

**FROM THE DESK OF Bobby Donelson, President**



**APWU**

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**TO: Grievance File**

**DATE: April 2009**

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| <input checked="" type="checkbox"/> Your information | <input type="checkbox"/> Acknowledge and reply     |
| <input type="checkbox"/> Take action                 | <input type="checkbox"/> Comment                   |
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USPS and their National Reassessment Program changes failed to apply the ELM 546 Provisions and Article 13 of the Contract in regards to working employees.

Employees working full time had work eliminated or reduced without any justification.

USPS failed to apply the provisions of the National Rehabilitation Act.

USPS actions were Discriminatory to injured workers.

USPS actions were arbitrary and capricious.

USPS failed to address their efforts (there was not one) to locate work.

The USPS did not share their list of necessary work.

The USPS failed to define: biomechanical restrictions or limitations.

The USPS changed a long time past practice of working limited duty workers.

# 1 Introduction to Reasonable Accommodation

## 1-1 Policy

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It is Postal Service policy to provide procedures, guidance, and instructions involving matters of reasonable accommodation, to assist managers and supervisors in meeting our legal and regulatory responsibilities in the day-to-day decision-making process, involving applicants and employees with disabilities.

## 1-2 Purpose

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This handbook establishes procedures that will enable postal managers and supervisors to make sound employment and placement decisions in reasonable accommodation to qualified individuals with disabilities during the processes of recruitment, examination, hiring, and internal placement.

## 1-3 Applicable Laws

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### 1-3.1 The Rehabilitation Act

The Rehabilitation Act prohibits discrimination against qualified employees and job applicants with disabilities in the federal government, including the United States Postal Service.

The Rehabilitation Act also imposes an obligation on the Postal Service to find reasonable ways to accommodate an individual with a disability so that he or she can become a productive member of the workforce. In other words, the Rehabilitation Act requires the employer to look for new or innovative ways to alter, restructure, or change the ways of doing a job in order to allow a qualified person with a disability to perform the essential functions of a particular job.

### 1-3.2 **The Americans With Disabilities Act**

The Americans with Disabilities Act (ADA) covers private-sector employers and the Rehabilitation Act covers public-sector employers.

## 1-4 **Persons Eligible for Protection Under the Rehabilitation Act**

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The Rehabilitation Act protects four categories of people. Regardless of the specific category, an individual must be qualified to perform the job and show that he or she is one of the following:

- A person with a disability.
- A person with a record of a disability.
- A person associated with a person with a disability.
- A person regarded as having a disability.

### 1-4.1 **Determining Who Is a Person With a Disability**

To determine whether an individual is a person with a disability, two questions must be resolved:

- Does the person have a physical or mental impairment?
- If so, does that physical or mental impairment substantially limit a major life activity?

#### 1-4.1.1 **Defining Physical and Mental Impairments**

A physical impairment can include:

- Any physiological disorder or condition.
- Cosmetic disfigurement.
- Anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genito-urinary, hemic, lymphatic, skin and endocrine.

Mental impairments can include any mental or psychological disorder, such as mental retardation or organic brain syndrome, and can also encompass emotional or mental illness and specific learning disabilities.

Physical and mental impairments do not include physical characteristics such as being overweight, or personality traits within the range of normal, such as poor judgment or a quick temper.

#### 1-4.1.2 **Defining Major Life Activities**

Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, caring for oneself, performing manual tasks, and breathing. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act, and not simply an activity important to a particular individual. It includes learning and working.

but does not include activities such as swimming, shopping, or enduring physical stress.

It is important to note that where individuals claim that they are limited only in the major life activity of working, they must show that they are significantly restricted in their ability to perform either a class of jobs, or a broad range of jobs in various classes, as compared to the average person having comparable training, skills, and abilities.

#### 1-4.1.3 **Defining *Substantially Limits* Criteria**

An impairment *substantially limits* a major life activity if that impairment renders the individual either unable to perform a major life activity or significantly restricts his or her performance of that activity as compared to the average person's performance of the activity.

Not all medical conditions are substantially limiting. A person with broken bones or a sprained ankle does not have a permanent long-term impairment because the condition will heal within a reasonable time. Similarly, a woman who has a normal pregnancy (and related conditions) does not have a permanent medical condition and therefore does not meet the definition of a person with a disability. In addition, if an individual employs measures to mitigate his or her impairment (e.g., medication, eyeglasses) the effect of those measures should be considered in determining whether an impairment is substantially limiting as to that individual.

Some permanent impairments are not substantially limiting. A back condition that places lifting restrictions of 30 or more pounds has been deemed not to be a substantially limiting condition. Other examples of permanent impairments that do not constitute a condition that substantially limits a major life activity are:

- Employees who complain that they cannot get along with their supervisors.
- Simple obesity.
- Allergies to a particular substance used only in a particular job or type of job.

