



**EEOC**  
U. S. Equal Employment  
Opportunity Commission

## Final Report

# Best Practices for the Employment of People with Disabilities in State Government

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## EXECUTIVE SUMMARY

This report highlights best practices of nine states that promote the hiring, retention, and advancement of individuals with disabilities in state government jobs. The United States Equal Employment Opportunity Commission (EEOC) is issuing this report as part of the agency's efforts in support of the New Freedom Initiative, President George W. Bush's comprehensive strategy for the full integration of people with disabilities into all aspects of America's social and economic life.

Despite progress made since the passage of the Americans with Disabilities Act (ADA) in 1990, people with disabilities still experience unemployment at a rate far above the national average. With more than five million workers nation-wide and with the unique opportunities they have to serve as model employers, state governments can play a significant role in enhancing employment opportunities for people with disabilities.

The governors of the nine participating states voluntarily allowed EEOC to review a wide range of best practices affecting individuals with disabilities who are state government employees or applicants for state employment. We examined state government practices related to the following:

- the recruitment and hiring of people with disabilities for state jobs;
- the provision of reasonable accommodations for applicants and employees with disabilities;
- the retention and advancement of individuals with disabilities within state government; and
- the employment of people with disabilities more generally – that is, in both public and private sector jobs.

This report also lists a number of what may be inadvertent barriers to the employment, retention, and advancement of qualified individuals with disabilities. We suggest that all states evaluate their practices to determine whether they include these or other barriers.

This report has two purposes. First, all employers, including the participating states, can learn from the best practices outlined in this report. Second, we are offering states free, informal technical assistance to promote voluntary compliance with the ADA.

Parts I through IV of the report discuss best practices, and Part V lists potential barriers. Following are some of EEOC's most significant findings:

## **PART I: RECRUITING AND HIRING**

- Governor Bill Richardson of New Mexico created an Executive Task Force on Disability Employment to develop strategies to increase the recruitment and hiring of qualified individuals with disabilities for state government jobs.
- Vermont and Washington work with organizations of and for individuals with disabilities as part of their targeted outreach and recruitment efforts. Maryland has a Coordinator of Special Outreach and Employment Programs to assist state agencies in targeting diverse applicant pools for state positions that include persons with disabilities.
- Vermont and Washington have programs that specifically train and/or hire individuals with disabilities for state jobs. Vermont also provides a “must interview” to anyone with a disability who meets the minimum qualifications for any state job.
- Most of the states surveyed provide clear statements to job applicants about reasonable accommodations for the application process and provide supervisors and managers with training on their ADA obligations related to the application and interview process.

## **PART II: REASONABLE ACCOMMODATION**

- Vermont has state-wide written reasonable accommodation policies and procedures; Washington requires state agencies with 50 or more employees to develop reasonable accommodation procedures that are reviewed by the state’s Affirmative Action Committee; and Florida and Kansas reported that a number of state agencies have adopted their own written procedures.
- Several states provide procedural safeguards to ensure that reasonable accommodations are not inappropriately denied. Utah trains all of its ADA Coordinators to submit any proposed denials to the Division of Risk Management so that they can be reviewed for legal sufficiency; Vermont created a Reasonable Accommodation Committee to which an employee may have a denial submitted for review; and Washington requires that all denials of accommodation be signed by the head of the employing agency.
- Maryland and Vermont have tracked information related to the provision of reasonable accommodations that could be used to assess the effectiveness of their reasonable accommodation procedures.

- While all of the states surveyed generally require individual state agencies to pay for reasonable accommodations, Utah and Washington have some centralized funds available for any agency that can demonstrate a particular accommodation would be too costly for the agency to obtain on its own.
- Agencies in Kansas and Missouri provide accommodations for some individuals who do not necessarily meet the ADA's definition of "disability," such as those with limitations resulting from short-term, temporary conditions.

### **PART III: PROTECTING THE RIGHTS OF INDIVIDUALS WITH DISABILITIES ON THE JOB**

- The Maryland Aviation Administration's bi-annual supervisory ADA training addresses the issue of how to promote career development for individuals with disabilities.
- Most of the states we surveyed indicated that training on the ADA is provided for managers and supervisors either on a statewide or agency-wide basis.

### **PART IV: OTHER BEST PRACTICES THAT PROMOTE THE EMPLOYMENT OF PEOPLE WITH DISABILITIES**

- In 2004, Florida established the Agency for Persons with Disabilities and Maryland elevated its former Office on Individuals with Disabilities to cabinet-level status.
- Florida, Kansas, and New Hampshire have taken steps to ensure a level of accessibility of state websites that meets or exceeds the standards applicable to the federal government under Section 508 of the Rehabilitation Act.
- The Florida Freedom Initiative is a demonstration project that allows certain individuals who received Medicaid and Supplemental Security Income to earn and save more than current law generally permits without losing vital benefits.
- Maryland and Vermont have participated in a pilot project to have some employees serve as "disability program navigators" at state One Stop Career Centers created under the Workforce Investment Act to help people with disabilities access these services more easily.
- Youth Leadership Forums in Florida, Kansas, Maryland, Missouri, Vermont, and Washington annually bring together thirty to forty high school juniors and seniors to participate in several days of activities that help them develop vocational goals, strengthen leadership skills, and learn from the experiences of other youth and adults with disabilities.

## **PART V: ISSUES FOR FURTHER EVALUATION BY STATES**

- Some equal employment opportunity and affirmative action policies fail to include disability. In other instances, affirmative action policies mention disability, but no specific efforts are being made to increase the representation of individuals with disabilities in the workforce.
- Some procedures inappropriately limit the obligation to provide reasonable accommodations such as telework and reassignment, or limit the availability of reasonable accommodation to those with “permanent” conditions.
- Some training materials for managers, supervisors, and ADA Coordinators include legal inaccuracies.

## **CONCLUSION**

The report’s conclusion notes several positive trends. Applicants for state employment are frequently given information about the availability of reasonable accommodations for the application process, and job announcements and position descriptions do not appear to be drafted in ways that would discourage people with disabilities from applying for state jobs. Some states have undertaken targeted outreach to and recruitment of individuals with disabilities. At this time there is insufficient data to assess the effectiveness of these efforts.

Supervisors, managers, and other state personnel responsible for the hiring, retention, and advancement of people with disabilities have access to sufficient information about their ADA obligations. The use of written procedures for providing reasonable accommodations, methods of documenting and tracking the disposition of requests, and the provision of appeal processes following denials of reasonable accommodations are also positive trends in some states. We were unable to determine the extent to which individuals with disabilities have been able to advance within state government once hired, since we saw little evidence that the states undertake any measures to determine the distribution of employees with disabilities among the various levels of the state government workforce.

Finally, we note that many of the best practices identified in the report resulted from legislative or executive actions. This sends a clear message “from the top” that the employment of people with disabilities is a priority for the states.

# FINAL REPORT ON BEST PRACTICES FOR THE EMPLOYMENT OF PEOPLE WITH DISABILITIES IN STATE GOVERNMENT

## INTRODUCTION

### A. Background

This report details best practices undertaken by states to promote the hiring, retention, and advancement of individuals with disabilities in state government employment. The U.S. Equal Employment Opportunity Commission (“EEOC” or “Commission”) issued an interim report covering four states – Florida, Maryland, Vermont, and Washington – on October 29, 2004.<sup>1</sup> This final report covers those four states and five others – Kansas, Missouri, New Hampshire, New Mexico, and Utah.

Title I of the Americans with Disabilities Act of 1990 (ADA)<sup>2</sup> prohibits private and state and local government entities that employ fifteen or more employees from discriminating against qualified individuals with disabilities with respect to recruitment, the application process, hiring, advancement, and other terms, conditions, and privileges of employment.<sup>3</sup> Employers covered by Title I of the ADA must also make reasonable accommodations so that qualified individuals with disabilities may participate in the application process, perform the essential (or fundamental) duties of a job, and enjoy the benefits and privileges of employment available to all employees.

Despite progress made as the result of the ADA, recent estimates still put the unemployment rate of people with severe disabilities at or near 70 percent. In response to this stubbornly high unemployment rate and other barriers that people with disabilities continue to face, President George W. Bush announced his New Freedom Initiative (NFI) on February 1, 2001. The NFI is the President’s comprehensive strategy for the full integration of people with disabilities into all aspects of America’s social and economic life. It promotes increased access to technology, education, the workplace, and community life.<sup>4</sup>

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<sup>1</sup>See [http://www.eeoc.gov/initiatives/nfi/int\\_states\\_best\\_practices\\_report.html](http://www.eeoc.gov/initiatives/nfi/int_states_best_practices_report.html).

<sup>2</sup>42 U.S.C. § 12101 *et seq.*

<sup>3</sup>See 42 U.S.C. § 12102. Pursuant to statutory directive, the United States Equal Employment Opportunity Commission has issued regulations implementing Title I of the ADA. Those regulations can be found at 29 C.F.R. Part 1630.

<sup>4</sup>For information on the New Freedom Initiative, see <http://whitehouse.gov/infocus/newfreedom/>.

