to discuss educational goals for the semester. This will allow you and the extern to have a mutual understanding regarding the kinds of work and experiences that will be available to the extern.

Arrange Weekly Meetings to Check In With Your Externs

Schedule a regular "standing appointment" to meet individually with your externs to check in, review completed work, address any problems, and discuss future assignments.

Create Opportunities for Learning:

Students are motivated to do their best work when they understand the intrinsic value of the task they have been given, and also see where that task fits into the larger picture of the work of the office. In addition to giving your extern research and writing assignments, make sure to invite him/her to observe you, and/or co-workers, in the full panoply of lawyering tasks that you engage in yourself.

Although lawyering tasks vary among different law offices, if your office engages in all or some of the activities described below, consider including the extern, either as observer or participant:

- Client interviewing and counseling
- Witness interviewing and preparation
- Fact investigation
- Case strategy discussions
- Depositions
- CLE events
- Meetings with co-counsel
- Negotiations with opposing counsel
- In-chambers discussions or staff meetings
- Hearings and/or trials

Follow up on learning opportunities:

Whenever possible, have a short conversation with the student immediately after any learning opportunity.

a. Ask them what they learned.
b. Offer them an insight that they may have missed.

c. Tell them why you did what you did. *Nothing teaches them more than when you share your thought processes.*

*Keep the lines of communication open:*

No matter how informal and friendly your office may be, be aware that there is a significant imbalance of power between supervisors and externs. Most externs are aware of their place in the office hierarchy and may be reluctant to ask questions or seek advice for fear of appearing incompetent. When you make every effort to create and maintain a comfortable and effective working relationship, the externs' educational experiences and their contributions to your office will be maximized.

**SECTION IV. WHAT TO EXPECT FROM LAW SCHOOL FACULTY:**

**Classroom Component**

For some placements, students attend a weekly or bi-weekly classroom component taught by Law College Faculty experienced in the areas of practice for particular placements as part of the field placement course. Our Prosecution, Criminal Defense and Mortgage Clinics all have regular classes. The classes provide an opportunity for students to discuss their placement experiences with and other students and to reflect on their experiences, practice skills, and gain additional insight and exposure to the broader system in their area of practice. The classroom component may incorporate simulations, journal writing, and readings as well as student presentations. If your placement has an associated class, you may want to attend to see what the students are learning.

**Communication**

The faculty directing externship programs and staff at the law school are here to support you. At the outset, faculty should be communicating with you about our goals and expectations for the student’s experience. Faculty should be mindful of your need for confidentiality. Faculty should be communicating with you on a regular basis about the status of the externship. Faculty should also be communicating with you about assessing the student’s performance and improving the overall experience for both current and future students.
Reflection

Depending on the nature of the program, faculty may be meeting with students throughout the semester either in a classroom setting or individually. In either case, faculty will be discussing the student’s experience in detail and requiring the student to engage in reflective activities – journaling, presentations, one-on-one discussions.

Assessment

While faculty have the ultimate responsibility for a student’s grade, your assessment of the student and the student’s experience is particularly important to us. Your honest feedback is appreciated. You are the person who has had hands on contact with the student. You can tell us not only what the student has accomplished but also how we improve the program.

Training

We are happy to provide training for you and your office on effective supervision techniques, to assist you with giving feedback, to brainstorm how to address a student who is underperforming, or any other concerns you might have about an extern or the program.

Site visits can be arranged periodically. The purpose of a site visit is to maintain open communication between the placement and the school and to model collaboration for the externs. We are eager to support you and are grateful for your work with our students; please do not hesitate to call upon us for assistance.

And, again, thank you so very much for your willingness to work with our students. Your time, energy, and wisdom are greatly appreciated.
UNIVERSITY OF ARIZONA ROGERS COLLEGE OF LAW
EXTERNSHIP PROGRAM
PLACEMENT EVALUATION OF STUDENT
(To be completed by field supervisor)

Student’s Name: ___________________________________________

Office Placement: ___________________________________________

Supervising Attorney(s): ______________________________________

Date/semester of externship:___________________________________

1. Please describe briefly the types of legal tasks, assignments or other activities performed by this student.

2. Did the student perform his/her assignments satisfactorily?_______ Please explain.

3. Please describe the progress the student made during the course of the semester. (e.g. improvements toward the educational goals identified at the beginning of the semester, using examples where possible):

4. What other benefits do you think the law student derived from this placement?

5. Please describe the student’s areas of strength:
6. Please identify areas for future growth:

7. Please describe the student’s level of professionalism:

8. Do you have any concerns regarding the student’s performance?

9. Did the student spend the required amount of time (______) at your office?  
   YES    NO

10. How much time per week did you spend supervising the student (including explaining assignments, reviewing written work, preparing and discussing cases, etc)? ________ Hours

11. Do you recommend that this student receive credit?  __YES__  NO

12. Have you reviewed this evaluation with the student?  __YES__  NO

13. May we share your comments with the student?  __YES__  NO

14. General comments and suggestions regarding the field placement program:

________________________  __________________
Signature(s)                        Date

Please return to:

Seánna Howard  
showard@email.arizona.edu  
University of Arizona Rogers College of Law  
1201 E Speedway Blvd.  
Tucson, AZ 85721-0176  
Tel: 520-626-8223 Fax: 520-621-9140
SAMPLE GOALS MEMO FORM

1. What are your lawyering goals for this semester? Please be concrete. Rather than stating “I want to improve my research and writing,” identify exactly which areas you want to improve.

