

Chapter 1: Equal Employment Opportunity & Accessibility

Administrative/HR Manual for Virginia Local Departments of Social Services (LDSS)

TABLE OF CONTENTS

EQUAL EMPLOYMENT OPPORTUNITY & ACCESSIBILITY	3
Policy Statement	3
Scope.....	3
SECTION I: EQUAL EMPLOYMENT OPPORTUNITY	4
General Information	4
Prohibited Acts.....	4
Discrimination	5
Harassment & Sexual Harassment.....	5
Harassment	5
Sexual Harassment.....	5
Retaliation	5
Hostile Work Environment.....	6
Complaints Regarding Violations	6
LDSS Internal Complaint Process	6
External Complaint Process	7
Requirement to Cooperate	7
Training	7
SECTION II: ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES.....	8
General Information	8
Reasonable Accommodation	8
Section 504 of the Rehabilitation Act of 1973	9
Retaliation	10
Confidentiality.....	10
Training	10
Interaction with Other Federal Laws	10
SECTION III: AFFIRMATIVE ACTION	11
General Information	11
Affirmative Action Planning	11
Workforce Analysis	11
Recruitment Efforts.....	11
Selection.....	12

Chapter 1: Equal Employment Opportunity & Accessibility

Job Structuring & Upward Mobility	12
Training	12
Reasonable Accommodation	12
Employee Recourse.....	13
Record Keeping	13
Assessment of Effectiveness	13
GLOSSARY:	14
Section I: Equal Employment Opportunity	14
Section II: Accommodations for Individuals with Disabilities	14
Section III: Affirmative Action	15

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EQUAL EMPLOYMENT OPPORTUNITY & ACCESSIBILITY

POLICY STATEMENT

The Virginia State Board of Social Services establishes policies that promote fair hearing practices, fostering workplace environments that recognize human dignity and mutual respect among employees, while also ensuring equal employment opportunity and compliance with all applicable federal, state, and local nondiscrimination laws. The following sections cover Equal Employment Opportunity (EEO), accommodating individuals with disabilities, and Affirmative Action.

The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing of anyone based on these factors, the use of quotas for any group, or any effort to favor one group over another.

SCOPE

This policy applies to all employees of Non-Deviating (ND) LDSS or Partially Deviating (PD) LDSS as well as applicants for employment.

Additional Information:

State and local governments are now exempt from the requirement to complete an Affirmative Action Plan (AAP). However, LDSSs may voluntarily elect to complete an AAP. More information on how to construct an AAP is covered in [Section III](#) of this chapter.

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SECTION I: EQUAL EMPLOYMENT OPPORTUNITY

GENERAL INFORMATION

This chapter is designed to assist LDSSs in understanding and implementing principles of nondiscrimination and providing reasonable accommodation in every aspect of employment, promoting accessibility and inclusivity. This includes following the guidelines for protected classes specified in Title VII of the Civil Rights Act of 1964, along with associated federal laws like the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA) as amended, and the Genetic Information Nondiscrimination Act (GINA), as well as relevant state and local laws and regulations¹. Reasonable accommodation is covered in greater detail in [Section II, "Accommodations for Individuals with Disabilities."](#)

For comprehensive information on workplace behavior standards, expectations of workplace civility, and the disciplinary measures applicable in case of confirmed violations of prohibited acts covered in this chapter, please refer to **Chapter 7** of the [LDSS Administrative/HR Manual](#). Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) with questions about the contents of this chapter.

PROHIBITED ACTS

The following acts are strictly prohibited:

1. Discriminatory employment action defined as any adverse treatment or decision made against an employee based on characteristics protected by federal, state, and local laws.
2. Harassment of any employee based on any characteristic protected by federal, state, and local laws. Employees encountering harassment from co-workers, supervisors, visitors, contractors, or customers should promptly communicate to them that their behavior is unwelcome and report it to their supervisor or through the complaint procedure defined in this chapter.
3. Retaliating against an employee for reporting discrimination, harassment, or retaliation, or for opposing discriminatory or harassing practices.