The EEOC enforces Title I of the ADA and has, since 2001, taken a lead role in helping to implement the NFI's employment goals. In addition to carrying out its traditional enforcement and litigation functions under the ADA, the EEOC has stepped up its outreach and technical assistance efforts. In April 2002, we began a series of free ADA workshops targeted to businesses with 15 to 100 employees. Since August 2002, we have distributed thousands of copies of *The Americans with Disabilities Act: A Primer for Small Business*. We have issued question-and-answer documents discussing how the ADA applies to specific disabilities in the workplace, such as diabetes, epilepsy, intellectual disabilities (i.e., mental retardation), and cancer and have published a guide that describes how Title I of the ADA applies to food service employers. We have also issued a question-and-answer document on telework as a reasonable accommodation. Finally, we have increased our outreach to people with disabilities through presentations at conferences sponsored by organizations of and for individuals with disabilities and publication of a question-and-answer document on the ADA for job applicants with disabilities.<sup>5</sup>

The EEOC has undertaken the "States' Best Practices Project" in part because of the number of people state governments employ (collectively more than five million), and because of the unique opportunities to serve as model employers for other public entities (such as county and municipal governments) and for the private sector. The purposes of this project are twofold. First, EEOC hopes that all states (as well as local governments and private employers) will learn from the best practices of the participating states. Second, EEOC is offering participating states free, informal, technical assistance to aid in voluntary compliance with the ADA.

## B. Methodology

States were chosen for this study based in part on geographical diversity, the range in size of their workforces, and their differing personnel structures. Appendix A to this report includes information about the size of each participating state's workforce and a description of each state's personnel structure.

The nine selected states voluntarily participated in this study. EEOC provided the states general guidelines concerning the kind of information we wished to review. We wanted to find out what individuals with disabilities would encounter when applying for state employment and what they would experience on the job. The information we requested included the following:

- job application forms, job announcements, and position descriptions;

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<sup>5</sup>EEOC publications on the ADA can be found at <http://www.eeoc.gov/types/ada.html>.

- written procedures for providing reasonable accommodations to qualified applicants and employees with disabilities;
- information about procedures for administering employment tests, including any reasonable accommodations the states provide for the testing process; and
- employee handbooks, manuals on recruitment and selection, directives on EEO and diversity, and other documents reflecting best practices related to the hiring, retention, and advancement of qualified individuals with disabilities.

Representatives from the EEOC held an initial teleconference with representatives from each state. The states determined who would provide information to the EEOC and what state agencies would be the subject of the review. Following the teleconference, EEOC submitted a Request for Information to each state, reviewed the documents provided in response to the request, and conducted follow-up interviews with state officials to clarify or expand upon information in the documents provided. All participating states reviewed and commented on a draft final report prior to publication.

Because the EEOC relied on self-reporting, it is possible that we have not learned about all state activities that contribute positively to the employment of people with disabilities in state government. Additionally, not all activities designated by states as “best practices” have necessarily been included here. We did not include activities we deemed merely to satisfy the states’ legal obligations under the ADA. Also, when most or all states engaged in a similar practice, we sometimes offered only representative examples of the practice from a few states. Appendix B to this report is a list of state contacts who can provide more information about the practices identified in this report and perhaps others.

### C. Overview

This report has five main parts and a conclusion.

- Part I discusses best practices related to the recruitment and hiring of qualified individuals with disabilities, including targeted outreach and provision of reasonable accommodations for the application process. Best practices with respect to job announcements, the job application process, and position descriptions are also considered.
- Part II discusses ways that the subject states provide reasonable accommodations for qualified employees with disabilities, including written reasonable accommodation procedures and other methods of ensuring prompt and fair resolution of accommodation requests. Some innovative accommodation solutions are also discussed.

- Part III describes what the states have done to ensure that, once hired, individuals with disabilities are treated fairly and have opportunities for advancement within state government. This part discusses not only specific state practices that promote advancement, but also ongoing training for managers and supervisors that can proactively prevent discrimination.
- Part IV describes state activities that, although not designed specifically to increase employment opportunities in state government, promote employment of people with disabilities generally.
- Part V lists possible barriers to the employment and advancement of people with disabilities in state government jobs that were found at the time of our survey of the participating states and that may exist in other states.
- The conclusion summarizes the most promising trends that EEOC found as the result of its review.

## **PART I: RECRUITING AND HIRING**

### A. Targeted Recruitment and Outreach

The following section discusses ways that the states surveyed by the EEOC have attempted to increase the representation of qualified individuals with disabilities in their hiring pools and in their workforces. Recruitment and outreach efforts are of essentially two types – those that seek to increase the number of applicants with disabilities for state jobs that are available to the general public, and hiring or training programs designed specifically for individuals with disabilities.

#### 1. *Efforts to Increase the Pool of Qualified Applicants with Disabilities*

Maryland, New Mexico, Vermont, and Washington reported the following practices aimed at increasing the number of individuals with disabilities in state government jobs:

- The Maryland Department of Budget and Management has a Coordinator, Special Outreach and Employment Programs, to assist state agencies in targeting diverse applicant pools for state positions that include persons with disabilities.
- The Maryland State Highway Administration has included specific action items for recruitment and advancement of individuals with disabilities in its *Strategic Plan for Managing Diversity 2000-2004*. Specifically, the Plan calls for implementing a series of diversity strategies that include expanding the recruitment plan to promote state government employment opportunities to disability advocacy organizations, the American Association of Retired Persons, and the Veterans Administration.
- Governor Bill Richardson of New Mexico charged state administrators of disability services with developing a proposal to increase the number of people with disabilities who apply, are interviewed, and are hired for employment in state government. The governor has launched an Executive Task Force on Disability Employment to implement the proposal. Key strategies may include:
  - developing an ongoing public awareness campaign about employment possibilities with the state;
  - educating state agencies about the benefits of hiring persons with disabilities;
  - identifying barriers in the application process;

- awarding pay differentials for service positions that are difficult to fill;
  - waiving competitive hiring requirements for a person with a disability who has successfully completed an approved on-the-job training (OJT) internship or apprenticeship program;
  - expanding existing OJT internship and apprenticeship programs to include persons with disabilities; and
  - identifying temporary positions that may provide work experiences for students with disabilities.
- The New Mexico legislature issued a “Joint Memorial” directing the Executive Task Force on Disability Employment to develop policies, procedures, and guidelines that state agencies can use to recruit, hire, retain, and promote individuals with disabilities and directing state agencies to follow these policies, procedures, and guidelines.
  - New Mexico has also implemented “recruitment pay” for vocational rehabilitation counselors at the Division of Vocational Rehabilitation that will enable the agency to recruit and retain counselors. These positions, which historically have been difficult to fill, generally have been held by individuals with disabilities.
  - Individual New Mexico agencies, such as the Public Education Department and the Commission for the Blind, engage in outreach and training to recruit and retain individuals with disabilities.
  - The New Mexico Developmental Disabilities Planning Council has developed, and Governor Richardson has distributed to all state agencies, a survey to identify internship and other placement opportunities for people with disabilities, as well as sources of funding for the various types of placements.
  - Vermont Governor Jim Douglas recorded a series of radio Public Service Announcements specifically designed to encourage people from all backgrounds, including those with disabilities, to consider employment with the state. These Public Service Announcements aired in conjunction with the Governor’s announcement of October 2004 as Vermont Diversity and Disability Employment Awareness Month.
  - Vermont reports that it actively engages in outreach to a diverse range of organizations that serve people with disabilities, such as the Vermont Center for

Independent Living. To be included on the outreach list, any individual or organization may submit a request to the Employment Services Division.

- Vermont’s Department of Human Resources has developed a “Working for the State” workshop for community-based organizations throughout the state, particularly those that serve people with disabilities. The workshop provides an overview of the application process, highlights state career options, and provides information on available resources.
- Vermont’s Department of Human Resources partners with the Division of Rehabilitation to assist individuals with specific impairments/disabilities, such as traumatic brain injury and developmental disabilities, in applying for jobs. The Department also works closely with the Division for the Blind and Visually Impaired to provide vocational assessments and evaluations for assistive technology for persons who are blind or visually impaired.
- Vermont also allows individuals with “qualifying disabilities” who meet the minimum qualifications for a state job to ask for a “mandatory interview.” A “qualifying disability” is any disability that meets the ADA’s definition.
- Washington state’s affirmative action policy covers, among other groups, Vietnam Era veterans, disabled veterans, disabled persons, and people over the age of forty. The state’s Department of Personnel administers the program, which means that it provides guidance and assistance to state agencies and institutions and monitors and reports on their progress. All general government agencies and higher education institutions must maintain an annual affirmative action policy and, depending on their size, must submit either an agency profile or an affirmative action plan (including a bi-annual update). The goal of the Department of Personnel is to address the underutilization of individuals with disabilities in the state workforce by:
  - cultivating relationships with disability groups;
  - disseminating job bulletins to persons with disabilities;
  - advertising in media that serve or represent persons with disabilities;  
and
  - developing a pool of qualified individuals with disabilities to fill temporary positions in underutilized job groups.

## 2. *Hiring Programs Specifically for People with Disabilities*

Two states – Washington and Vermont – have programs that specifically train and/or hire individuals with disabilities for state jobs.