#### 1-4.2 **Determining Who Is a Person With a Record of a Disability**

A person with a record of a disability is someone who does not now, but sometime in the past, had a medical condition that at that time substantially limited a major life activity. Examples of persons with a record of a disability may include:

- Someone who suffered from cancer but whose cancer is in remission.
- A person who had repeated hospitalizations and numerous periods of leave for a long term or permanent ailment.

# 2 The Reasonable Accommodation Process

## 2-1 Questions About Reasonable Accommodation

Questions concerning reasonable accommodation arise in basically two instances:

- When you are deciding whether a job applicant will be able to perform the job with or without reasonable accommodation.
- When an employee requests reasonable accommodation in order to perform his or her current job.

In either case, you must go through a four-step process to determine whether to provide an accommodation to the job applicant or the employee. Those steps are to do the following:

- Determine the essential functions of the job.
- Identify the abilities and limitations of the individual.
- Identify potential accommodations.
- Determine the reasonableness of the accommodations and select options.

Each step is discussed in detail in 2-2 below.

Remember, this interactive process may require you to consult and work with a number of different people, including the individual, medical and safety personnel, human resources and rehabilitation specialists, supervisors, and managers.

The four-step interactive process is not required if it is definitively clear an individual is not a qualified individual with a disability, i.e., temporary condition such as pregnancy, broken leg, etc. (see 1-4.1.3).

Article 2.3

**ARTICLE 2  
NON-DISCRIMINATION AND CIVIL RIGHTS**

**Section 1. Statement of Principle**

The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status.

In addition, consistent with the other provisions of this Agreement, there shall be no unlawful discrimination against handicapped employees, as prohibited by the Rehabilitation Act.

(See Memo, page 281)

**Section 2. Committees**

There are established at the national and APWU Regional/USPS Area levels Joint Committees on Human Rights. The committees will be composed of responsible representatives of the Union and responsible management officials. The committees may develop affirmative action proposals on all matters affecting minority groups. The committees will also be advised of the plan for site selection for facilities planned for national postal mail networks and major metropolitan areas, and review availability of adequate housing and public transportation. The committees shall meet as required at mutually agreeable times.

**Section 3. Grievances**

Grievances arising under this Article may be filed at Step 2 of the grievance procedure within fourteen (14) days of when the employee or the Union has first learned or may reasonably have been expected to have learned of the alleged discrimination, unless filed directly at the national level, in which case the provisions of this Agreement for

**Article 6**

**ARTICLE 5  
PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

(The preceding Article, Article 5, shall apply to Transitional Employees)

**ARTICLE 6  
NO LAYOFFS OR REDUCTION IN FORCE**

(1) Each employee who is employed in the regular work force as of the date of the Award of Arbitrator James J. Healy, September 15, 1978, shall be protected henceforth against any involuntary layoff or force reduction.

It is the intent of this provision to provide security to each such employee during his or her work lifetime.

Members of the regular work force, as defined in Article 7 of the Agreement, include full-time regulars, part-time employees assigned to regular schedules and part-time employees assigned to flexible schedules.

(2) Employees who become members of the regular work force after the date of this Award, September 15, 1978, shall be provided the same protection afforded under (1) above on completion of six years of continuous service and having worked in at least 20 pay periods during each of the six years.

(3) With respect to employees hired into the regular work force after the date of this Award and who have not acquired the protection provided under (2) above, the Employer shall

## **Article 13.4**

### **Section 4. General Policy Procedures**

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

B. The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

E. An additional full-time regular position can be authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.



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reemployment into the former position or an equivalent one. The names of all former employees who fully recover from their compensable disabilities more than 1 year after compensation begins must be entered on a reemployment list in two groups:

- a. Group one includes all those former employees who are entitled to 10-point veteran preference. They must be considered for employment before persons in group two.
- b. Group two includes all other former employees who fully recover from their compensable disabilities in more than 1 year. They must be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

546.132 **Rights and Benefits**

Rights and benefits are the same as those outlined in [546.122](#).

546.14 **Disability Partially Overcome**

546.141 **General**

The procedures for current employees cover both limited duty and rehabilitation assignments. Limited duty assignments are provided to employees during the recovery process when the effects of the injury are considered temporary. A rehabilitation assignment is provided when the effects of the injury are considered permanent and/or the employee has reached maximum medical improvement. Persons in permanent rehabilitation positions have the same rights to pursue promotional and advancement opportunities as other employees.

546.142 **Obligation**

When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:

- a. *Current Employees.* When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see [546.611](#)). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:
  - (1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.
  - (2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.
  - (3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all

reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

- (4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

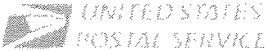
- b. *Former Employees.* When a former employee has partially recovered from a compensable injury or disability, the Postal Service must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.