2. In what way do these goals build upon your prior experiences – legal or otherwise?

3. What has been the critique of your skills (research, writing, oral advocacy) in your past experiences? Please be concrete (e.g. “In Legal Methods, my professor said X”; “in my summer job, my supervisor said Y”).

4. What strengths do you bring to this placement?

5. What areas of this externship will be most challenging for you? What obstacles can you identify that might interfere with your ability to achieve goals?

6. How do you plan to deal with the challenging areas or obstacles? (Please be concrete)

7. In what ways can your supervisor help you to overcome these obstacles?

8. Please list all classes, outside activities, jobs or commitments that you will be involved in during the semester or summer term of your externship.
INTERVIEW PLANNING AND REFLECTION GUIDE

PLANNING/PREPARATION

*Your perspective*

- What are your goals for the interview?
- What specific behavior (actions, tone, words) do you want to employ to achieve those goals?
- How will “control” be divided between you and your client (or other party)?
- How will responsibilities be divided between you and your partner (if applicable)?
- What specific information would you like to obtain from your client?

*The client’s anticipated perspective*

- What do you think the client’s expectations and goals for the activity may be?
- What information do you think your client will want to get from you?
- How do you think cultural and other differences between you and your client affect the interview?

REFLECTION/HYPOTHESIS

- What things did you do that worked well (and why/how did they work well)? (Be specific)
- What things did you do that didn’t (and why/how did they not work well)?
- What general truths/lessons (about interviewing, negotiating, your own personality or tendencies, etc.)/insights did you gain from this interview and how will you apply them to the next one?
Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

This fact sheet provides general information to help determine whether interns must be paid the minimum wage and overtime under the Fair Labor Standards Act for the services that they provide to “for-profit” private sector employers.

Background
The Fair Labor Standards Act (FLSA) defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and non-exempt individuals who are “suffered or permitted” to work must be compensated under the law for the services they perform for an employer. Internships in the “for-profit” private sector will most often be viewed as employment, unless the test described below relating to trainees is met. Interns in the “for-profit” private sector who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek.*

The Test For Unpaid Interns
There are some circumstances under which individuals who participate in “for-profit” private sector internships or training programs may do so without compensation. The Supreme Court has held that the term "suffer or permit to work" cannot be interpreted so as to make a person whose work serves only his or her own interest an employee of another who provides aid or instruction. This may apply to interns who receive training for their own educational benefit if the training meets certain criteria. The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

The following six criteria must be applied when making this determination:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;

2. The internship experience is for the benefit of the intern;

3. The intern does not displace regular employees, but works under close supervision of existing staff;

4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;

5. The intern is not necessarily entitled to a job at the conclusion of the internship; and

6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the Act’s minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad. Some of the most commonly discussed factors for “for-profit” private sector internship programs are considered below.
Similar To An Education Environment And The Primary Beneficiary Of The Activity
In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer's actual operations, the more likely the internship will be viewed as an extension of the individual's educational experience (this often occurs where a college or university exercises oversight over the internship program and provides educational credit). The more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer's operation, the more likely the intern would be viewed as receiving training. Under these circumstances the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the work of the intern. On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA’s minimum wage and overtime requirements because the employer benefits from the interns' work.

Displacement And Supervision Issues
If an employer uses interns as substitutes for regular workers or to augment its existing workforce during specific time periods, these interns should be paid at least the minimum wage and overtime compensation for hours worked over forty in a workweek. If the employer would have hired additional employees or required existing staff to work additional hours had the interns not performed the work, then the interns will be viewed as employees and entitled compensation under the FLSA. Conversely, if the employer is providing job shadowing opportunities that allow an intern to learn certain functions under the close and constant supervision of regular employees, but the intern performs no or minimal work, the activity is more likely to be viewed as a bona fide education experience. On the other hand, if the intern receives the same level of supervision as the employer's regular workforce, this would suggest an employment relationship, rather than training.

Job Entitlement
The internship should be of a fixed duration, established prior to the outset of the internship. Further, unpaid internships generally should not be used by the employer as a trial period for individuals seeking employment at the conclusion of the internship period. If an intern is placed with the employer for a trial period with the expectation that he or she will then be hired on a permanent basis, that individual generally would be considered an employee under the FLSA.

Where to Obtain Additional Information
This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

* The FLSA makes a special exception under certain circumstances for individuals who volunteer to perform services for a state or local government agency and for individuals who volunteer for humanitarian purposes for private non-profit food banks. WHD also recognizes an exception for individuals who volunteer their time, freely and without anticipation of compensation for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible. WHD is reviewing the need for additional guidance on internships in the public and non-profit sectors.
Laurel G. Bellows  
Immediate Past President  
American Bar Association  
321 North Clark Street  
Chicago, IL 60654-7598

Dear Immediate Past President Bellows:

I am writing in response to the concerns you raised regarding the limitations imposed by the Fair Labor Standards Act (FLSA) on the ability of law students to secure work experience through unpaid internships with private law firms where the work they perform is limited to pro bono activities.

Generally, the FLSA does not permit individuals to volunteer their services to for-profit businesses such as law firms. In most instances, individuals who are suffered or permitted to perform work by a covered for-profit entity are considered employees under the FLSA and entitled to minimum wage and overtime unless they are covered by a specific exemption or exclusion. The FLSA does, however, permit individuals to participate in unpaid internships or training programs conducted by for-profit entities if certain criteria are met.