- In 1997, Washington passed legislation creating a supported employment program for individuals who need on-the-job training and long-term support to do their jobs successfully. The program allows agencies to add positions within their budgets that will not count against their allotted full-time employee positions for the entire time the individual is employed by the agency. The program targets individuals with developmental disabilities and those with significant disabilities who are eligible for vocational rehabilitation services. In October 1998 the number of individuals working who were hired through this program was 23; by October 2003 it was 107.
- Vermont identified three specific programs that provide employment and training opportunities for individuals with disabilities in state government jobs:
  - The VR-OPT Program offers training in clerical support skills and job readiness to prepare individuals with disabilities for potential positions.
  - The Clean Sweep Program provides training in a wide range of cleaning, safety, and maintenance procedures. Program participants receive hands-on training in internships that rotate among various types of jobs.
  - The On-the-Job Training (OJT) Program allows state departments to fill entry-level positions at a lower salary and to receive support in providing additional training or mentoring. The goal of the OJT is to provide employment opportunities for individuals who, as a result of their disabilities, find it difficult to meet the testing, educational, or experience requirements for a position.

### B. Job Announcements and Job Applications

The ADA does not require employers to use a specific type of job announcement or job application form. Some practices related to job announcements and applications, however, may discourage individuals with disabilities from applying for jobs. For example, a deaf individual who uses a sign language interpreter to communicate might not apply for a position described as requiring “good oral communication skills.” Similarly, a job announcement that fails to differentiate between a position’s essential (or fundamental) and marginal functions may discourage individuals whose disabilities make them unable to do the

marginal functions from applying for the position, even though they may still be considered “qualified” under the ADA.<sup>6</sup>

On the other hand, employers can take several positive steps to ensure that their job announcements and job applications do not inadvertently exclude qualified individuals with disabilities from the applicant pool.

#### 1. Identifying Essential Job Functions

Several states reported on the efforts they make to identify essential and marginal functions in job announcements and position descriptions.

- Florida reported that, as part of ADA training at several state agencies, managers and supervisors are directed to designate those job functions considered “essential” in job descriptions and to prepare job descriptions prior to announcement of, and recruiting for, a position.
- Kansas agencies develop job descriptions that list the essential and marginal functions of a position, including the percent of time spent performing a specific function. The process of identifying whether a function is essential or marginal helps to refine job announcements.
- Utah’s Department of Human Resource Management has issued a detailed *Manual on Job & Position Analysis* (March 1, 2003) to facilitate compliance with the ADA requirements. Specifically, the manual is intended to help supervisors and managers develop job descriptions, compare job activities for the classification process, develop interview questions and examination tools, design selection devices for entry and/or promotion, and determine essential and marginal functions of a position for purposes of determining whether reasonable accommodation can be made. Utah reports that use of this guide to identify the essential functions of the job will help avoid disability discrimination in state employment by promoting correct determinations of when an individual is “qualified” for a position (i.e. can perform the essential functions with or without accommodation). The manual also contains information regarding ADA rules on reasonable accommodation as well as disability-related inquiries and medical examinations as they relate to the hiring process.

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<sup>6</sup>The ADA considers an individual with a disability “qualified” if he or she can perform a job’s “essential functions” (or fundamental duties) with or without reasonable accommodation. See 42 U.S.C. § 12111(8); 29 C.F.R. § 1630.2(m).

## 2. *Availability of Reasonable Accommodations*

Most of the states we surveyed take some measures to make potential applicants with disabilities aware of the availability of reasonable accommodations for the application process. For example:

- Florida's employment application states at the top of the form that applicants can notify an agency's hiring authority to request accommodations to participate in the employment process.
- The front page of Kansas' employment application clearly announces the state's obligation to provide reasonable accommodations to applicants and gives a telephone number for requesting accommodation. Individual agencies may customize their own applications, and these also prominently display a notice about requesting accommodation. Some applications, such as the one used by the Kansas Judicial Branch, have a place for the agency to indicate a contact person, a phone number, and a TDD number.
- Agencies operating under the Maryland Department of Budget and Management provide all job applicants who take employment tests with information about how to request accommodations for the tests. The Maryland Department of Transportation, among other Maryland state agencies, includes in all recruitment vacancy announcements a notification that accommodations are provided for persons with disabilities, as well as the Maryland Relay Service and TTY telephone numbers for hearing-impaired applicants using such services.
- The Missouri State Public Defender informs applicants that if they need assistance with "any phase of the application process" they should notify the Human Resources Director. A similar announcement appears on the Department of Economic Development's website, along with an e-mail address (which appears on the site as a live link) and a phone number for the contact person. On the state Department of Transportation job application page, applicants with "special needs addressed by the Americans with Disabilities Act" are instructed to call their local DOT office or the main office.
- The front page of New Hampshire's employment application declares that discrimination based on several characteristics, including "physical or mental disability," is strictly prohibited. The application informs individuals that it is available in modified formats for persons with disabilities, and that special testing arrangements can be made on request to the Division of Personnel's Examinations Section.

- The promotional materials for “Utah Job Match,” the state’s online application system for state jobs, as well as the homepage of the system itself, <http://www.statejobs.utah.gov>, contain a very prominently displayed message advising in part that, “[t]he State provides reasonable accommodations to the known disabilities of individuals with disabilities in compliance with the ADA.” The message also provides the voice and TTY phone numbers to call in order to request accommodation.

## C. Interviews

The interview process is an applicant’s opportunity to convince the employer that he or she is the best qualified person for the job. The ADA seeks to ensure that this is as true for people with disabilities as for all other applicants. The law requires that reasonable accommodations be made for the application and interview process,<sup>7</sup> such as conducting the interview somewhere that is accessible to a person in a wheelchair or providing a sign language interpreter for someone who is deaf. The ADA also seeks to ensure that applicants with disabilities are evaluated solely on the basis of their qualifications. Consequently, the law prohibits employers from asking about an applicant’s disability before a job offer has been made.<sup>8</sup>

These legal protections, however, are insufficient if individuals involved in the interview process are unaware of them. The following are some steps that states have taken to make their employment interview processes effective for people with disabilities.

- Florida’s Agency for Health Care Administration requires that all managers and supervisors receive ADA training that includes specific information about how to prepare job descriptions and conduct job interviews of applicants with disabilities. The Administration requires that all personnel be sensitized to issues that might arise during the application process. Thus, receptionists who work for the Administration are trained to be aware of communication and physical access issues that might arise if they come into contact with job applicants who have disabilities.
- Florida’s Department of Transportation requires that hiring managers and supervisors, as well as interview panel members, receive ADA training addressing interviewing and development of position qualifications (i.e., knowledge, skills, and abilities required for specific positions). Florida’s Department of State reported that it includes information about the ADA as part of its general hiring procedures.

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<sup>7</sup>See 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. Part 1630, app. § 1630.2(o).

<sup>8</sup>See 42 U.S.C. § 12112(d); 29 C.F.R. § 1630.13.

- Kansas requires that agency personnel involved in recruitment and selection be given training on the ADA's requirements regarding pre- and post-offer disability-related inquiries.
- In its Structured Interview Guidelines, the Maryland Aviation Administration includes a section that specifically discusses individuals with disabilities and the interview process. Among other things, the Guidelines:
  - remind managers and supervisors that they may need to modify the "standard" interview process as an accommodation for applicants with disabilities;
  - instruct human resources personnel to ask all applicants whether they will need reasonable accommodations for the application process at the time an interview is scheduled;
  - remind hiring officials that individuals with disabilities may not be excluded from jobs because they cannot perform marginal functions; and
  - offer examples of common accommodations that might be requested as part of the application and interview process.
- As part of its training on interviewing techniques, New Hampshire includes a section on the federal employment discrimination laws. This includes highlighting certain ADA issues, such as the need to ensure that notices about these laws be accessible to persons with disabilities affecting vision and reading.
- Vermont provides hiring officials and personnel officers with a reference guide, *People with Disabilities, Employment and the Workplace*, that includes information on the ADA, interviewing techniques and etiquette, suggestions on interacting with individuals with specific disabilities, a discussion of reasonable accommodation, and resources. Most of this information is also posted on the Vermont Department of Human Resources' website, <http://www.vermontpersonnel.org>.
- The University of Washington and the State of Vermont provide hiring officials with contact information for individuals and agencies in the state that can assist with issues concerning accommodations for the application and interview process. The University of Washington's *Selection and Hiring Tools Reference* also informs hiring officials about the need to make reasonable accommodations during the interview process and includes a section

discussing interviewing courtesies for job applicants with specific kinds of disabilities.

#### D. Mentoring

Mentoring programs offer students with disabilities information about employment opportunities and access to positive role models. The American Association of People with Disabilities and the U.S. Department of Labor's Office of Disability Employment Policy co-sponsor National Disability Mentoring Day every October, as part of National Disability Employment Awareness Month. In 2001, Kansas replicated this effort at the state level, and Vermont and Maryland did so in 2003. Following are descriptions of how Maryland and Vermont have used Disability Mentoring Day specifically as an opportunity to encourage individuals with disabilities to work for the state.

