

SUPPLEMENT TO THE NATIONAL CAPITAL PRESBYTERY POLICY ON EEO/AA FOR PERSONS WITH DISABILITIES

The Church's Policy on Employment of Persons with Disabilities¹

The Book of Order was amended in 1993 to forbid discrimination against persons with disabilities in calling persons to ministerial leadership [G11.0502g]. In adopting such a policy the Presbyterian Church (U.S.A.) was influenced by developments in the civil society. National Capital Presbytery had previously gone further in extending its non-discrimination requirements, including those with disabilities, to protect all persons hired by the church, not just those in called ministerial positions.²

Presbytery policy amplifies the Church's policy so as to "provide equal opportunity and mobility in employment for all qualifiable persons in all job categories within the Presbytery." The Presbytery policy includes "disability" among those attributes for which it applies its EEO/AA policy. The Presbytery "will prohibit discrimination in employment because of race, color, national origin, sex, age, marital status or **disability** by searching out and eliminating all causes leading to adverse impact."

Church Law in Relation to Civil Society

In the civil arena, the *Americans with Disabilities Act*, passed in 1990, advances a minimal standard in the society for the rights of persons with disabilities. The ADA follows on earlier federal legislation, the *Rehabilitation Act of 1973*. In the employment arena the ADA sets an equal employment policy, but does not require affirmative action, but the *Rehabilitation Act* does wherever Federal funds are involved. The requirements of the ADA about employment (Title I) are applicable in the private sector as well as in government for all organizations employing more than fifteen people, including the church. The Church's *Book of Order*, however, prohibits discrimination in *all* positions of called leadership in the church, regardless of staff size. The Presbytery policy extends that requirement which forbids discrimination to all employing agents (the Presbytery, local churches, and church related agencies) and all personnel within the jurisdiction of the Presbytery.³

Progress in Understanding Persons with Disabilities and their Rights

¹ At its stated meeting, September 1995, the Presbytery adopted "The Supplement to the Presbytery Policy on EEO/AA for Persons with Disabilities" as ecclesiastical guidance and direction for all employing agents within its jurisdiction and to assist them in avoiding civil court legal action.

² Presbytery policy on Equal Employment Opportunity/Affirmative Action for National Capital Presbytery, adopted November 20, 1984.

³ Although Title III of the ADA, Public Accommodations, exempts religious organizations, the denomination's policy encourages voluntary compliance, making loans available for building modifications. (Note that if Federal funds are received for particular programs such as day care, housing, or senior citizens programs, compliance is required.)

Church calling bodies may require particular religious beliefs and membership for employees. Under case law, Title VII of the Civil Rights Act of 1964 has been interpreted as not applying to religious leaders such as ministers, priest and rabbis. In *Corporation of the Presiding Bishop of the Church of Jesus Christ of the Latter Day Saints v. Amos*, 107 S.Ct. 2862 (1987), the Supreme Court extended that employer's privilege to require good standing in religious beliefs and performance to include even the employment of maintenance personnel.

Persons with disabilities are those with a mental or physical impairment that substantially limits one or more of the major life activities such as walking, speaking, thinking, or breathing. They may have significant limitations in one of the major sensory capacities, in their development, or in cognitive ability. Or, if they have a record of such impairment, or are regarded as having such impairment, they are in the protected class of persons with disabilities.

The nation has begun to mend its lack of understanding of persons with disabilities. Persons who are blind and deaf are no longer completely ostracized. Demeaning language, such as, “cripple,” “feeble minded,” and “crazy,” is giving way to more neutral descriptions to talk of persons who have “disabilities,” “mental illness,” or are “developmentally disabled.” As statutes and regulations begin to implement the rights of persons with disabilities, the resulting behavioral change will benefit those who have been discriminated against in access to facilities, housing and employment—and who are discriminated against in the life and service of the church.