Under certain circumstances, law school students who perform unpaid internships with for-profit law firms for the student’s own educational benefit may not be considered employees entitled to wages under the FLSA. The determination of whether such an internship meets this exclusion depends upon all of the facts and circumstances of each student’s case. Where all of the following criteria are met, an employment relationship does not exist under the FLSA:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

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1 See WHD Fact Sheet 71, enclosed, for further guidance.
While the intern (or trainee) exclusion from the definition of employment is necessarily quite narrow because the FLSA’s definition of “employ” is very broad, it may be met in some circumstances when law students perform unpaid internships for for-profit law firms. We understand your specific concern with respect to law students involves unpaid internships (whether or not any academic credit is provided) in which the law school places students with for-profit law firms and acts as an intermediary empowered to monitor the progress of the internship, and in which the law firms provide written assurance that the students will receive an educational experience related to the practice of law and that the student will be assigned exclusively to non-fee-generating pro bono matters.

Where the program is designed to provide a law student with professional practice in the furtherance of his or her education and the experience is academically oriented for the benefit of the student, the student may be considered a trainee and not an employee. Accordingly, where a law student works only on pro bono matters that do not involve potential fee-generating activities, and does not participate in a law firm’s billable work or free up staff resources for billable work that would otherwise be utilized for pro bono work, the firm will not derive any immediate advantage from the student’s activities, although it may derive intangible, long-term benefits such as general reputational benefits associated with pro bono activities. Where law firm internships involve law students participating in or observing substantive legal work, such as drafting or reviewing documents or attending client meetings or hearings, the experience should be consistent with the educational experience the intern would receive in a law school clinical program. Such internships also offer significant benefit to law students because legal representation and licensing requirements necessitate that unlicensed law students receive close and constant supervision from the firm’s licensed attorneys. Such supervision both provides an educational benefit to the law student, and reduces the time that firm attorneys may spend on other work, potentially impeding the firm’s operations. Thus, where the hiring of unpaid law student interns does not displace regular employees, the law student is not necessarily entitled to a job at the conclusion of the internship, and the law firm and the law student agree that the intern is not entitled to wages, an unpaid internship with a for-profit law firm structured in such a manner as to provide the student with professional experience in furtherance of their education, involving exclusively non-fee generating pro bono matters would not be considered employment subject to the FLSA. In contrast, a law student would be considered an employee subject to the FLSA where he or she works on fee generating matters, performs routine non-substantive work that could be performed by a paralegal, receives minimal supervision and guidance from the firm’s licensed attorneys, or displaces regular employees (including support staff).

You also raised concerns that recent law school graduates who have not yet passed any state bar should be able to participate in unpaid internships with law firms working on pro bono matters to the same extent as current law students. But we understand from your communications that the Labor and Employment Law Section leadership has

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2 The Department considers all of the facts in assessing whether all of the criteria are met. A different set of circumstances may, thus, lead to a different conclusion.
reviewed this matter and determined that law graduates may not volunteer for private law firms without pay in the same manner. Likewise, we believe that the analysis would be different for law school graduates than for law students as the former have completed their legal education. Additionally, law schools would not have the same ability to act as intermediaries between graduates and the law firms that they do with current students and would not be able to monitor the internship’s compliance with these principles.

I hope that this summary is helpful in clarifying the limitations the FLSA places on unpaid work in various situations.

Sincerely,

M. Patricia Smith

M. Patricia Smith
Solicitor of Labor
Titles I and V of the Americans with Disabilities Act of 1990 (ADA)

EDITOR'S NOTE: The following is the text of Titles I and V of the Americans with Disabilities Act of 1990 (Pub. L. 101-336) (ADA), as amended, as these titles will appear in volume 42 of the United States Code, beginning at section 12101. Title I of the ADA, which became effective for employers with 25 or more employees on July 26, 1992, prohibits employment discrimination against qualified individuals with disabilities. Since July 26, 1994, Title I has applied to employers with 15 or more employees. Title V contains miscellaneous provisions which apply to EEOC’s enforcement of Title I.

The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) amended sections 101(4), 102 and 509 of the ADA. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amended the statutes by adding a new section following section 1977 (42 U.S.C. 1977) to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the ADA, and section 501 of the Rehabilitation Act of 1973 (Rehab Act). The Americans with Disabilities Act Amendments Act of 2008 (Pub. L. 110-325) (ADAAA) amended sections 12101, 12102, 12111 to 12114, 12201 and 12210 of the ADA and section 705 of the Rehab Act. The ADAAA also enacted sections 12103 and 12205a and redesignated sections 12206 to 12213. The ADAAA also included findings and purposes that will not be codified.

Most recently, the Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amended Title VII, the Age Discrimination in Employment Act of 1967, the ADA and the Rehab Act to clarify the time frame in which victims of discrimination may challenge and recover for discriminatory compensation decisions or other discriminatory practices affecting compensation.

ADAAA amendments and Lilly Ledbetter Fair Pay Act amendments appear in boldface type. Cross references to the ADA as enacted appear in italics following each section heading. Editor’s notes also appear in italics.