- In Maryland, participants in Disability Mentoring Day are recruited from the state Division of Rehabilitation Services, the state Workforce and Technology Center, and field offices in the Baltimore metropolitan area and assigned for the day based on each individual's training area and/or career interest. In addition to accompanying their assigned mentor in workday activities, all participants attend two informational workshops, entitled "Applying for State Employment" and "Taking State Examinations."
- Vermont's Disability Mentoring Day is intended to inspire a year-round effort to promote mentoring opportunities for individuals with disabilities and enables job seekers with disabilities to spend time visiting a business or government agency that matches their interests. State employees provide one-on-one mentoring and job shadowing to job seekers to help them evaluate personal goals, target career skills for improvement, explore possible career paths, and perhaps develop lasting mentor relationships.

For more information about states' participation in National Disability Mentoring Day, see Section IV.E, below.

## PART II: REASONABLE ACCOMMODATION

### A. Reasonable Accommodation Procedures

The ADA requires covered employers to provide reasonable accommodations to the known physical and mental limitations of qualified individuals with disabilities. One way that an employer can promote compliance with this obligation is to have in place procedures that clearly define the responsibilities of everyone involved in the reasonable accommodation process and that enable tracking and prompt resolution of accommodation requests. The following subsections detail various ways in which the subject states ensure that requests for reasonable accommodations are handled appropriately.

#### 1. Reasonable Accommodation Procedures

Our survey revealed essentially four models used to promote prompt processing of reasonable accommodation requests. This report does not endorse a particular model. The choice of how to provide a reasonable accommodation depends on such factors as the size of a state's workforce, the structure of its personnel system, and the familiarity of the individuals involved in the accommodation process with their legal obligations.

- *Statewide Written Policy and Procedures:* Vermont has developed a statewide Reasonable Accommodation Policy with attending procedures which carefully outline the reasonable accommodation request and appeal process. It requires that a copy of the policy and procedures be provided to all newly-hired state employees. In addition, this information is posted on the Vermont Department of Human Resources' website, <http://www.vermontpersonnel.org>, under the "Workforce Equity and Diversity" section.
- *Agency Written Procedures Subject to Review by the State:* As early as 1993, the Governor of Washington issued an Executive Order requiring all agencies or institutions with fifty or more employees to develop written reasonable accommodation procedures. Each agency and institution submitted its procedures to the Governor's Affirmative Action Policy Committee for review and approval.
- *Agency Discretion to Adopt Procedures; No Review by the State:* Florida and Kansas employ this model.
  - For example, the Florida Department of Children and Families' reasonable accommodation procedures empower supervisors to provide the accommodation requested or one that is equally effective, but require them to refer the request to the human resources department if they believe the requested accommodation would change the nature of the employment. These procedures also require the

human resources offices to notify applicants and employees in writing about the action taken on their request.

- Many Kansas agencies have incorporated procedures into their “reasonable accommodation forms.” Managers are reminded of the steps they must take as part of the reasonable accommodation process and who to contact for assistance. For example, the Kansas Department of Social and Rehabilitation Services requires that managers identify the specific limitations resulting from a disability that require accommodation. The form also provides an example. In this way, the form helps to ensure that managers ask questions if the precise nature of the limitation is unclear.
- *Training and Centralized Control of Accommodation Decisions Without Specific Written Procedures:* The Utah Department of Human Services (DHS) chose to use a highly centralized system wherein management is directed to contact the ADA Coordinator in the DHS Human Resources office immediately regarding any and all accommodation requests. The ADA Coordinator works with the employee to determine what accommodation is needed, and works with management to implement any accommodation granted. The Utah DHS uses this system instead of providing detailed reasonable accommodation procedures to managers and supervisors. DHS reports that it believes this more centralized approach fosters confidentiality, facilitates agency-wide consistency, and minimizes the possibility of imposing inappropriate discipline for “disability-based” conduct.

## 2. Timelines

The ADA does not prescribe a specific time frame within which reasonable accommodations must be provided; however, accommodations must be provided without undue delay. The amount of time necessary to provide an accommodation may depend on factors such as the nature of the accommodation, the complexity of the decision-making process (e.g., whether a disability is obvious or must be determined by reviewing medical documentation), and the difficulty of providing the accommodation (e.g., whether it involves a simple modification of a policy or the acquisition of equipment).

Despite the various factors that may affect the length of time needed to provide an accommodation, the use of timelines in reasonable accommodation procedures emphasizes the importance of prompt processing of accommodation requests, promotes accountability of those involved in the accommodation process (including the requester), and serves as a guide for assessing, and where necessary, revising procedures.

Two states – Florida and Kansas – reported to us that at least some of their agencies have reasonable accommodation procedures that include timelines. For example, the

Florida Department of Education requires division directors to notify the ADA Coordinator of all requests for reasonable accommodation within two business days. The Kansas Department of Social and Rehabilitation Services requires a decision within 30 calendar days of the date on which an accommodation was requested.

### 3. *Denial of Reasonable Accommodation*

Not every requested accommodation can or should be granted. However, an employer can minimize the chance that an accommodation will be inappropriately denied by: (1) establishing procedures that ensure the denial has been properly reviewed and can be justified; and/or (2) providing employees with an opportunity to have an initial denial reviewed.

- Florida's Department of State's Reasonable Accommodation Record requires managers to explain, among other things, why an accommodation was not provided and requires that denials be submitted to the Department's Bureau of Human Resources prior to denying the accommodation. This helps ensure that denials are properly justified and all possible accommodations have been considered.
- Utah ADA Coordinators are trained to notify the State Division of Risk Management *before denying* any request for accommodation so that it may review the proposed denial for legal sufficiency. To provide additional incentive to ADA Coordinators to complete this step, the Utah state administrative rules governing risk management expressly exclude liability coverage for any covered entity (e.g. all school districts, all state colleges and universities, and all state agencies) on any failure to provide accommodation claim under the ADA or Section 504 of the Rehabilitation Act unless the covered entity has: (1) notified Risk Management of its preliminary intention not to provide the requested accommodation, and (2) allowed Risk Management a reasonable opportunity to consult with the covered entity before denying the requested accommodation.
- Vermont has created a Reasonable Accommodation Committee (RAC), consisting of six members from various state departments and agencies, to review department or agency requests for reasonable accommodation and provide an "advisory opinion" as to whether an accommodation should be granted. Any employee who is dissatisfied with a department's or agency's response to a reasonable accommodation request may file an appeal with the RAC. The RAC conducts a review to analyze a job's essential functions, reviews medical documentation and the individual's suggested accommodation(s), determines whether a requested accommodation would pose an undue hardship, and investigates other possible accommodations.

- The statewide policy in Washington requires an agency to provide evidence supporting its decision to deny a reasonable accommodation (e.g., evidence that shows why an accommodation would result in undue hardship). A denial of an accommodation must be signed by the head of the employing agency or his/her designee. An agency that wants to deny an accommodation for reasons related to cost should consider whether resources are available from other sources within the state government. (See Part II.A.4, below.)

#### 4. *Documenting and Tracking Requests for Reasonable Accommodation*

Documenting and tracking information about reasonable accommodation requests can help employers evaluate their performance in responding to them and implement measures to improve performance where necessary. Among other things, documenting and tracking may enable a state agency to determine how long it takes to respond to requests for different types of reasonable accommodations; whether there are particular types of reasonable accommodations that the employer has been unable to provide; whether there are agency components that have not granted requests for reasonable accommodations; and the reasons for denials. Where, for example, there have been repeated delays in the processing of reasonable accommodation requests, an agency can investigate the reasons for the problem and take steps necessary to correct it.

It may be helpful to document the request for accommodation and the steps taken in response to the request.

- Although requests for reasonable accommodation do not have to be made in writing, agencies in two states – Florida and Washington – use forms to ensure accuracy in handling a request. Florida’s Department of Transportation’s form prominently includes the toll-free phone and TTY number for the Job Accommodation Network (JAN), <http://www.jan.wvu.edu> (800-526-7234), and requires managers to indicate whether they contacted JAN. This reminds managers of important resources available to help with the accommodation process.
- The New Hampshire Department of Education, when providing reasonable accommodation, provides a letter from the Human Resources Administrator that sets out every element of the accommodation. With respect to more complex accommodations in particular, such a letter makes clear to both the employee and employer what is and is not being provided, the employer’s expectations for satisfactory completion of work, and a basis on which the effectiveness of the accommodation can be evaluated. A sample letter from New Hampshire granting a request to work at home as a reasonable accommodation illustrates the kind of specific information included. Among other things, the letter notes: (1) the reasons that working at home was found to be an appropriate accommodation, including alternatives that were

considered; (2) the number of hours the employee must work each day; (3) the equipment that the agency and employee will be responsible for providing; (4) a requirement that the employee be available by telephone during working hours; and (5) the extent to which the employee must come to the worksite or a location other than the home to meet with agency personnel.

- The Utah Department of Human Services, Office of Human Resources (DHS-HR) keeps logs of every approval of an accommodation request as well as copies of all denial letters. This information is reported to the Director of the DHS HR. In addition, Utah ADA Coordinators are trained to track accommodation request information by preparing the following, based in part on documents they receive during their training: (1) a letter to the requestor if it is determined he or she is not an individual with a disability; (2) a memorandum to the requestor's manager if it is determined that even though the requestor is not an individual with a disability some action should be taken; (3) a memorandum to the requestor's manager if it is determined that the requestor is an individual with a disability necessitating accommodation; and (4) a letter to the requestor if it is determined that no accommodation is possible within his or her current position, or no vacant position exists for which he or she is qualified with respect to reassignment.