**Note:** Placement priority for rehabilitation assignment is the same as for limited duty.

#### 546.143 **Rights and Benefits Upon Partial Recovery**

When a current or former employee has partially overcome the injury or disability, he or she has the following rights and benefits upon reassignment or reemployment:

- a. *Seniority.* Former employees who are reemployed into bargaining unit positions or current career employees who are reassigned into such positions are credited with seniority in accordance with the collective bargaining agreements covering the position to which they are assigned.
- b. *Probationary Period.* Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, are not required to serve a new probationary period.
- c. *Leave Credit.* For purposes of computing leave rate accrual, former employees who were eligible to accrue leave under 510 are credited upon reemployment with the total time compensation was received from OWCP.
- d. *Retirement.* Former employees (not reemployed annuitants) who were covered by the Civil Service Retirement Act (see 560) or Federal Employees Retirement System (see 580) are credited with the time spent on OWCP compensation in computing retirement credit. Annuitants who are reemployed after a period of separation during which they received OWCP benefits in lieu of an annuity receive credit for the separation only after they have qualified for a redetermination of the annuity. (For additional information on retirement considerations see the federal *CSRS/FERS Handbook*, Chapter 102.)



December 24, 2008

MANAGERS, HUMAN RESOURCES (AREA)  
MANAGERS, HUMAN RESOURCES (DISTRICT)  
MANAGERS, REMOTE ENCODING CENTERS  
MANAGER, CORPORATE PERSONNEL MANAGEMENT

SUBJECT: Changes to the Rehabilitation Act

Effective January 1, 2009, the definition of an individual with a "disability" as defined under both the Rehabilitation Act and the Americans with Disabilities Act (ADA) will be significantly expanded. This is due to the passage of the ADA Amendments Act (ADAAA) that sets new standards for determining disability status. Managers, supervisors and the Reasonable Accommodation Committees (RACs) need to be aware of the extent of the changes in the ADAAA so they can assess requests for reasonable accommodation in accordance with these new standards.


Although the Equal Employment Opportunity Commission (EEOC) will issue regulations implementing these new provisions, the regulations will not be published by January 1. Nonetheless, employers must still comply with the law. Consequently, we are providing you with the attached synopsis of the changes in the law so that you are fully informed about the new standards and for use as a guide in making reasonable accommodation decisions.

As a part of the reasonable accommodation process, RACs first evaluate through an interactive process whether applicants or employees are persons with covered disabilities. When a RAC finds that an individual does not have a covered disability, the RAC advises the manager of its recommendation. The manager is required to decide whether he/she agrees with the RAC's findings. The manager then advises the person of his/her decision.

With the ADAAA, more individuals will have covered disabilities and the RAC will need to engage them in the interactive process that includes determination of essential functions, identifying abilities and limitations, and determining reasonableness of accommodations.

Although there is nothing in the statute or its legislative history which indicates that the ADAAA is retroactive, an individual who is currently before the RAC and ultimately files an Equal Employment Opportunity (EEO) complaint will almost certainly have his or her EEO claim heard after the ADAAA goes into effect. Therefore, cases now pending before the RACs should be evaluated under the new standards, as should any request for reasonable accommodation that arises from now on. If a RAC is unsure whether a person has a covered disability, the RAC should contact the appropriate field law office to obtain guidance in determining the person's status.

Please share this information with your RAC and others who are involved in the Reasonable Accommodation process.

  
Mangala P. Gandhi  
Manager  
Selection, Evaluation, and Recognition

## Synopsis of Changes to Rehabilitation Act by ADA Amendments Act (ADAAA)

### *Broad Coverage Intended: A New Definition for a "Substantially Limiting" Impairment*

The primary purpose of the amended law was to broaden the universe of individuals who qualify as disabled under the Act. The Act states, for example, that it aims to eliminate disability discrimination by "reinstating a broad scope of protection to be available under the ADA." To carry out this intention, the Act specifically overturned long-standing case law defining a substantial limitation as one that "prevents or severely restricts" performance of a major life activity. That standard, says Congress, was "too high." Instead, the term "substantially limits" must be interpreted consistently with the broad remedial purpose of the Act and the focus should now be on whether employers have complied with their obligations under the law.

Notably, the Act does not define exactly what "substantially limits" means. Rather, that responsibility falls upon the EEOC who is charged with rewriting the ADA regulations to define that term "to provide a broad scope of protection." Consequently, in view of the Act's clear mandate, we can expect that the inquiry whether a disability exists will be far simpler and less involved than in the past. Indeed, Congress states that the inquiry "should not demand extensive analysis."

The Act also institutes a number of other significant changes that provide guidance in how employers are to assess a disability. These changes are discussed below.

