

Deaf Federal Workers: The Right to Reasonable Accommodations

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Deaf federal government employees may need reasonable accommodations or job modifications in order to perform certain job functions and in order to have equal access to job benefits and activities. Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, requires the federal government to practice affirmative action to hire and to promote disabled workers. The regulations for this law require the federal government to provide equal access to training and promotion opportunities, and to make reasonable accommodations to a worker's disabilities:

(a) An agency shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee . . .

(b) Reasonable accommodation may include, but shall not be limited to: . . . acquisition or modification of equipment or devices, the provision of readers and interpreters . . . and other similar actions.

29 C.F.R. 1613.704.

The requirements of Section 501 are open-ended. The accommodations that must be provided will depend on the needs of the deaf individual, the requirements of the job, and the type of work environment. For some employees, it will involve the provision of services (e.g., interpreters) or the provision of equipment such as TTYs, flashing lights or computer modifications. For other employees, it will involve changes in procedures, such as putting oral information in writing, or scheduling staff meetings sufficiently in advance to permit the procurement of interpreter services, or permitting the employee to be accompanied by a trained signal dog at the workplace.

The duty to provide reasonable accommodations is not limited to activities connected with on-the-job work performance. It also applies to situations such as training (including training provided by private contractors), safety talks, employee benefits, counseling, career counseling and other employment-related activities.

Sign Language and Oral Interpreters

Effective communication is critical to successful job performance. The Federal Personnel Manual outlines the procedures by which an agency shall hire sign language interpreters for its deaf employees, when interpreters are needed for effective communication. The Manual makes this distinction between qualified interpreters and individuals who know some sign language:

"Interpreting" involves translating the spoken word into sign language and vice versa to enable deaf persons to communicate with hearing persons. The terms "signing" and "interpreting" are often used interchangeably; however, "interpreting" requires a high degree of skill which many persons who have sign language abilities do not possess. An interpreter is one who has completed an interpreting training program and/or is certified by a recognized certifying body such as the National Registry of Interpreters for the Deaf.

Chapter 306, Federal Personnel Manual, Subchapter 5, Section 5-3(a).

The Equal Employment Opportunity Commission (EEOC) has determined that deaf federal workers have the right to qualified sign language interpreters, as opposed to "signers", for all important communications, including discussions about training, work procedures, policies, assignments, and disciplinary actions. Gerald Jackson v. Anthony M. Frank, Postmaster General, United States Postal Service, EEOC Request No. 05880750 (April 18, 1989); Barker v. United States Postal Service, EEOC Request No. 01842053 (September, 1986); Cassady v. U.S. Postal Service, EEOC Request No. 01841367 (June, 1986); Marcum v. Anthony M. Frank, EEOC Request No. 01892554 (January, 1990). Interpreters should also be available at EEO counseling sessions and meetings with EEO investigators and other EEO proceedings.

Telecommunications Devices

TTYs, amplified telephones and other modifications of telecommunications equipment are precisely the type of accommodation envisioned by Section 501's requirements. Many job functions require employees to use the telephone. With the availability of telecommunications devices and relay services, a deaf employee can perform these jobs successfully. In addition, deaf employees should have equal access to telephone services for personal and emergency calls. Section 501 applies to all the benefits of employment. If employees are permitted to use telephones for urgent personal calls, deaf employees must also have comparable permission, and the equipment, to place such calls.

Visual and Tactile Alarms

When a fire or other alarm sounds, deaf workers may be unaware of the danger unless the alarm includes a visual component, usually a flashing strobe light or a tactile vibrating device. Visual emergency alarms are precisely the type of accommodation envisioned by Section 501's requirements. The United States Office of Personnel Management, in its guidelines to federal employers of deaf employees in white collar jobs, has stated, "[m]ethods should be devised to alert the deaf worker(s) in case of an emergency, such as fire," and has outlined emergency and warning signal systems which can serve this function. U.S. Office of Personnel Management, Staffing Services Group, Personnel Research and

Development Center, "Reasonable Accommodation for Deaf Employees in White Collar Jobs," Operations Paper (October, 1981), at page 16.

The regulations adopted by federal agencies pursuant to Section 504 also require equal accessibility in federal facilities. Safety features available to other employees must, under this regulation, be equally usable by deaf employees.

Finally, federal law requires all federal buildings to comply with certain accessibility requirements. 29 U.S.C. §792. These requirements are outlined in the Uniform Federal Accessibility Standards. For buildings built after the requirement went into effect, visual alarms must be provided if emergency warning systems are used in a building. Uniform Federal Accessibility Standards, at 4.1.2(13). For older buildings, visual alarms are recommended in situations where deaf people may be alone in a room:

Locating visual emergency alarms in rooms where deaf individuals may work or reside alone can ensure that they will always be warned when an emergency alarm is activated.

Uniform Federal Accessibility Standards, at 4.28.4.

Transfer of Inessential Job Duties

The Office of Personnel Management has stated that it anticipates that an important job accommodation for deaf workers in the federal service will be transfer of job duties:

The job duties of white-collar jobs which are most difficult to accommodate for deaf workers are the use of the telephone and communication with the public. . . There are some possible solutions to these problems. For instance, in some office situations it might be possible to transfer telephone [and other job duties] to other workers and to give the deaf worker more assignments of another kind.

U.S. Office of Personnel Management, "Reasonable Accommodation for Deaf Employees in White Collar Jobs," Operations Paper (October 1981), at page 21 [parentheses added]. The same analysis would apply to any job function which is a traditional part of a job classification, but which can be severed or eliminated without affecting the employee's ability to perform other central job functions.

Complaint Procedure

A deaf federal employee who is unable to secure qualified interpreters, TDDs or emergency alerting devices, or other reasonable accommodations should file a complaint with the EEO office at the employing federal agency within thirty days of the denial of the accommodation. Additional remedies may be available under union grievance procedures.

For more information visit www.nad.org/deaffedworkers.

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