An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America assembled, that this Act may be cited as the “Americans with Disabilities Act
FINDINGS AND PURPOSES
SEC. 12101. [Section 2]

(a) Findings. - The Congress finds that-

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and
(b) Purpose. - It is the purpose of this chapter-

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

**DEFINITION OF DISABILITY**

SEC. 12102. [Section 3]

As used in this chapter:

(1) Disability. - The term "disability" means, with respect to an individual-

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):
(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—
(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

ADDITIONAL DEFINITIONS
SEC. 12103. [Section 4]

As used in this chapter:

(1) Auxiliary aids and services. - The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State. - The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SUBCHAPTER I [TITLE I] - EMPLOYMENT

DEFINITIONS
SEC. 12111. [Section 101]

As used in this subchapter:


(2) Covered entity. - The term "covered entity" means an employer, employment agency, labor organization, or joint labor management committee.

(3) Direct threat. - The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee. - The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer. -

(A) In general. - The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each
working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions. - The term "employer" does not include-

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of Title 26 [the Internal Revenue Code of 1986].

(6) Illegal use of drugs. -

(A) In general. - The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs. - The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc. - The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title [section 701 of the Civil Rights Act of 1964].

(8) Qualified individual. - The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation. - The term "reasonable accommodation" may include-

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for
individuals with disabilities.

(10) Undue hardship.

(A) In general. - The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. - In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include-

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

DISCRIMINATION

SEC. 12112. [Section 102]

(a) General rule. - No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. - As used in subsection (a) of this section, the term "discriminate against a qualified individual on the basis of disability" includes-

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing
fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;)

(3) utilizing standards, criteria, or methods of administration-
   (A) that have the effect of discrimination on the basis of disability; or
   (B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
   (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries. -

(1) In general. - It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.
(2) Control of corporation

(A) Presumption. - If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception. - This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination. - For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on-

   (i) the interrelation of operations;
   
   (ii) the common management;
   
   (iii) the centralized control of labor relations; and
   
   (iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries. -

   (1) In general. - The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

   (2) Pre-employment. -

      (A) Prohibited examination or inquiry. - Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

      (B) Acceptable inquiry. - A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

   (3) Employment entrance examination. - A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if-

      (A) all entering employees are subjected to such an examination regardless of disability;

      (B) information obtained regarding the medical condition
or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and (C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry.

(A) Prohibited examinations and inquiries. - A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries. - A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement. - Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

DEFENSES
SEC. 12113. [Section 103]

(a) In general. - It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.
(b) Qualification standards. - The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision. - Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities. -

(1) In general. - This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement. - Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases. -

(1) In general. - The Secretary of Health and Human Services, not later than 6 months after July 26, 1990 [the date of enactment of this Act], shall-

   (A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

   (B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

   (C) publish the methods by which such diseases are transmitted; and

   (D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public. Such list shall be updated annually.

(2) Applications. - In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction. - Nothing in this chapter shall be construed to preempt,
modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

ILLEGAL USE OF DRUGS AND ALCOHOL
SEC. 12114. [Section 104]

(a) Qualified individual with a disability. - For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. - Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who-

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity. -

A covered entity-

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and (5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs,
require that-

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing.-

(1) In general. - For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction. - Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees. - Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to-

(1) test employees of such entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-
sensitive duties in implementing subsection (c) of this section.

POSTING NOTICES
SEC. 12115. [Section 105]

Every employer, employment agency, labor organization, or joint labor management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title [section 711 of the Civil Rights Act of 1964].

REGULATIONS
SEC. 12116. [Section 106]

Not later than 1 year after July 26, 1990 [the date of enactment of this Act], the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5 [United States Code].

ENFORCEMENT
SEC. 12117. [Section 107]

(a) Powers, remedies, and procedures. - The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title [sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964] shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title [section 106], concerning employment.

(b) Coordination. - The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990 [the date of enactment of this Act].

[42 USC § 2000e-5 note]

section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

SUBCHAPTER IV [TITLE V] - MISCELLANEOUS PROVISIONS CONSTRUCTION

SEC. 12201. [Section 501]

(a) In general. - Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws. - Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter [title I], in transportation covered by subchapter II or III of this chapter [title II or III], or in places of public accommodation covered by subchapter III of this chapter [title III].

(c) Insurance. - Subchapters I through III of this chapter [titles I through III] and title IV of this Act shall not be construed to prohibit or restrict-

1. an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

2. a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

3. a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter I and III of this chapter [titles I and III].

(d) Accommodations and services. - Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits
under State worker’s compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability.

(h) Reasonable accommodations and modifications

A covered entity under subchapter I of this chapter, a public entity under subchapter II of this chapter, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III of this chapter, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

STATE IMMUNITY

SEC. 12202. [Section 502]

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

PROHIBITION AGAINST RETALIATION AND COERCION

SEC. 12203. [Section 503]

(a) Retaliation. - No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation. - It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures. - The remedies and procedures available under sections 12117, 12133, and 12188 of this title [sections 107, 203 and 308] shall be
available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III, respectively, of this chapter [title I, title II and title III, respectively].

[42 USC § 2000e-5 not]


REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
SEC. 12204. [Section 504]

(a) Issuance of guidelines. - Not later than 9 months after July 26, 1990 [the date of enactment of this Act], the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter [titles II and III]. (b) Contents of guidelines. - The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties. -

(1) In general. - The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register. - With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites. - With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.
ATTORNEYS' FEES
SEC. 12205. [Section 505]

In any action or administrative proceeding commenced pursuant to this chapter, the
court or agency, in its discretion, may allow the prevailing party, other than the United
States, a reasonable attorney's fee, including litigation expenses, and costs, and the
United States shall be liable for the foregoing the same as a private individual.