### *Major Life Activities*

The Act now defines major life activities. They are

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

The Act specifies that this list is not meant to be exhaustive, thereby opening the door to those who wish to make the case that other activities should be included. Moreover, Congress also included "the operation of a major bodily function" as a major life activity. The Act lists functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Again, this list is nonexhaustive.

### *Mitigating Measures*

In another notable break from the past, the Act forbids consideration of mitigating measures in assessing whether a disability exists. This means employers cannot consider the mitigating effects of medication, hearing aides, cochlear implants, prosthetics, equipment, assistive technology, or "learned behavioral or adoptive neurological modifications." The sole survivor of this sweeping edict is "ordinary eyeglasses" or contact lenses. Employers are still allowed to consider their effect on determining whether an impairment substantially limits a major life activity.

On a practical level, this modification will extend protection to employees suffering from diabetes, hypertension, cancer, amblyopia and other conditions that can be managed through treatment and medication.

### *Impairments that are Episodic or in Remission*

The Act states that "[a]n impairment which is episodic or in remission is a disability if it would substantially limit a major life activity when active."

Like the mitigating measures provision, this too is targeted to bring a potentially large group of individuals within the protection of the law. Under ADAAA, employees with seizure disorders, allergies, bipolar disorder, depression, and other chronic conditions prone to flare-ups can seek accommodation in the workplace.

#### *Regarded as Disabled*

In a radical departure from prior law, the Act amends what it means to regard an individual as being disabled. Previously, employees had to show that their employer regarded their impairment as one that substantially limited a major life activity. This often meant that individuals had to show that the employer regarded them as incapable of performing a broad range of jobs, not just the job they held or desired. Under ADAAA, however, an individual can meet the requirements of a "regarded as" claim simply by showing that he or she was subjected to an adverse action prohibited by the Rehabilitation Act because of an actual or perceived impairment. It does not matter whether that impairment actually limits a major life activity or is perceived to limit a major life activity. Consequently, it will be far easier for individuals to assert claims under this prong of the Rehabilitation Act.

However, there are two important qualifiers to this otherwise broad revision. First, regarded as claims cannot be based upon "transitory and minor" impairments. The Act defines a transitory impairment as one with an actual or expected duration of 6 months or less. At the very least, this ensures that employees will not bring claims of discrimination based upon a broken leg or a case of the flu. Second, the Act states that no reasonable accommodation is required for an individual who is regarded as disabled, but who does not actually have a disability. While this may help offset the number of individuals who would otherwise bring such claims, it is unlikely to make a significant dent in those numbers given how broadly the term "disability" is now defined.

#### *Other Notable Statutory Changes*

*Findings and Purposes:* In keeping with the congressional intent that the ADA provide broad protection, the Act strikes key language from the "Findings and purpose" section of the ADA at 42 U.S.C. §12101(a). It amends paragraph (1) which states that "some 43,000,000 Americans have one or more physical or mental disabilities..." In its stead, is a general statement condemning disability discrimination and this statement does not reference any numbers of individuals. A more telling change is the wholesale deletion of paragraph (7) which states that "individuals with disabilities are a discrete and insular minority..." Given that this is no longer consistent with Congress' view that a disability be broadly construed, it is not surprising that it was eliminated.

*Discrimination:* 42 U.S.C. §12112(a) sets forth the general rule that "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual..." That provision will now read: "no covered entity shall discriminate against a qualified individual *on the basis of disability*." A similar change was made to the term "discriminate" in subpart (b) of this same section. This brings the ADA and Rehabilitation Act in line with other civil rights laws to cover discrimination on the basis of the individual's protected status. The goal is to focus attention on the merits of the alleged discriminatory conduct, rather than on the individual's impairment.

*Qualification Standards:* The Act adds a new section to the "Defenses" provision of 42 U.S.C. §12113, entitled "Qualification Standards and Tests Related to Uncorrected Vision." It provides, in pertinent part, that employers can not use qualification standards, employment tests, or other selection criteria "based on an individual's uncorrected vision unless the standards, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity." Essentially, this amendment serves simply to codify established case law.

**Brief Synopsis of the ADA Amendments Act of 2008**

Friday, January 9, 2009 7:00 AM

From: "Laborchief@aol.com" &lt;Laborchief@aol.com&gt;

To: gkloepfer@apwu.org

**The following information was obtained from a variety of websites and represents my reading of the Act. It does not represent the current position of the APWU.**

In 1990, Congress enacted the Americans with Disabilities Act (ADA) to provide a clear and comprehensive national mandate for eliminating discrimination against individuals with disabilities. Upon enactment of the ADA, the United States Supreme Court became constitutionally obligated to interpret and enforce the law in a manner consistent with Congress's directives. But as a result of several prominent Supreme Court decisions in ADA cases, legislators in Congress have become displeased by the manner in which the law has been interpreted. In response, Congress has passed the ADA Amendments Act of 2008 (ADAAA), effectively expanding the scope of the original law.

