

**§ 60-741.83 Rulings and interpretations.**

Rulings under or interpretations of the act and this part shall be made by the Deputy Assistant Secretary.

**§ 60-741.84 Effective date.**

This part shall become effective August 29, 1996, and shall not apply retroactively. Contractors presently holding Government contracts shall update their affirmative action programs as required to comply with this part by December 27, 1996.

APPENDIX A TO PART 60-741—GUIDELINES ON A CONTRACTOR'S DUTY TO PROVIDE REASONABLE ACCOMMODATION

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See § 60-741.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under section 503, like reasonable accommodation required under the ADA, is a part of the nondiscrimination obligation. See EEOC appendix cited in this paragraph. Affirmative action is unique to section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of an employee with a known disability who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" individual with a disability, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in § 60-741.2(t), an individual with a disability is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essen-

tial functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the individual with a disability is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees of whose disability the contractor has actual knowledge. As stated in § 60-741.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they begin their employment duties, to indicate whether they may have a disability and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of individuals who "self-identify" in this way as to proper placement and appropriate accommodation. Moreover, § 60-741.44(d) provides that if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) Accommodations in the application process; (2) accommodations that enable employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.