Two states reported on measures undertaken to identify the extent to which accommodations were granted or denied.

- In fiscal year 2001, various Maryland agencies began tracking annual statistical information regarding the provision of reasonable accommodations to state government applicants and employees. By fiscal year 2003, nineteen state agencies participated in tracking and reporting this data, which was included in the annual "Statewide Equal Employment Opportunity Report." The data collected reflects the number of accommodation requests received from applicants and from employees, how many of those requests were granted and denied, and how many remain pending.
- In 2003, the Vermont Department of Personnel and the Division of Vocational Rehabilitation commissioned the University of Vermont's Center for Rural Studies to conduct a survey of classified state employees concerning disability and diversity issues in the workplace. The survey was mailed using stratified, random sampling, and resulted in a response rate of 45%, for an overall sample size of 1,443. Among other things, the survey revealed that:
  - Approximately 17% of state employee respondents identified themselves as having a disability within the meaning of the ADA, closely matching 2000 Census results for the general population in Vermont.

- Of those self-identified disabled state employees, 45% said that their disability had started before they came to work for the state, and 68% said that their primary disabling condition was physical.
- More than half of the 38% who indicated that they had requested accommodations responded that they had no problems receiving them, and of the few who encountered problems, 25% received accommodations other than the ones they had requested. Only 3% ever felt that they had been discriminated against in the workplace based on their disability, either by other state employees or by the public.

##### 5. *Centralized Funding for the Cost of Reasonable Accommodations*

The ADA does not require a statewide source for funding reasonable accommodations. However, a centralized funding source may promote the hiring of people with disabilities by removing disincentives that result from concerns that the cost of reasonable accommodations will be charged against the budgets of individual offices, departments, or agencies. Such a funding scheme makes sense, moreover, because the ADA would likely require assessment of whether the cost of a particular accommodation would pose an undue hardship in light of the resources available to an entire state agency or potentially to the state as a whole.

None of the states we surveyed appear to have a statewide mechanism for funding reasonable accommodations. However, two states – Utah and Washington – reported promising practices that allow individual state agencies to draw upon resources in addition to their own budgets to pay for at least some accommodations.

- While the Utah Division of Risk Management expects each state agency to pay for its own costs of providing accommodations to applicants and employees, the Division periodically helps defray some or all of these costs on request from individual agencies that can demonstrate they do not have the resources to cover the costs of a particular accommodation. The Division has used this system to help fund technological equipment purchases as well as structural modifications to facilities.
- Established by the legislature in 1987, Washington’s Department of Personnel’s Disability Accommodation Revolving Fund is used to make unanticipated worksite modifications for which an agency or institution does not have the financial resources. The funds can be disbursed within two weeks after they are requested.

## 6. *Ensuring the Confidentiality of Medical Information*

The ADA requires that all medical information obtained from an applicant or employee be kept separate from personnel files and treated as a confidential medical record. Disclosures of confidential medical information are permitted only in very limited circumstances, including to supervisors and managers in connection with work restrictions or necessary accommodations.<sup>9</sup>

The effectiveness of an employer's reasonable accommodation procedures depend to a great extent on the ability to ensure individuals with disabilities that confidentiality of their medical information will be maintained. Applicants or employees (particularly those with hidden disabilities) may be more likely to ask for an accommodation if they know that information they disclose to support their requests will not be shared with co-workers or with other individuals who do not need the information.

Utah reported promising practices to ensure compliance with the ADA's confidentiality requirements:

- The Utah state government has developed a warning notice that is included on various documents subject to the ADA confidentiality provision, such as memoranda from the ADA Coordinator to a supervisor advising that an accommodation has been granted and should be provided. The notice states: "This memorandum must not be placed in a personnel file or co-mingled with personnel records. It is subject to the protections articulated in the Americans with Disabilities Act . . . ."
- Additionally, Utah's statewide Department of Human Resource Management Rule 2-5, "Records," specifically provides that all state agencies shall maintain a separate file from the personnel file if the agency obtains any confidential employee medical information, including "all written and orally obtained information pertaining to medical issues, including Family and Medical Leave Act forms, medical and dental enrollment forms which contain health-related information, health statements, applications for additional life insurance, fitness for duty evaluations, drug testing results and any other medical information." Employees who violate these confidentiality requirements are subject to state disciplinary procedures.

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<sup>9</sup>See 42 U.S.C. § 12112(d)(3)(B), (C), and (4)(C); 29 C.F.R. § 1630.14(b)(1), (c)(1), and (d)(1).

## B. Innovative Accommodation Solutions

The following section discusses the ways that some states may exceed the ADA's reasonable accommodation obligation, as well as numerous methods for promoting the provision of accommodations required by the law.

### 1. *Measures that Exceed ADA Obligations*

Although state employers are required to provide reasonable accommodations only to qualified individuals with disabilities, taking measures that go beyond this legal obligation may make sense under certain circumstances. For example, providing an accommodation so that someone with a temporary, non-chronic condition of short duration can continue working may enable an employer to benefit from the employee's continued productivity on the job and save the employer costs (such as workers' compensation) of having the employee out of work. Temporary accommodations may enable a worker who has made a request for reasonable accommodation under the ADA to continue working while a final determination of whether to grant or deny the accommodation is being made. A state might even determine that accommodating individuals on a longer-term basis who do not technically meet the ADA's definition of "disability" is preferable to losing a valuable worker.

- Some Kansas state agencies have chosen to go beyond the requirements of the ADA reasonable accommodation obligation. For example, the Kansas Department of Social and Rehabilitation Services' Human Resource Policy states that the agency is committed to providing accommodations to individuals with temporary or short-term disabilities which are not covered by the ADA. The agency defines "temporary" as lasting no more than 90 days.
- Missouri's Office of Administration (OA) has implemented an Early Return to Work program. The goal of the program is to facilitate the return to work of employees who are injured or contract an occupational disease in the course and scope of employment with the Office.<sup>10</sup> Under the terms of the program as set forth in an OA policy statement, employees will be placed in "temporary modified duty assignments during the course of the recovery to perform duties consistent with temporary limitations." The program states that modified assignments will last no more than three months, although longer assignments are possible in exceptional circumstances. Employees participating in the program retain their current position and job classification, continue to receive their current salary and benefits, and maintain their seniority, layoff, and other similar rights.

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<sup>10</sup>Reducing workers' compensation costs also is listed as a goal of the program.

- Washington's Department of Personnel's website has "Diversity Chat," a series of articles addressing reasonable accommodation issues under the ADA and showing how Washington state law exceeds federal requirements.

2. *Accommodation Solutions Related to Assistive Technology*

- Missouri's Office of Administration encompasses the Missouri Assistive Technology (MAT) program. The program offers assistance to state agencies that have hired or may consider hiring disabled individuals. Specifically, the MAT operates the Equipment Technology Consortium a short-term assistive technology equipment loan program for Missouri state agencies. Under the program, agencies can borrow equipment on behalf of individuals with disabilities to try out the equipment before purchasing, for use during the time equipment is in repair, or for other short-term needs.
- In Washington, the Department of General Administration (GA) has established a central pool of assistive technology. Agencies and institutions may borrow equipment from the pool. To reserve equipment, such as assistive listening systems for people with hearing impairments, agencies simply call GA at least a week prior to the event.
- The Braille Access Center is a program set up by the Washington State Department of Corrections, Department of Printing and the Washington State School for the Blind that uses inmate labor to transcribe materials into Braille.
- A State Taping Center was developed at Central Washington University to provide all state agencies and institutions with the capacity to produce audio versions of print materials.

### **PART III: PROTECTING THE RIGHTS OF INDIVIDUALS WITH DISABILITIES ON THE JOB**

Employers must make sure that, once hired, individuals with disabilities have the tools they need to succeed and the same opportunities for advancement as other employees. In addition to practices specifically designed to provide opportunities for advancement, this part also considers how periodic training can work to prevent discrimination.

#### A. Activities That Specifically Promote the Retention and Advancement of Employees with Disabilities

The Maryland Aviation Administration specifically addresses in its bi-annual supervisory ADA training the issue of how to promote career development for individuals with disabilities. Using the publication "Career Development for Persons with Disabilities," produced in 2000 by the President's Committee on Employment of People with Disabilities<sup>11</sup> and available online at [www.dol.gov/odep/pubs/ek00career.htm](http://www.dol.gov/odep/pubs/ek00career.htm) as a resource, the training addresses topics such as:

- discussing career expectations with each employee;
- evaluating the employee's interests, talents, and skills, and developing appropriate goals;
- encouraging lateral movements, job rotations, and team assignments that will give employees problem-solving skills and leadership opportunities;
- facilitating networking by including individuals with disabilities in formal workgroups and informal employee gatherings;
- encouraging mentoring;
- ensuring training opportunities, and
- emphasizing an employee's responsibility for self-development.