¹ [22VAC40-675-180](#)

DISCRIMINATION

Adverse actions based on protected characteristics relating to **all** aspects of the employment relationship are strictly prohibited. Such actions may include the following:

1. Hiring and Promotion: Discrimination in any activity related to hiring, promotion, job assignment, or transfer decisions.
2. Compensation and Benefits: Discrimination in compensation-related activities based on protected characteristics (unequal pay, benefits, etc.).
3. Terms and Conditions of Employment: Discrimination relating to work assignments, employee development, schedules, opportunities for advancement.
4. Work environment: Creating a hostile work environment through harassment, intimidation, or other discriminatory behavior.
5. Retaliation: Reprisal against employees who assert their rights under anti-discrimination laws, including reporting discrimination or participating in discrimination investigations.

HARASSMENT & SEXUAL HARASSMENT

Harassment and sexual harassment are related but distinct concepts, and both are strictly prohibited in the LDSS workplace.

HARASSMENT

Harassment of any employee based on any characteristic protected by federal, state, and local laws will not be tolerated. This includes verbal or non-verbal expressions, gestures, or physical acts, such as jokes, innuendos, inclusions/exclusions from activities, or comments, that create a hostile workplace environment. These behaviors undermine the creation of a positive work environment where all employees feel valued and respected.

SEXUAL HARASSMENT

Sexual harassment is a specific type of harassment that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual harassment can occur between individuals of the same or different genders and can include behaviors such as unwanted touching, sexual comments or jokes, or displaying sexually explicit materials in the workplace.

RETALIATION

Workplace retaliation occurs when an employer or colleague takes adverse actions against an employee in response to the employee engaging in protected activities, such as filing a complaint about workplace discrimination or reporting illegal activities. Adverse actions can be either overt or covert and include termination, demotion, harassment, or other forms of mistreatment. Retaliation is strictly prohibited.

HOSTILE WORK ENVIRONMENT

A hostile work environment can arise when unwelcome or offensive behavior, whether verbal, physical, or visual, interferes with an individual's ability to perform his/her job duties or creates an intimidating, offensive, or oppressive atmosphere. This type of environment can develop regardless of a connection to protected classes. For more information, see **Chapter 7** of the [LDSS Administrative/HR Manual](#).

Examples of behavior that may contribute to a hostile work environment include, but are not limited to:

1. Verbal abuse, derogatory remarks, or insults directed at an individual or group.
2. Displaying offensive materials, such as posters, images, or written messages.
3. Unwanted physical contact, gestures, or invasion of personal space.
4. Bullying, intimidation, or threats of violence.
5. Discrimination based on protected characteristics.

COMPLAINTS REGARDING VIOLATIONS

LDSS INTERNAL COMPLAINT PROCESS

A. **Complaint Recipients**

Complaints of discrimination, harassment, or retaliation should be brought to the attention of:

1. The LDSS local director.
2. The locality human resource (HR) representative or EEO officer.

If the complaint involves an LDSS local director or locality HR representative, or EEO Officer, the employee may bring the complaint to the Chair of the local Board of Social Services.

Upon receipt of the complaint, the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) may be contacted. Depending upon the nature and severity of the complaint, LDSSs may also want to consult with the locality HR representative or attorney.

B. **Reporting Process**

The following outlines the reporting process:

1. Submission of the report in person is preferred; however, alternative formats will also be accepted.
2. Upon receipt of the complaint, LDSSs will take the necessary steps to prevent further adverse action to the complainant, and charges will be promptly and thoroughly investigated.
3. A high level of confidentiality must be maintained during the investigation of EEO claims. Share information related to the investigation strictly on a need-to-know basis to protect the privacy of

Chapter 1: Equal Employment Opportunity & Accessibility

all parties involved. LDSSs should contact the VDSS HR Employee Relations Team or the locality HR representative or attorney for assistance with preparing for and conducting a proper investigation.

4. An employee accused of violating this policy will be fully informed of the allegations and will be able to offer an explanation or defense to the charges.
5. All steps of the investigation, including interviews, evidence gathering, and decisions, should be documented as thoroughly as possible.
6. In the event of a founded complaint, the complainant will receive appropriate resolution, and disciplinary measures, including termination, may be taken against the accused party.
7. Non-employees engaging in workplace harassment will be notified of LDSS policy and appropriate actions will be pursued.
8. In all cases, LDSSs will make follow-up inquiries to ensure that the prohibited conduct has not resumed.