In expressing its dissatisfaction with the Supreme Court's decisions in ADA cases, Congress found that the Court has "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect." Moreover, Congress found that the definitions of two seminal legal terms used by the Equal Employment Opportunity Commission (EEOC) were inconsistent with Congressional intent because they expressed too high a standard for individuals seeking protection under the law. Thus, Congress drafted the ADAAA with the goal of correcting the judicial contraction of the ADA's scope, as well as the EEOC's expansion of several of the ADA's minimum applicability thresholds.

In June 2008, the House of Representatives passed a version of the ADAAA (H.R. 3195) by a vote of 402 to 17; the Senate unanimously approved its own, slightly different version of the ADAAA (S. 3406) on September 11. Six days later, the House approved the Senate's version, and, on September 25th, President George W. Bush signed the bill into law, which will take effect on January 1, 2009. Although the ADA prohibits discrimination on the basis of disability in several different areas, the ADAAA will likely have its greatest impact in the employment context, requiring employers with 15 or more employees covered by the ADA to adjust their policies and procedures to comply with the ADAAA. Some of the new law's significant provisions are described below.

**Scope of "Disability" Broadened**

Determining an individual's entitlement to protection under the ADA hinges on whether or not that individual suffers from a "disability," as the term is defined by the ADA. Although other terms and phrases found within the definition of disability have been changed by the ADAAA, the definition of "disability" itself was not. However, what the ADAAA does do is state that "the definition of disability...shall be construed in favor of broad coverage of individuals under [the ADA], to the maximum extent permitted by the terms of [the ADA]." This provision was included in the ADAAA to reinstate the broad scope of protection afforded by the ADA that, in the view of the Congress, the Supreme Court has improperly narrowed.

**List of "Major Life Activities" Expanded**

To qualify as a disability under the ADA, a physical or mental impairment must substantially limit "one or more major life activities" of an individual. In one Supreme Court decision legislatively overruled by the Congress's enactment of the ADAAA, the Court had held that the word "major" in this context "need[s] to be interpreted

strictly to create a demanding standard for qualifying as disabled.” In the ADAAA, however, Congress has explicitly rejected this standard as contrary to the broad scope of protection that is available under the ADA .

Moreover, the ADAAA provides an expanded list of “major life activities,” which includes, but is not limited to:

- caring for oneself;
- performing manual tasks;
- everyday activities such as breathing, seeing, hearing, speaking, eating, sleeping, and walking;
- standing, lifting, and bending;
- learning, reading, concentrating, thinking, and communicating; and
- working.

The ADAAA also introduces a non-exclusive list of major bodily functions, the operation of which constitute major life activities. The list includes, but is not limited to:

- functions of the immune system;
- normal cell growth; and
- functions involving the digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems.

### **Loosening of “Substantially Limits” Requirement**

While under the ADA a physical or mental impairment must “substantially limit” one or more major life activities, the ADAAA includes several provisions that loosen this requirement. First, the ADAAA rejects the Supreme Court’s requirement that the word “substantially” be interpreted strictly to create a demanding standard for individuals seeking to qualify as disabled. Furthermore, the ADAAA rejects the Supreme Court’s rule that the word “substantially” be read to mean “prevents or severely restricts.” In this regard, the ADAAA significantly reduces the degree of impairment required for protection under the ADA .

Second, the ADAAA provides that an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability. Third, the ADAAA provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when it is active.

Finally, the ADAAA provides that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, prosthetics, hearing aids, mobility devices, and oxygen therapy equipment. This provision in the new law expressly overrules a case in which the Supreme Court held that determining whether impairment substantially limits a major life activity requires reference to the ameliorative effects of mitigating measures. However, there is an important exception to this rule—one that states that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether impairment substantially limits a major life activity. The purpose of this exception is to prevent the many individuals who wear either ordinary glasses or contact lenses from making claims of disability on those grounds.

### **Relaxation of “Regarded As” Requirement**

The ADA prohibits discrimination against an individual who is “being regarded as” having a disability. Traditionally, an individual claiming that he or she was “regarded as” having a disability had to prove that an employer regarded him or her as being substantially limited in a major life activity. The ADAAA has lifted this burden of proof by providing that an individual may be unlawfully regarded as having a disability “whether or not the impairment limits or is perceived to limit a major life activity.” However, the ADAAA provides that transitory and minor impairments which have an actual or expected duration of less than six months are not considered disabilities under the “regarded as” prong of the definition of disability. Additionally, the ADAAA provides that an employer is not required to provide a reasonable accommodation or make reasonable modifications to policies, practices, or procedures for an individual who meets the “regarded as” prong of the



definition of disability.