Rule of construction regarding regulatory authority
SEC. 12205a. [Section 506]

The authority to issue regulations granted to the Equal Employment Opportunity
Commission, the Attorney General, and the Secretary of Transportation under this
chapter includes the authority to issue regulations implementing the definitions of
disability in section 12102 of this title (including rules of construction) and the
definitions in section 12103 of this title, consistent with the ADA Amendments Act of
2008.

TECHNICAL ASSISTANCE
SEC. 12206. [Section 507]

(a) Plan for assistance.

(1) In general. - Not later than 180 days after July 26, 1990 [the date of
enactment of this Act], the Attorney General, in consultation with the Chair
of the Equal Employment Opportunity Commission, the Secretary of
Transportation, the Chair of the Architectural and Transportation Barriers
Compliance Board, and the Chairman of the Federal Communications
Commission, shall develop a plan to assist entities covered under this
chapter, and other Federal agencies, in understanding the responsibility
of such entities and agencies under this chapter.

(2) Publication of plan. - The Attorney General shall publish the plan
referred to in paragraph (1) for public comment in accordance with
subchapter II of chapter 5 of title 5 [United States Code] (commonly
known as the Administrative Procedure Act).

(b) Agency and public assistance. - The Attorney General may obtain the assistance of
other Federal agencies in carrying out subsection (a) of this section, including the
National Council on Disability, the President's Committee on Employment of People
with Disabilities, the Small Business Administration, and the Department of
Commerce.

(c) Implementation.

(1) Rendering assistance. - Each Federal agency that has responsibility
under paragraph (2) for implementing this chapter may render technical
assistance to individuals and institutions that have rights or duties under
the respective subchapter or subchapters of this chapter for which such
agency has responsibility.

(2) Implementation of subchapters.
(A) Subchapter I [Title I]. - The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter [Title I].

(B) Subchapter II [Title II]. -

(i) Part A [Subtitle A]. - The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter [Subtitle A of Title II].

(ii) Part B [Subtitle B]. - The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter [Subtitle B of Title II].

(C) Subchapter III [Title III]. - The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title [section 304], the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV. - The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals. - Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter [titles I, II, and III] and title IV.

(d) Grants and contracts.-

(1) In general. - Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.
(2) Dissemination of information. - Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance. - An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

FEDERAL WILDERNESS AREAS
SEC. 12207. [Section 508]

(a) Study. - The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report. - Not later than 1 year after July 26, 1990 [the date of enactment of this Act], the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access. -

(1) In general. - Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) Definition. - For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

TRANSVESTITES
SEC. 12208. [Section 509]

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH
SEC. 12209. [Section 510]

(a) Coverage of the Senate. -

(1) Commitment to Rule XLII. - The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows:
"No member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof-

"(a) fail or refuse to hire an individual;
"(b) discharge an individual; or
"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment on the basis of such individual’s race, color, religion, sex, national origin, age, or state of physical handicap."

(2) Matters other than employment.

(A) In general.- The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) Remedies.- The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Proposed remedies and procedures.- For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

(3) Exercise of rulemaking power.- Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraph (2)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraph (1), (2) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) Coverage of the House of Representatives.

(1) In general.- Notwithstanding any other provision of this chapter or of law, the purposes of this chapter shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) Employment in the House.

(A) Application.- The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the
House of Representatives and any employing authority of the House of Representatives.

(B) Administration. -

(i) In general. - In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) Resolution. - The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) Exercise of rulemaking power. - The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) Matters other than employment. -

(A) In general. - The rights and protections under this chapter shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) Remedies. - The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) Approval. - For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) Instrumentalities of Congress. -

(1) In general. - The rights and protections under this chapter shall,
subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities. - The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 201(c)(1) of the Civil Rights Act of 1991.

(3) Report to Congress. - The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities. - For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.


ILLEGAL USE OF DRUGS

SEC. 12210. [Section 511]

(a) In general. - For purposes of this chapter, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction. - Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who-

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.
(c) Health and other services. Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title [section 512(b)(3)], an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) Definition of illegal use of drugs. -

(1) In general. - The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

DEFINITIONS
SEC. 12211. [Section 512]

(a) Homosexuality and bisexuality. - For purposes of the definition of "disability" in section 12102(2) of this title [section 3(2)], homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions. - Under this chapter, the term "disability" shall not include-

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

ALTERNATIVE MEANS OF DISPUTE RESOLUTION
SEC. 12212. [Section 514]

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

SEVERABILITY
SEC. 12213. [Section 515]

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.
An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

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DEFINITIONS

SEC. 2000e. [Section 701]

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts,
unincorporated organizations, trustees, trustees in cases under Title 11 [originally, bankruptcy], or receivers.

(b) The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 [United States Code]), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 [the Internal Revenue Code of 1986], except that during the first year after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term “employment agency” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term “labor organization” means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers
within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be
endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. [Section 702]

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title [section 703 or 704] for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title [section 703 or 704] engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title [sections 703 and 704] shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

(A) the interrelation of operations;

(B) the common management;
(C) the centralized control of labor relations; and
(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-2. [Section 703]

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual’s race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual
because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin. In those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that
(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [section 6(d) of the Labor Standards Act of 1938, as amended].

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to
demonstrate that the challenged practice is job related for the position in question and consistent with business necessity, or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(I) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or
national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or
(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [United States Code].