EXTERNAL COMPLAINT PROCESS

If it is believed that the nature and severity of the complaint requires a higher degree of support:

1. LDSSs may contact the [VDSS HR Employee Relations Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) for direct assistance with the investigation; or
2. LDSSs may reach out directly to the nearest local office of the Equal Employment Opportunity Commission (EEOC) for direct assistance.

Employees who believe that they have been discriminated against may also file a complaint directly with the nearest local office of the Equal Employment Opportunity Commission.²

REQUIREMENT TO COOPERATE

All local departments are required to cooperate fully with the EEOC or any other official investigation of charges of discrimination. Cooperation includes providing papers, notes, documents, and any other written material and responding to questions deemed necessary to investigate the charge.³

TRAINING

LDSS are strongly encouraged to implement a training program to proactively educate employees on EEO policies, procedures, and expectations.

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² [22VAC40-675-180](#)

³ Ibid.

SECTION II: ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

GENERAL INFORMATION

LDSSs are committed to providing equal employment opportunities to qualified individuals with disabilities who are otherwise able to perform the essential functions of a job with or without accommodation. This policy section outlines the need for LDSSs to develop a process for the request and provision of reasonable accommodations to qualified individuals with disabilities, accessibility standards, confidentiality, and training and awareness. LDSSs are required to comply with the Americans with Disabilities Act (ADA) as amended, as well as any other relevant state and local laws.

Position descriptions will set forth which functions are essential so as not to deny employment opportunities to individuals with disabilities. An individual is considered to have a disability if that individual either:

1. Has a physical or mental impairment which substantially limits one or more major life activities.
2. Has a record of such an impairment.
3. Is regarded as having such an impairment.

Reasonable accommodations will be provided to a qualified employee or applicant with a disability when a request for an accommodation is made. A qualified employee or applicant is one who is able to perform essential functions of the job with or without accommodation.

A request for an accommodation can be denied if the accommodation is not shown to be effective or if it places an undue burden on the LDSS, or if the employee poses a direct threat to the health and safety of himself or herself or others.

REASONABLE ACCOMMODATION

It is the responsibility of LDSSs to develop a process for receiving requests for reasonable accommodations from employees.

LDSSs are strongly encouraged to designate an individual who will be responsible for managing the accommodation process. The designated individual overseeing the process should be LDSSs 504 Coordinator (see [“Section 504 of the Rehabilitation Act of 1973”](#)), the local director, or an LDSS employee who possess a “need-to-know” regarding the information associated with reasonable accommodations.

The established process should:

1. Be interactive and allow a dialogue where employees are able to identify potential accommodations that will enable them to perform essential job functions.

2. Outline a clear and consistent process for the review and approval of requests (e.g., timelines for return of documentation and LDSS response, involvement of relevant stakeholders, etc.).
3. Ensure timely implementation of approved accommodations.
4. Have steps for monitoring the effectiveness of the implemented accommodations. This includes seeking regular feedback from the employee to determine if the employee's needs are being met, or if additional assistance required.
5. A procedure for the review of accommodation requests that are denied or disputed, including an appeal process to address questions, concerns, or disagreements.

The [Job Accommodation Network \(JAN\)](#) is an excellent resource for state and local employers for establishing a process, creating supporting documentation, and providing a multitude of accommodation suggestions. Contact the [VDSS HR Employee Relations Team](#) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney with questions about reasonable accommodation or how to establish a process. See "Helpful Hints – Job Accommodation Network (JAN)" (*sidebar*) for more information.

SECTION 504 OF THE REHABILITATION ACT OF 1973

Prior to the ADA, Section 504 of the Rehabilitation Act of 1973 was the first comprehensive federal law to prohibit discrimination on the basis of disability in programs and activities receiving federal financial assistance. As a result, many agencies may have a '504 Coordinator.' Due to some of the similarities between the ADA and Section 504, it is highly encouraged that the 504 Coordinator also act as LDSSs' ADA liaison.