We now understand that the effects of physical disabilities can be ameliorated by removing architectural barriers and making modifications in the work setting. We are beginning to understand that people who are blind, deaf, or have other disabilities, using assistive technology, contribute greatly to the life of the society. Despite these advances, the remedies for people with all forms of disability remain problematic because of patterns of discrimination which persist.

Underlying the patterns of discrimination is a stigma against persons with disabilities which is expressed in demeaning language and social behavior directed against them. For instance, it took over a hundred years before a person with hearing impairment was elected president of Gallaudet University. Stigma still prevails to varying degrees according to the disability.⁴ The stigma is present in the very social service systems that are supposed to be helping those with disabilities. The stigma is in the church, for the world is in the church. That stigma against persons with disabilities is what must first be eliminated or protected against in an EEO/AA process, if the church is to be faithful.

At the heart, it is a spiritual challenge. Each individual with a disability is a person whom Jesus loves. We are all fellow members of the body of Christ. Our faith should help us change our attitudes. That is the first task.

Implementing the Policy of Non-discrimination Against Persons with Disabilities

When the church employs persons who have disabilities and who are able to perform the essential functions of the position, the church models the standard of conduct that should prevail in society. Just as the Presbytery requires special effort to see that women are given equal opportunities,

⁴ Mental illness is one of the most stigmatized disabilities. The fear of losing control of one’s own mental faculties frightens most people, and that fear seems to be projected on persons who have a mental illness. With most forms of serious mental illness, the disease of the brain may be controlled with new medications. In some cases the illness does not recur; but, the disease may persist, even when the individual returns to more normal behavior, but it can be controlled by medication and a less stressful environment so that the person can work and relate effectively.

so persons with disabilities need affirmative action, if we are to “search out and eliminate all causes leading to adverse impact.”

Disabilities are not immutable characteristics, as are sex, race, age, or national origin. A disability is **a matter of degree** as it affects the ability of a person to perform the tasks associated with the position to which he or she is being called or employed. Therefore, providing the reasonable accommodation, when necessary, which meets the needs of the person with a disability is crucial to providing equal opportunity and requires informed judgement. The Presbytery, including the local church and church agencies, must provide a procedure for making the reasonable accommodations for persons with disabilities, which would be limited by undue hardship to the church as employer.

The following section, excerpted from a pamphlet of the Equal Employment Opportunity Commission with adaptations to the church context with answers to frequently asked questions, is a practical guide to implementing the policy .

What Are Presbytery’s Obligations to Provide Reasonable Accommodations?

Reasonable accommodation is any change or adjustment to a job or work environment which permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- ? acquiring or modifying equipment or devices,
- ? job restructuring,
- ? part-time or modified work schedules,
- ? reassignment to a vacant position,
- ? adjusting or modifying examinations, training materials or policies,
- ? providing readers and interpreters, and
- ? making the workplace readily accessible to and usable by people with disabilities.

Reasonable accommodation also must be made to enable an individual with a disability to participate in the application process, and to enjoy benefits and privileges of employment equal to those of other employees.

It is a violation of Presbytery policy to fail to provide reasonable accommodation when requested for the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of the church or church related activity. Undue hardship means that the accommodation would require significant difficulty or expense for the employer.

What is the Best Way to Identify a Reasonable Accommodation?

Frequently, when a qualified individual with a disability requests a reasonable accommodation, the appropriate accommodation is obvious. Individuals may suggest a reasonable accommodation based upon the person's own life or work experience. However, when the appropriate accommodation is not readily apparent, we must make a reasonable effort to identify one. The best way to do this is to consult informally with the applicant or employee about potential accommodations that would enable the individual to participate in the application process or perform essential functions of the job. If this consultation does not identify an appropriate accommodation, we may contact the EEOC, state vocational rehabilitation agencies, or state or local organizations representing or providing services to individuals with disabilities. In the Presbyterian Church the Presbyterian Health, Education, and Welfare Association stands ready to identify one of the networks or specialists who have skill in this area. Another resource is the Job Accommodation Network (JAN). JAN is a free consultant service that helps employers make individualized accommodations. The telephone number is 1-800-526-7234.