#### B. Training

Most of the states we surveyed indicated that training on the ADA is provided for managers and supervisors either on a statewide or agency-wide basis. Section I.C, above, identifies some of the training states provide on the recruitment and hiring process. The

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<sup>11</sup>In 2001, the President's Committee on the Employment of People with Disabilities became part of the Department of Labor's Office of Disability Employment Policy.

following are a few examples of more comprehensive training specifically on issues concerning disability and employment.

- In Kansas, some state agencies have developed comprehensive training curricula for managers which emphasize practical approaches to dealing with ADA issues. Certain agencies also recognize the need for advanced training that focuses on specific issues. For example, the Kansas Department of Social and Rehabilitation Services has developed advanced ADA training addressing complex issues involving reasonable accommodation, essential functions, confidentiality, mental disabilities, and alcoholism and drug addiction. The training also provides an “Essential Function Flow Chart” to make it easier for managers to determine whether a specific function is essential.
- The Maryland Department of Transportation has produced a flyer, “ADA, MDOT, and You,” that is given to all new employees at orientation. The flyer explains ADA reasonable accommodation obligations and explains that the ADA prohibits interference, coercion, intimidation, or retaliation against individuals exercising their ADA rights. New hires are also provided with a detailed flyer explaining how to receive and make telephone calls using the Maryland Relay system.
- In 2001, the Maryland Department of Budget and Management sponsored an ADA “Train the Trainer” Conference, the purpose of which was to provide ADA training by state and federal ADA expert trainers that could then be replicated by the conference attendees on a large scale and an ongoing basis for managers and supervisors at their own state workforce locations. Approximately 275 state agency representatives, including ADA Coordinators, Fair Employment Practice Officers, Employee Assistance and Employee Relations Personnel, EEO Officers, Human Resources Managers, Recruitment and Examination Managers, and Training Officers attended. In addition to information about a wide range of ADA topics, the conference also included training on disability etiquette and sensitivity issues to raise consciousness about common missteps in interacting with individuals with disabilities.
- In 1997, the Maryland Department of Budget and Management issued a reference booklet, entitled *The Americans with Disabilities Act and Employment Guidelines*, to all ADA coordinators statewide. The booklet provides a concise overview of a variety of ADA statutory and regulatory terms.
- The Maryland Aviation Administration ADA training for supervisors includes distribution and discussion of the EEOC Technical Assistance Manual on Title I of the ADA, as well as various Department of Labor publications, available at <http://www.dol.gov/odep/pubs/publicat.htm>, addressing how to prepare for and conduct an effective job interview consistent with the ADA, making

management decisions about accommodations, and examples of accommodation problems and solutions.

- The Utah Department of Human Services provides periodic detailed training to ADA Coordinators statewide and training for supervisors. One of the most significant topics addressed in the training is the relationship between the ADA, the Family and Medical Leave Act, and workers' compensation law. Utah ADA Coordinators are also given formal training on tips and best practices, follow-up, and paperwork associated with handling requests for accommodations.
- Beginning in 1992, the Governor of Washington sponsored several full-day training sessions on the ADA and provided operating funds for a team of ADA trainers that conducted customized training for small to large groups throughout state government. The Governor's ADA Coordinator, Governor's Committee on Disability Issues and Employment and the Attorney General's Office jointly developed and presented a series of nine, half-day training sessions on such topics as: reasonable accommodation and undue hardship; essential functions; direct threat; medical examinations and disability related inquiries; ADA, worker's compensation, and the Family and Medical Leave Act; disciplinary actions and terminations under the ADA; and accommodating people with psychiatric disabilities. This series was repeated three times from 1994 through 2000, with an average attendance for each training session of more than 100 state employees, predominantly supervisors or human resource specialists.

Some training on disability has been incorporated into training on diversity issues more generally.

- Florida's Agency for Health Care reported that its cultural diversity training (required for all supervisors) has been expanded to include disability and explores issues about workers' potential discomfort relating to people with disabilities.
- Information about individuals with disabilities is included as part of diversity training initiated by Vermont Governor Jim Douglas. The Governor offered this training first to his Extended Cabinet and then throughout the leadership team within state government. The program reinforces the value of an engaged, diverse workforce and sets standards of accountability.

## **PART IV: OTHER BEST PRACTICES THAT PROMOTE THE EMPLOYMENT OF PEOPLE WITH DISABILITIES**

All of the states we surveyed undertake a number of practices, in addition to traditional vocational rehabilitation services, to promote the employment of people with disabilities in both the public and private sectors. The following sections describe some of the most significant practices, including legislative and executive action, internships, and public/private partnerships.

### A. Legislative and Executive Actions

- During its 2004 session, the Florida legislature created a new agency within the state called the Agency for Persons with Disabilities. The agency's mission is devoted entirely to helping persons with developmental disabilities enhance their quality of living through, among other things, improved housing, employment, and transportation opportunities. The agency will also focus on ways to use public funds more efficiently and effectively.
- Under Executive Order 04-62, Florida created a Blue Ribbon Task Force on Inclusive Community Living, Transition, and Employment of Persons with Developmental Disabilities. The Task Force is charged with coordinating the provision of transition services statewide for students with developmental disabilities as they leave school and attempt to gain employment. The Task Force also wants to expand and improve competitive, integrated employment opportunities for individuals with developmental disabilities. On December 15, 2004, the Task Force submitted a report to the Governor on achieving these objectives, including 86 recommendations for legislative or regulatory action, and a semi-annual progress report on implementing these recommendations was submitted on July 15, 2005. The reports and information about Task Force activities are available at <http://apd.myflorida.com/>.
- Also by executive order, Florida established the Americans with Disabilities Act Working Group to provide information and technical assistance to state agencies and people with disabilities on the requirements of the ADA, including its employment provisions. The Working Group provides individualized assistance to state agencies seeking practical information on how to comply with the ADA's employment provisions. Applicants for state jobs and state employees also can use the Working Group's services to clarify their rights and responsibilities under the ADA. A subsequent executive order added a clearinghouse to the Working Group's mandate, the purpose of which is to make information on disability resources and services more easily obtainable. The clearinghouse also provides information on job opportunities, including jobs with state agencies.

- State legislation enacted in Maryland elevated the former Governor's Office for Individuals with Disabilities to cabinet-level status. Established on July 1, 2004, the Department is charged with overseeing the implementation of funding and services for persons with disabilities and facilitating state compliance with federal requirements such as the ADA.
- The New Mexico State Use Act opens up state service contracts to persons with disabilities, including contracts to provide service to the state as business owners and entrepreneurs. The State Use Act also enhances the ability of the Division of Vocational Rehabilitation and the Commission for the Blind to purchase products and services that are needed for individuals with disabilities receiving vocational rehabilitation services.
- In Vermont, the Governor's Workforce Equity and Diversity Council (GWEDC) was created by Executive Order to lead the state's efforts in the areas of affirmative action and diversity by acting as a consultant and advisor to the Commissioner of Human Resources and the Secretary of Administration. The mission of the GWEDC calls for a greater focus on supporting a workplace culture that promotes equitable treatment for all and the value of workplace diversity. The Council, consisting of representatives from designated state entities, the state employees union, and ten members appointed by the Governor, includes strong representation from the disability community.
- The Governor of Washington established the Washington State Governor's Task Force on Employment of Adults with disabilities, which brings together business leaders, legislators, program and policy staff, and disability community advocates to create a coordinated and aggressive state policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general public. Outcomes achieved by the Task Force include:
  - creation of a clearinghouse that provides employers with a single point of contact for recruiting applicants who have disabilities and for technical assistance;
  - enactment of a Medicaid buy-in for workers with disabilities with a high income cap (450% of federal poverty level, in gross income) and no asset test;
  - creation of broad-based partnerships and continuing coordination around such issues as implementation of the Ticket-to-Work program and improving access, services and outcomes for people with disabilities under the Workforce Investment Act; and

- a Careers Day program, developed and funded by Microsoft, for high school students with disabilities, their teachers, and parents.

## B. Access to Information and Assistive Technology

The efforts that several states have undertaken to provide individuals with disabilities access to information communicated on state agency websites, and to provide access to assistive technology are noteworthy. Three states – Florida, Kansas, and New Hampshire – have taken significant steps to ensure a level of accessibility of state websites that meets or exceeds the level of accessibility required of the federal government under Section 508 of the Rehabilitation Act. Section 508 requires that all electronic and information technology purchased, maintained, or used by the federal government be “readily accessible to and usable by individuals with disabilities” unless this would cause “undue hardship.” This commitment will assist applicants with disabilities in using websites to learn about and apply for jobs with state agencies, current state employees with disabilities who use assistive technology to do their jobs, and individuals with disabilities looking for resources related to employment in both the public and private sectors. The Brown University Center for Public Policy’s annual study of state and federal e-government found that Kansas has the second highest percentage of accessible web sites for people with disabilities, and that New Hampshire ranks fourth.

## C. Internship Programs

The Maryland Department of Budget and Management sponsored the Governor’s QUEST Internship Program for Persons with Disabilities. Initiated in 2000, the program provides three-month internships in state government, with the possibility of an extension. QUEST, which stands for “Quality, Understanding, Excellence, Success, and Training,” is a training/learning experience for customers of the state’s Department of Rehabilitation Services, designed to enhance the participants’ knowledge, skills, and abilities while working at a state agency. The internship program has included positions such as Communications and Marketing Trainee, Activity Therapy Aide, Graphics Assistant, Dietary Worker, Fiscal Accounts Clerk, Medicaid Program Associate, Maintenance Assistance, Office Clerk, Junior Accountant, Computer Information Services Specialist, Parole & Probation Caseload Aide, Residential Program Advisor, Buyer’s Clerk, Real Estate Administrative Assistant, Publications and Community Relations Trainee, Payroll Clerk, and Personnel Associate.