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. [Section 704]

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception.

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, specification, or discrimination based on religion, sex, or national origin where religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. [Section 705]

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel.

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than
three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 [United States Code] governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges [originally, hearing examiners], and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 [United States Code], relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges [originally, hearing examiners] shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5 [United States Code].

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title [sections 706 and 707]. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.
(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken [originally, the names, salaries, and duties of all individuals in its employ] and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power-

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title [section 706] by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.
(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-

   (A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

   (B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5 [originally, section 9 of the Act of August 2, 1939, as amended (the Hatch Act)], notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

   (1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

   (2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

   (3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

   (1) There is hereby established in the Treasury of the United States a revolving fund to be known as the “EEOC Education, Technical Assistance, and Training Revolving Fund” (hereinafter in this subsection referred to as the “Fund”) and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

   (2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training-

   (i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,
(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. [Section 706]

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor
organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time
for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision
or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by
a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28 [United States Code], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his
absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this Title [section 704(a)].

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title [section 703(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney’s fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title [section 703(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).
(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 [the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)] shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28 [United States Code].

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL
SEC. 2000e-6. [Section 707]

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court
shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5 [United States Code], inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a
person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title [section 706].

EFFECT ON STATE LAWS
SEC. 2000e-7. [Section 708]

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

INVESTIGATIONS
SEC. 2000e-8. [Section 709]

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title [section 706], the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance
Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority
under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF Title 29
SEC. 2000e-9. [Section 710]

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 [section 11 of the National Labor Relations Act] shall apply.

POSTING OF NOTICES; PENALTIES
SEC. 2000e-10. [Section 711]

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' SPECIAL RIGHTS OR PREFERENCE
SEC. 2000e-11. [Section 712]

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION
SEC. 2000e-12. [Section 713]

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5 [originally, the Administrative Procedure Act].

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in
good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18

SEC. 2000e-13. [Section 714]

The provisions of sections 111 and 1114, Title 18 [United States Code], shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18 [United States Code], whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS

SEC. 2000e-14. [Section 715]

[Original introductory text: There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission [originally, Council] shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 [originally, July 1] of each year, the Equal Employment Opportunity Commission [originally, Council] shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF
LEADERSHIP WITH PROVISIONS FOR EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP

SEC. 2000e-15. [Section 716]

[Original text: (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after July 2, 1964 [the date of enactment of this title], convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1 of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. [Section 717]

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5 [United States Code], in executive agencies [originally, other than the General Accounting Office] as defined in section 105 of Title 5 [United States Code] (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal
employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress.

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission [originally, Civil Service Commission] shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission [originally, Civil Service Commission] shall-

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to-

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission [originally, Civil Service Commission] shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time
for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission [originally, Civil Service Commission] upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission [originally, Civil Service Commission] on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title [section 706], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title [section 706(f) through (k)], as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) [Section 706(e)(3)] shall apply to complaints of discrimination in compensation under this section.

PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF AFFIRMATIVE ACTION PLAN OF EMPLOYER; TIME OF ACCEPTANCE OF PLAN

SEC. 2000e-17. [Section 718]

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5 [United States Code], and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an
affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.
41-1461. Definitions
In this article, unless the context otherwise requires:
1. "Auxiliary aids and services" includes:
   (a) Qualified interpreters or other effective methods of making aurally delivered materials
       available to individuals with hearing impairments.
   (b) Qualified readers, taped texts or other effective methods of making visually delivered
       materials available to individuals with visual impairments.
   (c) Acquisition or modification of equipment or devices.
   (d) Other similar services and actions.
2. "Being regarded as having such a physical or mental impairment":
   (a) Means an individual who establishes that the individual has been subjected to an
       action prohibited under this article because of an actual or perceived physical or mental
       impairment whether or not the impairment limits or is perceived to limit a major life
       activity.
   (b) Does not mean an impairment that is transitory and minor. For the purposes of this
       subdivision, "transitory impairment" means an impairment with an actual or expected
       duration of six months or less.
3. "Covered entity" means an employer, employment agency, labor organization or joint
   labor-management committee.
4. "Disability" means, with respect to an individual, except any impairment caused by
   current use of illegal drugs, any of the following:
   (a) A physical or mental impairment that substantially limits one or more of the major life
       activities of the individual.
   (b) A record of such a physical or mental impairment.
   (c) Being regarded as having such a physical or mental impairment.
5. "Employee":
   (a) Means an individual employed by an employer.
   (b) Does not include an elected public official of this state or any political subdivision of
       this state, any person chosen by an elected official to be on the elected official's personal
       staff, an appointee on the policymaking level or an immediate adviser with respect to the
       exercise of the constitutional or legal powers of the office, unless the person or
       appointee is subject to the civil service laws of this state or any political subdivision of
       this state.
6. "Employer":
   (a) Means a person who has fifteen or more employees for each working day in each of
       twenty or more calendar weeks in the current or preceding calendar year, and any agent
       of that person, except that to the extent that any person is alleged to have committed
       any act of sexual harassment, employer means, for purposes of administrative and civil
       actions regarding those allegations of sexual harassment, a person who has one or more
       employees in the current or preceding calendar year.
   (b) Does not include either:
       (i) The United States or any department or agency of the United States, a corporation
           wholly owned by the government of the United States or an Indian tribe.
       (ii) A bona fide private membership club, other than a labor organization, that is exempt
           from taxation under section 501(c) of the internal revenue code of 1954.
7. "Employment agency" means any person regularly undertaking with or without
   compensation to procure employees for an employer or to procure for employees
   opportunities to work for an employer and includes an agent of that person.
8. "Labor organization":
   (a) Means a labor organization and any agent of a labor organization.
   (b) Includes:
       (i) Any organization of any kind, any agency or employee representation committee,
group, association or plan in which fifteen or more employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment. (ii) Any conference, general committee, joint or system board or joint council that is subordinate to a national or international labor organization.