When Does a Reasonable Accommodation Become An Undue Hardship?

It is not necessary to provide a reasonable accommodation if doing so would cause an undue hardship. Undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the church activity. Among the factors to be considered in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of the church's operation. If a particular accommodation would be an undue hardship, we must try to identify another accommodation that will not pose such a hardship. If cost causes the undue hardship, we must also consider whether funding for an accommodation is available from an outside source, such as a vocational rehabilitation agency, and if the cost of providing the accommodation can be offset by state or federal tax credits or deductions. The national Church provides loans to make physical accommodations. We must also give the applicant or employee with a disability the opportunity to provide the accommodation or pay for the portion of the accommodation that constitutes an undue hardship.

Can We Require Medical Examinations or Ask Questions About an Individual's Disability?

It is unlawful:

- ? to ask an applicant whether she is disabled or about the nature or severity of a disability, or
- ? to require the applicant to take a medical examination before making a job offer.

We can ask an applicant questions about ability to perform job-related functions, as long as the questions are not phrased in terms of a disability. We can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions.

After a job offer is made and prior to the commencement of employment duties, we may

require that an applicant take a medical examination if everyone who will be working in the job category must also take the examination. We may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability we must be able to show that the reasons for exclusion are job related and necessary for conduct of our church-related activity. We also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions.

Once we have hired an applicant, we cannot require a medical examination or ask an employee questions about disability unless we can show that these requirements are job related and necessary for the conduct of our church activity. We may conduct voluntary medical examinations that are part of an employee health program.

The results of all medical examinations or information from inquiries about a disability must be kept confidential, and maintained in separate medical files. We may provide medical information required by state workers' compensation laws to the agencies that administer such laws.

Applying These Guidelines in the Life of The Presbytery

Recognizing that it is unlawful to require disclosure of a disability in the hiring process, it may be the case that some disabilities are not mentioned in applicants' materials. That is their right, and it must be protected.

In the calling process in the denomination it is possible that many disabilities might be mentioned in the dossier of the individual or discovered in contacts with persons providing letters of reference. In previous employment (or in the process of caring for candidates), accommodations may have been provided or discussed.

The calling or employing organization can inquire only as to whether the person with a disability can do what is in the job description. In contacting the executive in the previous presbytery who might also be a source of information as to whether the applicant can perform the essential functions of the job, the calling body is limited in its inquiry. Except when disclosed by the applicant in the employment process, a direct inquiry about the nature and severity of a disability is forbidden. We should, however, describe the tasks to be performed and ask whether the applicant can do them.

It should be incumbent on the calling body or church-related employer to make sure that any items of information about a disability should not prejudice against the applicant, and take into account that, even in the church, the stigma will be present. The information can be used only when disclosed by the candidate. The disability itself can not be discussed, unless volunteered by the applicant. In a conversation with the candidate, if the candidate or applicant reveals a disability, the disability can be discussed in terms of providing reasonable accommodations. The church must equal or exceed the secular standard.

A local church, for instance, in hiring a choir director, may not exclude a person using a wheel chair from applying for and being treated as eligible, if providing a ramp would give access to the chancel. A blind minister should not be excluded from a pastoral ministry if arrangements can be made to provide mobility for pastoral calls. Persons with sleep disorders who function better in the latter part of the day could have working hours adjusted to accommodate their vesperital pattern.

It is always the applicant's choice as to whether to reveal or openly discuss any disability. It may be in the applicant's own interest, however, that disabilities be addressed openly. They may turn out to be special gifts. A secondary benefit is the witness to the achievement of persons with disabilities which may follow and therefore benefit all others similarly situated.⁵

⁵ A more extended discussion of how the ADA affects religious institutions including congregations, hospitals, nursing homes, seminaries, universities, colleges, schools, camps and social service agencies is to be found in *Loving Justice, The ADA and the Religious Community*, ed. Ginny Thornburgh. National Organization on Disability, 910 16th St., Washington, DC 20006. 1994.