Both the ADA and Section 504:

1. Prohibit discrimination based on disability in programs, activities, and services provided by covered entities.
2. Apply to a wide range of entities, including state and local governments.
3. Require covered entities to provide reasonable accommodations to individuals with disabilities, such as modifications to policies, practices, or procedures, and the provision of auxiliary aids and services, to ensure equal access and participation.



Helpful Hints: Job Accommodation Network (JAN)

The [Job Accommodation Network \(JAN\)](#) supports employers by providing accommodation solutions, strategies, and guidance on the Americans with Disabilities Act (ADA). The site offers:

- ◆ Assistance specific to state and local government.
- ◆ An ADA Library with information on the ADA's history and amendments.
- ◆ An Accommodation Search database with recommendations.
- ◆ Publications and articles on various disabilities, including the "Accommodation and Compliance Series."

A thorough analysis may be needed to determine applicable laws and accommodations. It is best to consult the locality HR representative or attorney or the [VDSS HR Employee Relations Team](#) for assistance in these situations.

Chapter 1: Equal Employment Opportunity & Accessibility

4. Require covered entities to make their programs, activities, and facilities accessible to individuals with disabilities to the greatest extent possible. This may involve physical modifications to buildings and infrastructure, as well as the provision of alternative formats or communication supports.

Contact the [VDSS HR Policy Team](mailto:hr.employeerelations@dss.virginia.gov) (hr.employeerelations@dss.virginia.gov) or the locality HR representative or attorney for more information on how the ADA and Section 504 interact or where they may differ.

RETALIATION

Workplace retaliation occurs when an employer or colleague takes adverse actions against an employee in response to the employee engaging in protected activities, such as requesting a reasonable accommodation or exercising his or her rights under the ADA. Adverse actions can be either overt or covert and include termination, demotion, harassment, or other forms of mistreatment. Retaliation is strictly prohibited.

CONFIDENTIALITY

Individuals responsible for administering processes associated with the ADA must ensure confidentiality regarding the disclosure of employee disability information and all accommodation requests. Maintaining confidentiality is not only ethical but also a legal requirement of under the ADA. Disclosure of disability information should be limited to individuals directly involved in the accommodation process and those with a legitimate “need-to-know” (e.g., supervisors; HR personnel). Documents and records collected during the reasonable accommodation process must be stored securely, regardless of whether they are in physical or electronic format, to prevent unauthorized access.

TRAINING

LDSS are strongly encouraged to implement a training program to proactively educate managers, supervisors, and employees to increase awareness of ADA rights and responsibilities. Employees who are responsible for handling disability-related information should be trained on confidentiality procedures to ensure consistency in handling sensitive information across LDSSs.

INTERACTION WITH OTHER FEDERAL LAWS

Under the ADA, covered employers may be required to grant leave to employees as a form of reasonable accommodation. However, it's important to note that other federal laws, including the Family and Medical Leave Act (FMLA) and the Pregnant Workers Fairness Act (PWFA), may also require employers to grant leave to employees as a reasonable accommodation.

For more detailed information on how the ADA, FMLA, and PWFA may interact with one another regarding leave accommodations, please refer to **Chapter 4** of the [LDSS Administrative/HR Manual](#). If you have any

Chapter 1: Equal Employment Opportunity & Accessibility

questions or need assistance regarding the interaction of these federal laws, please contact the VDSS HR Employee Relations Team or your locality HR representative or attorney for guidance.

SECTION III: AFFIRMATIVE ACTION

GENERAL INFORMATION

Local jurisdictions are now exempt from the requirement to develop and maintain a written Affirmative Action Plan (AAP). However, LDSSs may still ***voluntarily*** complete an AAP. This section provides basic information on the completion of an AAP. VDSS HR no longer requires the submission of a locality's AAP. Contact the locality HR representative or attorney for more guidance on the completion of an AAP.