### **Shift of Focus in ADA Cases**

Through the ADAAA, Congress has conveyed its intent that the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and that the question of whether an individual's impairment qualifies as a disability under the ADA should not demand extensive analysis. Such a shift is significant because the Postal Service has had success in arguing that an employee is not disabled under the ADA and is therefore ineligible for its protection. By reducing the amount of attention that is to be focused on an employee's status as disabled, it is likely that more ADA cases will end up going to trial rather than being resolved summarily without a trial.

There is no denying that the ADAAA has expanded the number of individuals who may be entitled to protection under the ADA . At the very least, the ADAAA has made it easier for employees to state a claim under the ADA . At this time, the ultimate impact of the ADAAA is difficult to determine. Adding to the uncertainty is the fact that the EEOC has yet to promulgate any regulations interpreting the ADAAA's provisions.

Nevertheless, on January 1, 2009, the Postal Service, which is covered by the ADA , will be required to comply with the new law.

Further information will be provided after the EEOC promulgates the new ADAAA regulations.

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[www.apwu.org](http://www.apwu.org)  
[www.unionlabel.org](http://www.unionlabel.org)  
[www.unionshop.aflcio.org](http://www.unionshop.aflcio.org)  
[www.shopunionmade.org](http://www.shopunionmade.org)  
[www.nosweatapparel.com](http://www.nosweatapparel.com)  
[www.sweatfree.org](http://www.sweatfree.org)  
[www.uaw.org/uawmade/auto/2009/2008vehicles.pdf](http://www.uaw.org/uawmade/auto/2009/2008vehicles.pdf)  
[www.unionplus.org](http://www.unionplus.org)

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# Introduction

## Purpose of the Handbook

Handbook EL-505, *Injury Compensation*, is a comprehensive guide to help injury compensation control office (ICCO) and designated control point personnel perform their jobs.

In this handbook, we have attempted to compile and update all applicable U.S. Postal Service (USPS) regulations, policies, and guidelines into one user-friendly manual. The handbook serves as both a training tool and a reference guide. It covers many injury compensation (IC) issues, including:

- The history of the USPS Injury Compensation Program.
- Certain provisions of the Federal Employees' Compensation Act (FECA).
- Staffing and supplying an ICCO.
- Responses to employee injuries.
- Claims management.
- Records management.
- Limited duty and rehabilitation.
- Legal issues surrounding injury compensation.

Using this handbook alone is not sufficient for the effective management of a USPS Injury Compensation Program. A complete list of supplementary IC resource materials is, therefore, included in Chapter 1.

Finally, it is important to note that while responsible parties and means of implementation may vary from one installation to another, the USPS responsibilities and obligations set forth in the boxed portions of this guide and labeled "Obligation" are mandatory.

## How to Use the Handbook

### The Text

This handbook comprises 13 chapters, each beginning with a brief overview of the topics covered. Chapter 1 is considered a reference chapter and should be used to answer fundamental questions concerning workers' compensation. When a chapter is written for personnel in a specified Postal Service position, the relevant position is indicated.

Each chapter is separated into sections that refer to various situations you may encounter through the normal routine of your job. Each situation is followed by one or more responses you may make, then by specific tasks. The following is an example of what you will see:

### Claims Management in Case of Death

*When the ICCO receives notice of a death from a traumatic injury or potentially from an occupational disease or illness...* ← Here is a situation.

#### 14.4 Contacting the Employee's Family — supervisor or ICCO ← This is one of the responses, which is...

- Contact the employee's family, and do the following:
  - Offer assistance in completing the appropriate claim form... ←
  - Ensure that the employee's family is advised of their rights under FECA... ←
  - Explain to the employee's family the distinction between OPM and OWCP benefits... ← } composed of several tasks.
- If the investigation reveals a basis to challenge the claim, prepare a challenge package in accordance with Chapter 8, Controversion and Challenge, and submit this to OWCP along with CA-5 or CA-5b.
- ◇ *Ensure that family contact is conducted in accordance with the local installation's established protocol.* ← This is a cautionary note.

Sections showing obligations that result from the law or from USPS policy are framed with solid lines and labeled "Obligation" as follows:

---

---

Obligation: Assigning Limited Duty

When an employee is not totally disabled or has partially overcome the injury or disability, the USPS must make every effort to assign the employee to limited duty consistent with the employee's work limitation tolerance.

---

---

Sections that provide information that will help you fulfill the tasks outlined are framed with dotted lines, for example:

---

---

Assigning an Employee to Limited Duty

When an employee has partially overcome the injury or disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's work limitation tolerance.

---

---

### The Appendixes

Throughout the handbook, you will find references to appendixes. You will find these appendixes at the end of the handbook. They are labeled as follows:

- Appendix A, Abbreviations and Acronyms.
- Appendix B, Addresses.
- Appendix C, Definitions.
- Appendix D, Forms.