9. "Major life activities" includes:
(a) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.
(b) The operation of a major bodily function, including functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

10. "Person" means one or more individuals, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

11. "Qualified individual" means a person with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the employment position that the individual holds or desires.

12. "Reasonable accommodation" includes:
(a) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
(b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers, taped texts or other effective methods of making visually delivered materials available to individuals with visual impairments, the provision of auxiliary aids and services or interpreters and other similar services and actions for individuals with disabilities.

13. "Religion" means all aspects of religious observance and practice, as well as belief. Unlawful practices as prohibited by this article include practices with respect to religion unless an employer demonstrates that the employer is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

14. "Undue hardship":
(a) Means an action requiring significant difficulty or expense when considered in light of the factors set forth in subdivision (b) of this paragraph.
(b) When determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
(i) The nature and cost of the accommodations needed under this article.
(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility and any other impact of the accommodation on the operation of the facility.
(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees and the number, type and location of its facilities.
(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of the covered entity.

(v) The geographic separateness and the administrative or fiscal relationship of the facility to the covered entity.

ARS TITLE PAGE  NEXT DOCUMENT  PREVIOUS DOCUMENT

41-1462. Exemption: nonresident aliens, religious institutions
This article does not apply to an employer with respect to the employment of aliens outside any state or to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
41-1463. Discrimination; unlawful practices; definition
A. Nothing contained in this article shall be interpreted to require that the less qualified be preferred over the better qualified simply because of race, color, religion, sex, age or national origin or on the basis of disability.
B. It is an unlawful employment practice for an employer:
1. To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, sex, age or national origin or on the basis of disability.
2. To limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age or national origin or on the basis of disability.
3. To fail or refuse to hire, to discharge, or to otherwise discriminate against any individual based on the results of a genetic test received by the employer, notwithstanding subsection I, paragraph 2 of this section.
C. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of the individual's race, color, religion, sex, age or national origin or on the basis of disability or to classify or refer for employment any individual on the basis of the individual's race, color, religion, sex, age or national origin or on the basis of disability.
D. It is an unlawful employment practice for a labor organization:
1. To exclude or to expel from its membership or otherwise to discriminate against any individual because of the individual's race, color, religion, sex, age or national origin or on the basis of disability.
2. To limit, segregate or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive the individual of employment opportunities or would limit those employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's race, color, religion, sex, age or national origin or on the basis of disability.
3. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.
E. It is an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to discriminate against any individual because of the individual's race, color, religion, sex, age or national origin or on the basis of disability in admission to or employment in any program established to provide apprenticeship or other training and, if the individual is an otherwise qualified individual, to fail or refuse to reasonably accommodate the individual's disability.
F. With respect to a qualified individual, it is an unlawful employment practice for a covered entity to:
1. Participate in any contractual or other arrangement or relationship that has the effect of subjecting a qualified individual who applies with or who is employed by the covered entity to unlawful employment discrimination on the basis of disability.
2. Use standards, criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.
3. Exclude or otherwise deny equal jobs or benefits to an individual qualified for the job or benefits because of the known disability of an individual with whom the individual qualified for the job or benefits is known to have a relationship or association.
4. Not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or employee unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity or the individual only meets the definition of disability as prescribed in section 41-1461, paragraph 4, subdivision (c).
5. Deny employment opportunities to a job applicant or employee who is an otherwise qualified individual if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairment of the applicant or
6. Use qualification standards, employment tests or other selection criteria, including those based on an individual’s uncorrected vision, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity.

7. Fail to select and administer tests relating to employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills or aptitude or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual or speaking skills of the applicant or employee, except if the skills are the factors that the test purports to measure.

G. Notwithstanding any other provision of this article, it is not an unlawful employment practice:

1. For an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual’s religion, sex or national origin in those certain instances when religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

2. For any school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university or other educational institution or institution of learning is in whole or in substantial part owned, supported, controlled or managed by a particular religion or religious corporation, association or society, or if the curriculum of the school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

3. For an employer to fail or refuse to hire or employ any individual for any position, for an employment agency to fail or refuse to refer any individual for employment in any position or for a labor organization to fail or refuse to refer any individual for employment in any position, if both of the following apply:
   (a) The occupancy of the position or access to the premises in or upon which any part of the duties of the position are performed or are to be performed is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the president of the United States.
   (b) The individual has not fulfilled or has ceased to fulfill that requirement.

4. With respect to age, for an employer, employment agency or labor organization:
   (a) To take any action otherwise prohibited under subsection B, C or D of this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or if the differentiation is based on reasonable factors other than age.
   (b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, deferred compensation or insurance plan, which is not a subterfuge to evade the purposes of the age discrimination provisions of this article, except that no employee benefit plan may excuse the failure to hire any individual and no seniority system or employee benefit plan may require or permit the involuntary retirement of any individual specified by section 41-1465 because of the individual’s age.
   (c) To discharge or otherwise discipline an individual for good cause.