AFFIRMATIVE ACTION PLANNING

WORKFORCE ANALYSIS

1. LDSSs may choose to conduct an analysis of the current workforce to identify any representation disparities in the organization and should work with their locality HR representative to gather demographic data or other relevant characteristics.
2. Calculate representation rates by comparing the total number of individuals in each demographic group to the total workforce population.
3. Identify any disparities or underrepresentation of certain demographic groups compared to their availability in the relevant labor market or population.
4. Evaluate whether these disparities are statistically significant. If so, identify areas for improvement (e.g., recruitment efforts, training programs, etc.).
5. Develop goals aimed at increasing representation of underrepresented groups within an LDSS workforce. Goals should be S.M.A.R.T. – specific, measurable, achievable, relevant, and time-bound.
6. Develop an action plan around the goals; assign responsibilities and establish a way to track and evaluate success.
7. Routinely monitor workforce demographics and other data related to the action plan. Adjust the plan and goals as needed.
8. Document all efforts and results.

RECRUITMENT EFFORTS

A process should be established for developing and maintaining a list of recruitment sources, including contacts with organizations that support minorities, women, and people with disabilities, to attract qualified candidates for positions. Additionally, recruitment procedures should be monitored to ensure they provide equal employment opportunities, and all recruitment materials should clearly communicate an LDSS' commitment to Equal Employment Opportunity (EEO).

SELECTION

LDSSs may consider developing processes for documenting and maintaining selection procedures used for each vacancy and for ensuring that all employees who conduct employment interviews (including those who serve on an interview panel) possess knowledge of proper interviewing techniques. Additionally, LDSSs may want to consider appointing employees who are responsible for:

1. Reviewing all selection procedures to ensure that such procedures are job-related.
2. Maintaining data on selection criteria, including interview questions, applicant rankings, reasons for rejection, and correspondence with applicants.
3. Analyzing the flow of applicant information through the selection and appointment process, including analyzing the written reasons why applicants are rejected.

JOB STRUCTURING & UPWARD MOBILITY

LDSSs should outline the agency's promotion, reclassification, and lateral transfer processes, highlighting steps where discrimination could potentially occur and describing actions to be taken if discrimination is identified. They may also consider appointing employees responsible for providing career counseling and guidance, as well as publicizing promotional opportunities within each department and the entire LDSS.

TRAINING

LDSSs may consider including the following:

1. A statement that LDSSs will establish training programs in a nondiscriminatory manner, specifying the training and educational resources that will be utilized.
2. Appointing an LDSS employee to be responsible for annually reviewing training profiles to ensure that training opportunities are offered to all eligible employees on an equal basis.
3. A statement that each new employee will receive information on LDSS policies, grievance procedures, federal and state EEO complaint procedures, and standards of conduct during orientation.

REASONABLE ACCOMMODATION

LDSSs may consider including the following:

1. Appointing an LDSS employee as the ADA/504 coordinator, tasked with organizing LDSS efforts to fulfill the mandates of the Rehabilitation Act of 1973. This coordinator acts as a point of contact with entities like the Virginia Department of Rehabilitative Services and other relevant agencies, facilitating the acquisition of reasonable accommodation information, as well as researching applicable information from the [Job Accommodation Network \(JAN\)](#).
2. A statement that facilities or programs are accessible to applicants and employees with disabilities.
3. A statement that all employees are afforded the opportunity to voluntarily declare any disabilities they may have.
4. Plans addressing the removal of physical barriers that have been or should be undertaken by an LDSS.

Chapter 1: Equal Employment Opportunity & Accessibility

EMPLOYEE RECOURSE

LDSSs may want to consider attaching or adding the policy Information from [Section I](#) of this chapter to ensure that all employees are aware of both the internal and external EEO complaint procedures. Employees should also be readily supplied with information on the grievance procedure.

RECORD KEEPING

LDSSs may want to consider maintaining demographic data and records on the following:

- | | |
|---|------------------------------------|
| 1. The current workforce. | 7. Separations. |
| 2. Demotions. | 8. Training. |
| 3. Applicants interviewed. | 9. Promotions. |
| 4. Title changes. | 10. Complaints of discrimination. |
| 5. New hires (original appointment, transfer-in, and reemployment). | 11. Lateral transfers. |
| 6. Redefinitions. | 12. Standards of conduct offenses. |

ASSESSMENT OF EFFECTIVENESS

Consider employing the following steps to determine if the AAP is effective:

1. Regularly review workforce demographics, hiring practices, promotion rates, and other key indicators.
2. Conduct exit interviews for any employee separating from the agency and designate an LDSS employee who is responsible for collecting and maintaining exit interview information.
3. Review the AAP annually and make any revisions, additions, or updates as necessary. Update and revise action plans as necessary, and make sure goals and objectives are as clearly defined as possible.
4. Review outreach methods and contacts and update as necessary.
5. Provide training to employees on the AAP and the goals and objectives of the LDSS.