## 11. Rehabilitation Program

### Overview

### Procedures

#### Potential Rehabilitation Candidates

---

*When you review chargeback reports each accounting period...*

*Obligation: Recognizing OWCP and USPS Responsibilities*

- 11.1 Identifying Potential Rehabilitation Program Participants . . . . . *area IC personnel*  
*OWCP Pay Statuses*
- 11.2 Requesting Referral From OWCP . . . . . *area IC personnel or IC specialist*
- 11.3 Responding to the Referral Package Received  
From OWCP . . . . . *area IC personnel or IC specialist*

#### Medical Evaluation

---

*When medical evaluation is necessary...*

- 11.4 Evaluating the Results of Medical Examinations . . . . . *associate area medical director or*  
*contract medical provider*  
*Evaluation of OWCP Rehabilitation Program Referrals*  
*The Pre-reemployment or Reassignment Medical Examination*
- 11.5 Responding to the Results of the Medical Examination . . . . . *area IC personnel or ICCO*  
*Results of Medical Examination*

#### Management Refusal

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*When management refuses to provide a modified job offer...*

- 11.6 Initiating Management Refusal Action . . . . . *senior IC specialist or district HR manager*

#### Management Job Offer

---

*When management identifies a modified job offer...*

*Identification of Modified Job Assignments*

- 11.7 Identifying a Modified Job Assignment . . . . . *ICCO*
- 11.8 Preparing the Job Description . . . . . *area IC personnel or ICCO*
- 11.9 Conducting the Pre-reemployment or Reassignment Interview  
With the Employee . . . . . *ICCO*
- 11.10 Extending the Job Offer . . . . . *area IC personnel or ICCO*  
*Good Faith Understanding*
- 11.11 Responding to the Employee's Acceptance of the Job Offer . . . . . *ICCO*  
*Direction of the Employee Back to Work*



**HBK EL-505, INJURY COMPENSATION, DECEMBER 1995**  
REHABILITATION PROGRAM

- 11.12 Responding to the Employee's Refusal of, or Refusal to Respond to,  
the Job Offer ..... *area IC personnel of ICCO*  
*Obligation: Recognizing the Penalty of Refusing Compensation*  
*OWCP Due Process*

**Employee Relocation**

---

*When an injured employee has relocated to another geographical area subsequent to the job-related disability...*

*Obligation: Extending a Job Offer to a Relocated Employee*

- 11.13 Initiating a Job Offer for a Relocated Injured Former Employee . . . *originating district's senior IC specialist*
- 11.14 Identifying a Modified Position for Current or Former Employees Who Have Relocated for Health Conditions ..... *area IC personnel or senior IC specialist*
- 11.15 Arranging for Payment of Relocation Expenses ..... *senior IC specialist*  
*Obligation: Receiving Payment or Reimbursement of Moving Expenses*  
*Relocation Expenses*

**Employee Return to Work**

---

*When the employee returns to work...*

- 11.16 Monitoring the Injured Employee's Return to Work . . . *ICCO or employee's supervisor*  
*OWCP Rehabilitation Specialist Required Follow-Up*

**1-Year Follow-Up**

---

*When the employee has been back to work for 1 year...*

- 11.17 Scheduling and Monitoring the Results of a Follow-Up FFD . . . *ICCO or postal contract physician*

**USPS In-House Rehabilitation Program**

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*When an employee's disability is deemed to be permanent...*

*Obligation: Providing Rehabilitation for the Permanently Disabled Beneficiary*

*OWCP Vocational Rehabilitation Services*

*In-House Rehabilitation Program*

- 11.18 Identifying Potential In-House Program Participants ..... *ICCO*
- 11.19 Scheduling and Monitoring the Results of the FFD to Determine If a Job Offer Can Be Made ..... *area IC personnel or ICCO*
- 11.20 Extending an In-House Rehabilitation Job Offer ..... *ICCO*
- 11.21 Responding to the Employee's Refusal of the In-House Rehabilitation Job Offer *ICCO*
- 11.22 Responding to the Employee's Acceptance of the In-House Rehabilitation Job Offer ..... *ICCO*
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**HBK EL-505, INJURY COMPENSATION, DECEMBER 1995**  
REHABILITATION PROGRAM

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- 11.16a Sample Letter: Post-reemployment or Reassignment Employee Interview
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## 11. Rehabilitation Program

### Overview

The Joint DOL-USPS Rehabilitation Program was developed to fulfill the USPS legal obligation to provide work for injured-on-duty (IOD) employees. Providing gainful employment within medically defined work restrictions has proven to be in the best interest of both the employee and the USPS. In many cases, returning to work has aided the employee in reaching maximum recovery. This program is also one of the most viable means of controlling workers' compensation costs.