H. As used in this article, unlawful employment practice does not include any action or measure taken by an employer, labor organization, joint labor-management committee or employment agency with respect to an individual who is a member of the communist party of the United States or of any other organization required to register as a communist-action or communist-front organization by final order of the subversive activities control board pursuant to the subversive activities control act of 1950.

I. Notwithstanding any other provision of this article, it is not an unlawful employment
practice:
1. For an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that these differences are not the result of an intention to discriminate because of race, color, religion, sex or national origin.
2. For an employer to give and act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.
3. For any employer to differentiate upon the basis of sex or disability in determining the amount of the wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of section 6(d) or section 14 of the fair labor standards act of 1938, as amended (29 United States Code section 206(d)).
J. Nothing contained in this chapter applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation.
K. Nothing contained in this article or article 6 of this chapter requires any employer, employment agency, labor organization or joint labor-management committee subject to this article to grant preferential treatment to any individual or group because of the race, color, religion, sex or national origin of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization or admitted to or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex or national origin in any community, state, section or other area, or in the available work force in any community, state, section or other area.
L. Nothing in the age discrimination prohibitions of this article may be construed to prohibit compulsory retirement of any employee who has attained sixty-five years of age and who, for the two year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan or any combination of plans of the employer for the employee, which equals, in the aggregate, at least forty-four thousand dollars. In applying the retirement benefit test of this subsection, if any retirement benefit is in a form other than a straight life annuity, with no ancillary benefits, or if employees contribute to the plan or make rollover contributions, the benefit shall be adjusted in accordance with rules adopted by the division so the benefit is the equivalent of a straight life annuity, with no ancillary benefits, under a plan to which employees do not contribute and under which no rollover contributions are made.
M. A covered entity may require that an individual with a disability shall not pose a direct threat to the health or safety of other individuals in the workplace. For the purposes of this subsection, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.
N. This article does not alter the standards for determining eligibility for benefits under this state's workers' compensation laws or under state and federal disability benefit programs.
O. For the purposes of this section and section 41-1481, with respect to employers or employment practices involving a disability, "individual" means a qualified individual.
41-1464. Other unlawful employment practices; opposition to unlawful practices; filing of charges; participation in proceedings; notices and advertisements for employment

A. It is an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to discriminate against any individual or for a labor organization to discriminate against any member or applicant for membership because the member or applicant has opposed any practice which is an unlawful employment practice under this article or has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under article 6 of this chapter.

B. It is unlawful employment practice for an employer, labor organization, employment agency or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization or relating to any classification or referral for employment by such an employment agency or relating to admission or to employment in any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification or discrimination based on race, color, religion, sex or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex or national origin when religion, sex or national origin is a bona fide occupational qualification for employment.

C. It is unlawful for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by an employer or membership in or any classification or referral for employment by a labor organization or relating to any classification or referral for employment by a labor organization or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification or discrimination based on age, except such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on age when age is a bona fide occupational qualification for employment.

41-1465. Age discrimination; affected individuals
The age discrimination prohibitions in this article are limited to individuals who are at least forty years of age.
41-1466. Medical examinations and inquiries: exception
A. The prohibition against discrimination based on a disability includes medical examinations and inquiries. Except as provided in subsection B, paragraph 2, a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability.
B. A covered entity may:
1. Make preemployment inquiries into the ability of an applicant to perform job related functions.
2. Require a medical examination after an offer of employment has been made to a job applicant and before commencement of employment duties of the applicant and may condition an offer of employment on the results of such examination if all of the following apply:
   (a) All entering employees are subjected to the examination regardless of disability.
   (b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that the covered entity:
      (i) May inform supervisors and managers of necessary restrictions on the work or duties of the employee and necessary accommodations.
      (ii) When appropriate, may inform first aid and safety personnel if the disability might require emergency treatment.
      (iii) On request, shall provide relevant information to government officials investigating compliance with this article.
   (c) The results of the examination are used only in accordance with this section.
C. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job related and consistent with business necessity.
D. A covered entity may:
1. Conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site.
2. Make inquiries into the ability of an employee to perform job related functions.
E. Information obtained pursuant to subsections C and D regarding the medical condition or history of any employee are subject to the requirements prescribed in subsection B, paragraph 2, subdivisions (b) and (c).
F. For the purposes of this section, a test to determine the illegal use of drugs is not a medical examination.

41-1467. Essential job functions
Under this article and article 6 of this chapter, in determining what functions of a job are essential, consideration shall be given to the employer's judgment as to what functions of the job are essential, and if the employer has prepared a written description of the job before advertising or interviewing applicants for the job, this written description is evidence of the essential functions of the job.
A person shall define and construe a disability in favor of broad coverage of individuals under this article to the maximum extent permitted by the terms of this article.

B. A person shall interpret substantially limits consistently with the findings and purposes of the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

C. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

D. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

E. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as:
   1. Medication, medical supplies, equipment or appliances, low-vision devices, excluding ordinary eyeglasses or contact lenses, prosthetics, including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices or oxygen therapy equipment and supplies.
   2. Use of assistive technology.
   3. Reasonable accommodations or auxiliary aids or services.
   4. Learned behavioral or adaptive neurological modifications.

F. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

G. For the purposes of this section:
   1. "Low-vision devices" means devices that magnify, enhance or otherwise augment a visual image.
   2. "Ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error.