QUEST interns receive a \$3,000 stipend. While there is no implied offer of employment to participants beyond the volunteer period, a number of past interns have applied for and been placed into positions based on the experience gained in their internship. The state reports that approximately 50% of all past QUEST interns are presently employed in their target job areas in either private or public sector positions.

#### D. Public/Private Partnerships

Three states – Florida, Missouri, and Vermont – identified partnerships they have with business and/or community organizations to promote the employment of individuals with disabilities.

- Florida has established the Able Trust, also known as the Florida Governor’s Alliance for the Employment of Citizens with Disabilities, a 501(c)(3) public-private partnership foundation. Since its establishment, the Able Trust has awarded over \$16 million to individuals with disabilities and nonprofit agencies, and helped approximately 2,000 individuals with disabilities annually to enter the workforce. Among the projects supported by the Trust are: on-the-job coaching, supported employment, job skills-training, job development, employer outreach, and ADA facility compliance.
- The Missouri Governor’s Council on Disability has worked with several large employers in encouraging mentoring and job shadowing by persons with disabilities in private sector jobs. The Council also has worked with other state agencies to hold several “Disability Resource Expos,” which brought state rehabilitation agencies, schools, providers of medical equipment and assistive technology, and employers together so that future employees and employers could share information and make an employment match.
- The Vermont Governor’s Summit on Employment of People with Disabilities brings together key stakeholders (e.g., state departments, business leaders, and community organizations) to plan and deliver discussions on current issues relating to employing people with disabilities. Previous summits have addressed: key issues and concerns facing job seekers with disabilities; barriers to transportation; mental illness; and youth and transition to work.
- The Business Leadership Networks (BLN) in Florida and Vermont are dedicated to assisting businesses and organizations in the recruitment, hiring, training and retention of people with disabilities and in diversifying their customer base to include people with disabilities. BLNs provide businesses with a means of communicating with one another about best practices and successes that they have had in hiring qualified individuals with disabilities. Further information on the Florida BLN is available at <http://www.myabilities.org>.

#### E. Other State Actions That Promote the Employment of People with Disabilities

- The Florida Freedom Initiative (FFI) is a demonstration project that aims to reduce disincentives to work by allowing recipients of Medicaid and Supplemental Security Income (SSI) to work and save money while continuing to receive vital benefits. Florida has received a waiver from the Social Security

Administration allowing FFI participants to earn significantly more than the law generally permits before their benefits will be reduced. Additionally, FFI participants may save up to \$10,000 annually to purchase, lease, or modify a home; to purchase, lease or maintain a car; to obtain additional education; or to purchase or expand a small business (called a “microenterprise”) without losing benefits. More information about the FFI is available at <http://apd.myflorida.com/ffi>.

- Florida adopted a five-year initiative in 2003 to expand the state’s Developmental Disabilities Program’s emphasis on employment. The Program will divert 25% of people receiving Adult Day Training Services into competitive employment opportunities. The initiative seeks to move away from an emphasis on “prevocational training,” which in practice delays or defers employment, in favor of learning through on-the-job training and workplace experience.
- Florida’s Able Trust (see Section IV.D, above) sponsors twenty High School/High Tech programs throughout the state with plans to implement ten new sites by the end of 2005. Through the High School/High Tech program, students are encouraged to set their sites on college and a career in the fields of science, technology, engineering or math. Students with disabilities enrolled in High School/High Tech sites across Florida take field trips to science and technology-related businesses and attractions and receive on-the-job experiences through job shadowing and internships. More than 90 percent of Florida High School/High Tech graduates have enrolled in post-secondary education or training.
- Florida served as the national kickoff site for Disability Mentoring Day (DMD) 2005, on October 19. Governor Jeb Bush served as the Florida DMD Honorary Chair. Across the state, over one-hundred educators, service providers and state agency representatives volunteered as Community Liaisons to match students and job seekers with disabilities with business mentors for on-site job shadowing activities. Nearly 1,000 Florida students with disabilities were mentored by business professionals, elected officials and corporate executives in nearly thirty cities across the state.
- Since 1999, the Maryland Department of Budget and Management and Department of Disability (formerly the Governor’s Office of Individuals with Disabilities) have co-sponsored the Disability Employment Workgroup. Its stated purpose is to develop innovative ways to increase employment opportunities for individuals with disabilities within state government, and to ensure low-cost access to high-quality, current information regarding the ADA for state employees.

- Maryland's "WorkTech" program provides public and private sector employers with free information, consulting, and training about job accommodation strategies and the employability of individuals with disabilities. WorkTech services include a Universal Workplace demonstration site and statewide information and consulting services.
- The Missouri Governor's Council on Disability (GCD) provides training on request for both public and private employers. In 2004, the Council provided training to the Missouri Office of Administration, the main personnel department in the state, as well as to the Department of Labor and Industrial Relations. The GCD training generally covers the functions of the Council itself and the assistance it can provide in addressing the needs of persons with disabilities. The Council also has provided "sensitivity" training as well as training on issues associated with employment of persons with mental disabilities.
- The Missouri Commission on Human Rights, the state agency charged with enforcing the state's fair employment practices law, has developed numerous fact sheets on ADA compliance and posted them on its website. The Commission also provides ADA training to public and private employers, including training on "disability awareness."
- In an effort to increase compliance with the ADA, New Mexico has created a Consortium of ADA State Agency Coordinators. Led by the New Mexico Commission on Disability, the Consortium offers ADA Coordinators an opportunity to meet periodically to share information and correspond more regularly on an e-mail list. The state believes the Consortium will significantly increase the ADA Coordinators' knowledge, status, and effectiveness.
- New Mexico has developed an innovative Medicaid Buy-In program (Medicaid Category 043) that enables persons who have a disability and who are working to receive Medicaid despite earning levels that would otherwise make them ineligible. Also, persons who are on the Medicare 24-month waiting period and who lost Supplemental Security Income due to the start of Social Security Disability Insurance benefits can receive Medicaid so that they can become sufficiently medically stabilized to participate in a vocational rehabilitation program and have a greater chance of returning to work.
- Vermont has partnered with the Social Security Administration in the Social Security Disability 1 for 2 pilot project. Under the project SSDI beneficiaries earning more than the threshold amount for SSDI eligibility will not lose their entire SSDI benefit. Rather the benefit will be reduced \$1 for every \$2 the individual earns over the threshold, thus reducing disincentives to working.

- Maryland and Vermont received grants from the U.S. Department of Labor to establish “Disability Program Navigators.” This pilot program is operated out of the states’ Career Resource (“One Stop”) Centers. The program is designed to assist people with disabilities who are seeking training in job skills and who need help in “navigating” the employment application process and to ensure that employers have access both to qualified candidates with disabilities and the disability-related information and resources they need. This program also provides information on employment support programs, such as the Social Security Administration’s Ticket-to-Work Program.
- Seven states have established Youth Leadership Forum (YLF) programs for high school students with disabilities. The YLF is a national program that has been replicated by more than 25 states. YLF programs in Florida, Kansas, Maryland, Missouri, Vermont, and Washington annually bring together thirty to forty high school juniors and seniors to participate in several days of activities designed to help them develop vocational goals, strengthen leadership skills, and learn from the experiences of other youth and adults with disabilities.

## **PART V: ISSUES FOR FURTHER EVALUATION BY STATES**

The following section details practices that we think may be inadvertent barriers to the hiring, retention, and advancement of qualified individuals with disabilities in state government jobs or lead to violations of the ADA. In many instances, the action necessary to remove a particular barrier will be obvious or may be suggested by some of the best practices outlined in Section I through IV of this report. This section also proposes some possible solutions to several of the potential barriers we have identified.

### A. Non-Discrimination and Equal Employment Opportunity Policies

- Some states or state agencies fail to post nondiscrimination policies prominently or have policies that fail to reference all applicable laws that affect individuals with disabilities (e.g., that mention section 504 of the Rehabilitation Act but not the ADA). States should ensure that managers, employees, and applicants are aware of all state and federal non-discrimination laws that apply to employment, including Title I of the ADA.
- Some equal employment opportunity and affirmative action policies fail to include disability. In other instances, affirmative action policies mention disability, but no specific efforts are being made to increase the representation of individuals with disabilities in the workforce, such as targeted outreach to organizations of or for individuals with disabilities.

### B. Reasonable Accommodation Policies

Our review of state personnel and reasonable accommodation policies disclosed the following misstatements or omissions concerning the obligation to provide reasonable accommodation, and statements that may be misapplied and result in the inappropriate denial of a reasonable accommodation.