Over the years, an in-house rehabilitation program has evolved and has been incorporated into the Rehabilitation Program as a means of facilitating the proper placement and accommodation of current employees with permanent partial disabilities resulting from injuries on duty. This program is also appropriate for reassigning to permanent modified positions employees who have not received compensation but have been in temporary limited duty assignments for an extended period of time.

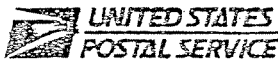
From December 1978 to May 1979, DOL and the USPS conducted a pilot program for the rehabilitation of injured USPS workers through reemployment. From that pilot program, procedures and forms were developed that provided the basis for the original guidelines issued in October 1979 and for Handbook EL-515, *Joint Rehabilitation Guidelines* (issued in May 1992), now being made a part of this handbook. The Rehabilitation Program is applicable for both former and current USPS employees on OWCP rolls.

To be eligible for participation in the Rehabilitation Program, the employee must meet the following criteria:

- He or she must have an approved FECA claim on file with OWCP.
- He or she must have a job-related, permanent partial disability documented by medical evidence.
- He or she must be receiving or be eligible to receive compensation payments for the disability. (Note that an employee working in a limited duty assignment is *eligible* for disability compensation but is *not receiving* it because an appropriate limited duty assignment has been made available.)

ELM 546

PACIFIC AREA OFFICE  
LABOR RELATIONS



December 12, 2003

MEMORANDUM FOR DISTRICT/SR. PLANT MANAGERS

Subject: Arbitration Award Case No. F901N-4F-C02201183  
Reassignment of Limited Duty Employees from Carrier to Clerk Craft

The Pacific Area recently received an arbitration award concerning the permanent reassignment of a Letter Carrier to a Clerk position as a result of her limited duty status.

The Arbitrator concluded that management failed to meet its obligations to adhere to the pecking order for reassignments required by Section 546.142 of the ELM (copy attached). One of the problems in the case was the lack of documentation to support management's position that there was not adequate productive work in the carrier craft to assign the grievant.

As limited duty assignments are reviewed it may at times become necessary to consider reassignment to other crafts, particularly from carrier to clerk. We cannot reassign a full-time employee to a PTF. As such reassignments would be as full-time employee in the gaining craft, at the bottom of the seniority rolls in the gaining craft. Management must document how we are making these decisions as we go through the pecking order. When employees protest these reassignments in addition to grievances, there may be disability accommodation issues that need to be addressed; managers must discuss these issues with the District Reasonable Accommodation Committee for guidance as well.


Once the Union has established that the facts in the case are covered by ELM Section 546, arbitrators have ruled that the burden, then shifts, to management to produce evidence showing that management made a good faith effort to place the grievant at each level of the pecking order above the level which the employee was ultimately placed.

Documentation should consist, of, but is not limited to the following:

- The employees restrictions and time able to perform productive duties in his or her craft vs. time able to perform duties in the other craft.
- Employee complements for each craft in the facility, a list of all job duties and physical requirements.
- The number of limited duty and/or permanent light duty employees assigned to the office, listed by name, restriction and assignments
- Efforts made at each step of the ELM 546 pecking order and why the reassignment could not be made at that Step.
- An explanation of why it is important for the employees to be placed in the appropriate craft designation, such as the ability to adequately assess and meet staffing requirements.

PACIFIC AREA OFFICE  
LABOR RELATIONS

If such reassignments are grieved it is crucial that management provide the documentation during the grievance process. Additionally, any Union arguments concerning the adverse impact to the employee should be rebutted. Please contact your labor relations office concerning any questions you have regarding documentation or grievances on this issue.

  
Gary L. Connely  
Manager, Labor Relations

Cc: Executive Board  
ALRS (All)  
MHR (All)  
MLR (All)

**PRIORITY FOR ASSIGNMENT OF JOB OFFERS**  
**ELM 546.142**

Employee: \_\_\_\_\_

SSN: \_\_\_\_\_

The attached job offer satisfies the attached medical restrictions.  
 It has been created after careful analysis of the work available, and following the criteria specified in the ELM 546.142 as listed below:

**WHENEVER POSSIBLE, ASSIGN QUALIFIED EMPLOYEES TO LIMITED DUTY IN THEIR REGULAR CRAFT, DURING REGULAR TOUR OF DUTY, AND IN THEIR REGULAR WORK FACILITY.**

REGULAR CRAFT	REGULAR TOUR	REGULAR FACILITY
WITHIN	WITHIN	WITHIN

If necessary to change any of the elements to meet the employee's physical limitations or to provide the employee with suitable work, the elements must be changed in the following order:

REGULAR CRAFT	REGULAR TOUR	REGULAR FACILITY
OUTSIDE	within	within
within	OUTSIDE	within
OUTSIDE	OUTSIDE	within
within	within	OUTSIDE
OUTSIDE	OUTSIDE	OUTSIDE