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GLOSSARY:

SECTION I: EQUAL EMPLOYMENT OPPORTUNITY

1. Discrimination: The unfair or unequal treatment of individuals based on characteristics that are irrelevant to their qualifications or performance, resulting in disadvantages or adverse effects in employment, education, housing, or other areas of life.
2. Equal Employment Opportunity: Refers to the principle and practice of ensuring that all individuals have the same rights and opportunities in employment, regardless characteristics that are irrelevant to their qualifications or performance or characteristics that are protected by EEO laws and regulations, such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Equal Pay Act (EPA).
3. Harassment: Unwelcome conduct that is based on a person's identification with any characteristic or status protected by federal, state, or local laws. Harassment violates agency policy but also becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
4. Retaliation: An overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment toward an employee bringing forth a workplace complaint in good faith.
5. Sexual Harassment: A form of harassment characterized by unwelcome sexual advances, requests for sexual favors, or other verbal, physical, or visual conduct of a sexual nature that creates a hostile, intimidating, or offensive work environment. It can include behaviors such as unwanted touching, sexual jokes or comments, suggestive gestures, or displaying sexually explicit materials, and it can occur between individuals of the same or different genders.

SECTION II: ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

1. Americans with Disabilities Act (ADA) as Amended: A federal statute was signed into law on July 26, 1990. Its overall purpose is to make American Society more accessible to people with disabilities. In 2008, the ADA Amendments Act (ADAAA) was passed. Its purpose is to broaden the definition of disability. The ADA is divided into five (5) titles; however, the LDSS Administrative/HR Manual focuses on Title I, Employment. Title I requires covered employers to provide reasonable accommodations for applicants and employees with disabilities; prohibits discrimination based on disability in all aspects of employment; and regulates medical examinations and inquiries.
2. Disability: Under the Americans with Disabilities Act (ADA) as amended, a disability is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. Major life activities include functions such as walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. Disabilities covered by the ADA can include physical disabilities, sensory

Chapter 1: Equal Employment Opportunity & Accessibility

impairments, mental health conditions, intellectual disabilities, learning disabilities, chronic health conditions, and others that substantially limit a person's ability to perform major life activities.

3. Job Accommodation Network (JAN): A free consulting service funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). JAN provides expert guidance and resources to employers, individuals with disabilities, and other stakeholders on workplace accommodations and disability employment issues.
4. Reasonable Accommodation: Refers to modifications or adjustments to the job application process, the work environment, or the way job duties are performed that enable individuals with disabilities to have equal employment opportunities. Reasonable accommodations are determined on a case-by-case basis and may include modifications to work schedules, job duties, equipment, policies, or facilities, as long as they do not impose undue hardship on the employer.
5. Section 504 of the Rehabilitation Act of 1973: A federal civil rights law, preceding the ADA, that prohibits discrimination based on disability in programs and activities receiving federal financial assistance. It requires covered entities, including state and local governments, educational institutions, healthcare providers, and other recipients of federal funds, to provide equal access and opportunities to individuals with disabilities. Section 504 prohibits discrimination in areas such as employment, education, transportation, housing, and public services, and it requires covered entities to make reasonable accommodations to ensure equal participation for individuals with disabilities. Additionally, Section 504 requires covered entities to provide auxiliary aids and services to individuals with disabilities, such as interpreters or assistive technology, to ensure effective communication.

SECTION III: AFFIRMATIVE ACTION

1. Affirmative Action Plan (AAP): A proactive strategy implemented by organizations to promote equal opportunity in employment. It involves setting goals, establishing policies, and implementing practices aimed at increasing the representation of underrepresented groups in the workforce. State and local governments are exempt from the requirement to complete an AAP but may do so voluntarily.

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