- *Reasonable Accommodations for the Application Process*: States or state agencies sometimes failed to provide important information about reasonable accommodations related to the application process, including: (1) a prominently displayed statement that such accommodations are available; (2) instructions for what an individual with a disability must do to request a reasonable accommodation for the application process; and (3) contact information for applicants who need to request reasonable accommodations that does not include a TTY number.
- *Failure to Mention Accommodations Related to the "Benefits and Privileges of Employment"*: The ADA requires employers to provide reasonable accommodations that enable individuals with disabilities to enjoy the same benefits and privileges of employment that are available to other employees.

The benefits and privileges of employment include access to parts of an employer's facility that are available to all employees (e.g., cafeterias or break rooms), as well as participation in employer-sponsored training, services (e.g., Employee Assistance Programs), or social functions. States may want to make it clear that their policies with respect to reasonable accommodations include providing accommodations related to the benefits and privileges of employment to ensure that individuals with disabilities will request such accommodations if needed and to avoid improper denials.

- *Limiting Accommodations to Individuals with "Permanent" Conditions:* Reasonable accommodation policies should not limit the availability of reasonable accommodations to individuals with "permanent" conditions. Under the ADA, impairments do not have to be permanent; they can also be long-term, potentially long-term, or of unknown or unknowable duration.
- *Requiring That Reasonable Accommodations Benefit "Other Employees":* A reasonable accommodation policy should not require an individual with a disability to justify an accommodation request by providing information about how the accommodation will benefit other employees and should not instruct managers or supervisors to seek such information. Although a reasonable accommodation may benefit someone other than the individual with a disability who is seeking it, this fact is not legally relevant when assessing whether an accommodation must be provided.
- *Prohibitions on Working at Home:* Working at home is a reasonable accommodation under the ADA. Policies that generally prohibit telework, emphasize liability concerns related to allowing employees to work from home, encourage employees to use leave instead of working at home, and allow telework only in extenuating circumstances may result in improper denials of telework as a reasonable accommodation. A state employer may retain a general policy against telework, but might specifically state in the policy that telework is available as a reasonable accommodation under the ADA, absent undue hardship.
- *Improper Limits on Reassignment as a Reasonable Accommodation:* Some state or agency policies limit the reassignment search to the employee's current agency or to the agencies within his current department, rather than providing for statewide reassignment.
- *Limits on Resources Available to Pay for Reasonable Accommodations:* Some state agencies require that the cost of a reasonable accommodation be paid by the organizational unit where the employee is located or where the position is budgeted. This statement is legally inaccurate to the extent it ignores the fact that the determination of whether the accommodation would pose an undue

hardship will be made in light of the budget of the entire state agency and perhaps the state as a whole. As a practical matter, the statement may serve as a disincentive for a particular office or organizational unit within a larger agency to hire someone who requires a reasonable accommodation that will involve some cost.

## C. Training

Training that contains erroneous, misleading, or ambiguous information can lead agency managers to violate the ADA. States should ensure that training manuals and curricula are carefully checked for legal accuracy. Following are some of the legal inaccuracies we discovered during the course of our review.

### 1. *Training Related to the Hiring Process*

- An employer may ask an applicant with a known disability to describe or demonstrate how he or she would perform a job only when the employer has a reasonable belief that the person may have trouble performing a specific job function because of the disability. Training materials should clearly state this standard and should not state or suggest that an applicant's known disability is alone sufficient to justify an employer's request that the applicant describe or demonstrate job performance.
- It may be misleading to state that a job offer may be conditioned on passing a medical examination without also making it clear that the examination must wait until *after* a bona fide job offer has been extended.
- Stating that all post-offer medical examinations must be job-related and consistent with business necessity under the ADA is not accurate. While this may be true under some state laws, the ADA permits employers to conduct any type of medical examination they wish, as long as all individuals entering a certain job category are given the same examination. States should present any additional limitations on post-offer medical examinations as state requirements or best practices, and not as ADA requirements.

### 2. *Training on Reasonable Accommodation*

- Instructing supervisors or managers NOT to make long-term "modifications" to job duties, but only "temporary" modifications for "a short-term illness/injury" is legally inaccurate, as is the instruction that accommodations can be provided "only" for "permanent" substantially limiting impairments. Long-term modifications, such as elimination of a marginal function, may indeed be required as a reasonable accommodation if undue hardship cannot be shown. Furthermore, reasonable accommodation is required for more than short-term

illnesses or injuries, though an impairment need not be “permanent” to qualify as a disability under the ADA.

- Statements in some training for state ADA Coordinators that reasonable accommodations are not available to individuals who have a “record of” or are “regarded as” having a disability may not accurately reflect the law in the federal circuit where the state is located or may fail to take account of the fact that the issue is unresolved in some circuits.
- Managers should not be instructed to give a medical form to *all* employees requesting reasonable accommodation. An employer may request medical information to support an accommodation request *only* from those individuals whose disability and/or need for accommodation are *not obvious*.
- Some state training materials instruct ADA Coordinators and management that an employee seeking reassignment as an accommodation has the burden to notify the employer of any known vacant position for which he or she is qualified. The ADA generally assigns to the employer responsibility for identifying vacancies, while the individual with a disability is responsible for providing information that might aid the employer in its search, such as information about qualifications.

### 3. *Sovereign Immunity*

- Some states incorrectly train ADA Coordinators or management that the state cannot be sued for monetary damages. In fact, although the Supreme Court’s decision in *Univ. of Alabama v. Garrett*, 531 U.S. 356 (2001), limits the relief available in ADA employment discrimination suits brought by individuals against state employers to injunctive relief, the federal government may still bring suit against state employers under the ADA for monetary relief.

## CONCLUSION

We are encouraged by many of our findings concerning state best practices aimed at recruiting and hiring qualified individuals with disabilities. These practices include not only the establishment of some training and hiring programs specifically for individuals with disabilities, but more significantly, efforts to increase the number of qualified applicants with disabilities for jobs available to the general public. Ultimately, however, very limited data is available concerning the number of individuals with disabilities who applied or were hired for state jobs as a direct result of many of these measures.

Based on information reported by the states, it appears that individuals involved in the hiring process have access to more than adequate training on subjects such as interviewing people with disabilities and preparing job descriptions. The job announcements that we have examined do not describe jobs in a way that would inadvertently screen out qualified individuals with disabilities. In fact, many job announcements and job descriptions specifically reference the availability of reasonable accommodations for the application process and on the job.

The use of written procedures for providing reasonable accommodations, methods of documenting and tracking the disposition of requests, and the provision of appeal processes following denials of reasonable accommodations are also positive trends in some states. States that have not done so may wish to consider the adoption of specific timelines for the provision of reasonable accommodations and use of a centralized funding source for the provision of more costly accommodations. States might also examine whether it is possible to use data concerning the disposition of accommodation requests to revise aspects of their reasonable accommodation procedures.

With respect to ensuring that individuals with disabilities are treated fairly once they are on the job, the states we have surveyed appear to offer significant ongoing training on the ADA and disability issues for managers and supervisors. We are particularly encouraged that training on disability issues is increasingly becoming part of the states' diversity programs. However, we saw little evidence of mentoring programs or training opportunities specifically aimed at promoting the advancement of employees with disabilities after they are hired, or evidence that the states undertake any measures to determine the distribution of employees with disabilities among the various levels of the state government workforce.

Finally, the states we have surveyed have taken a significant number of steps aimed at increasing the employment of people with disabilities generally. We particularly commend states for those efforts initiated by legislative or executive action, as this sends a clear message "from the top" that the employment of people with disabilities is a state priority.

## APPENDIX A

State	Number of Employees	Personnel Structure for Job Seekers
Florida	130,000	Florida Department of Management Services develops state-wide hiring and employment policies, which provide minimum requirements that all state agencies must follow, although state agencies have some latitude to exceed these requirements.
Kansas	40,570	Each agency establishes its own policies, practices, and procedures, including policies related to reasonable accommodation, with assistance from the state's Division of Personnel Services, Department of Administration where necessary.
Maryland	93,000	Maryland has several different personnel systems, each of which has its own employment policies, practices, and procedures that apply to the agencies under that system.
Missouri	57,596 <sup>12</sup>	State Office of Administration, Employee Services Section, is responsible for reviewing job applications for employment within the Missouri Merit System. For jobs outside of the merit system, each state agency handles job openings and hiring. A state web site lists state agencies with direct links to each agency's internet job posting page.
New Hampshire	11,000	Division of Personnel coordinates and posts open recruitment announcements. Applications can be submitted to the Division of Personnel or to the agency that has the vacant position. Interviewing and hiring decisions are made at the agency level.

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<sup>12</sup>Missouri Office of Administration, Division of Personnel, 2004 Annual Report 21 (available at <http://www.oa.mo.gov/pers/AnnualRpt.pdf>).

New Mexico	24,687	Centralized system: State Personnel Office coordinates and posts official position announcements.
Utah	24,000	Large agencies handle own personnel/hiring; smaller state agencies rely on Department of Human Resource Management.
Vermont	8,000	Department of Human Resources develops policies and procedures to govern statewide human resources management practices. Interviewing and hiring decisions are the responsibility of the agency/department hiring official.
Washington	98,500	Department of Personnel developed state-wide policies that individual agencies implement. Washington also included a mix of centralized recruitment for some job classes and individual agency recruitment for others. (Washington is transitioning to a system wherein collective bargaining agreements will establish most personnel policies and procedures.)

## APPENDIX B

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