

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, DC 20506



August 20, 1987

Office of the
Commissioner

William Bradford Reynolds, Esq.
2479 N. Wakefield Court
Arlington, Virginia 22207

Dear Brad:

I received your draft bill to extend equal employment opportunity law to handicapped persons in the private sector, under cover signed for you by Mark Disler. I realize that you have been as busy as a one-armed paper hanger with a scratch, but I was both surprised and disappointed by the DOJ draft. I was surprised because none of the essential elements of my draft, (with which you indicated you agreed except for the enforcement provisions), were in your proposal, and, I was disappointed that you are doing no more than extending section 504 requirements to the private sector. I am writing today to set forth what I feel are essential elements for such a bill in order to see if we can reach some agreement on a basic outline from which a joint draft can be developed. I would like to discuss this framework with you privately before going further in the drafting process. Please give me a call to see if we can get together for lunch or dinner.

Your draft bill essentially incorporates the section 504 statutory nondiscrimination mandate together with provisions concerning retaliation and the posting of notices and leaves the other substantive rights to be developed by EEOC regulations, presumably along the lines, of existing section 504 regulations. I have two principle concerns with this approach. First, I believe it essential that the bill authorize reasonable accommodation, define reasonable accommodation and undue hardship, establish a process for individualized accommodation, and set standards covering selection criteria, safety rules, and architectural accessibility. Second, to the extent that these issues are addressed in existing section 504 regulations, the regulations provide insufficient guidance, both because they are themselves not specific enough and the standards they set do not go far enough if we as a society really want the integration of the 65% of disabled people of working age who are unemployed and excluded from society.

Without specific legislative guidance on essential issues, employers, disabled people, regulators and courts will flounder for years, just as they have struggled over the past decade and a half to give meaning to nondiscrimination under section 504. Our goal, therefore, should not be simply to extend section 504 requirements to private sector employers but to learn from our fourteen years of experience under section 504 to introduce a bill that moves us further toward the integration and independence of all disabled people, including those with severe disabilities who need accommodation.

I believe that the conceptual model for this legislation is the Education for All Handicapped Children Act of 1975 because of that Act's specificity in setting forth the rights and obligations of disabled children and parents of disabled children and because of the Act's emphasis on the process of individualization. Indeed, it might be argued that the individualized education program (IEP) requirement the Act creates is as important as the right to a free appropriate public education that the IEP is to assure for each disabled child. Such process-oriented legislation, however, requires that the details of the process, as well as the substantive rights and obligations, be set forth with a specificity not common to most legislation. That is why my draft defined reasonable accommodation and undue hardship and provided not only specific standards but also set forth the process for individualized accommodations. Such an individualized approach would be in stark contrast to the group-oriented approach that the Democrats take, and would allow the Republican Party to have a civil rights platform that stresses individual rights anti duties over group rights.

I realize that a bill which is introduced in Congress is rarely the same as the bill that is signed into law. compromise, amendment, and change are hallmarks of the legislative process. But let us begin that process with a "model" bill that the disability community can support, not a bill that will be viewed as precatory or at best group oriented.

I also have concerns with specific sections of your proposal that we can discuss later; right now, I feel it is more important to concentrate on the central issue of whether to go beyond section 504 standards and to clearly set forth the reasonable accommodation process and require elimination of discriminatory selection, safety and architectural barriers.

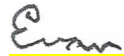
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Please let me know when we can get together to discuss this matter.

Hope you had a fun time in China. I adore my job at EEOC. Thanks.

Janine sends her best.

Best wishes,



Signature

Evan J. Kemp, Jr.

A BILL

To prohibit discrimination in employment against individuals with handicaps and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

SECTION 1. This Act may be referred to as the Equal Employment Opportunity Act of 1987.

CONGRESSIONAL FINDINGS AND PURPOSE

SECTION 2. The Congress finds and declares that discrimination in employment against individuals with handicaps who are qualified for employment limits their ability to provide for their own well-being and the well-being of their families, undermines the productivity of the nation, and burdens commerce over which the congress has jurisdiction.

DEFINITIONS

SECTION 3. As used in this Act--

(a) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United states, a corporation wholly owned by the Government of the United States, an Indian tribe, or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501Cc) of the Internal Revenue Code.

or drug abuse , would constitute a direct threat to property or include the ability to transmit a contagious or communicable

(b) The terms "labor organization," "employment agency," "joint labor-management committee," "employee," "commerce," "industry affecting commerce," and "state" shall have the same meaning as they have in sections 701 and 706 of the Civil Rights Act of 1964.

(c) "Individual with handicaps" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current or alcohol or drug abuse, would constitute a direct threat to property or safety of others. A physical or mental impairment does not include the ability to transmit a contagious or communicable disease.

(d) "Qualified individuals with handicaps" means an individual with handicaps who, with reasonable accommodation, can

perform the essential functions of the particular job in question.

(e) "Commission" means the Equal Employment Opportunity commission established by section 705 of the Civil Rights Act of 1964.

PROHIBITION AGAINST DISCRIMINATION

SECTION 4. No employer, labor organization, employment agency or joint labor-management committee shall discriminate against any qualified individual with handicaps, solely because of his or her handicap, with respect to compensation, or to the terms conditions or privileges of any aspect of employment.

PROHIBITION AGAINST RETALIATION

Section5 No employer, employment agency, labor organization, or joint labor management committee shall discriminate against any person because he or she has opposed any practice made lawful by this Actor because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

ENFORCEMENT

Section6. The remedies and procedures set forth in Sections 706,709,and710 of the Civil Rights Act of 1964 shall be available to any person aggrieved for any violation of this Act and the remedies and procedures of Sections 706 and 707 of the civil Rights Act of 1964 shall be available to the Attorney General or to the Commission as prescribed by law to enforce the provisions of this Act.

REGULATIONS

SECTION 7. The Commission shall have the authority to issue regulations under this Act to the same extent it has such authority under section 713 of the Civil Rights Act of~1964.

POSTING NOTICES

SECTION 8. (a) Every employer, employment agency, and labor organization shall post and keep posted, in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted, a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100.00 for each separate offense.

EXEMPTION

SECTION 9. Nothing in this Act shall be construed to prohibit an entity whose principal purpose is assisting a particular class of individuals with handicaps from establishing a publicly announced policy of giving preference in hiring to persons who are members of that class.

EFFECT ON OTHER LAWS

SECTION 10.

(a) The amendments made by this Act do not

affect any right/ remedy ~~I~~ obligation, or responsibility under the

Rehabilitation Act of 1973.

(b) Nothing in this Act shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which

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purports to require or permit the doing of any act which this Act makes unlawful.

AUTHORIZATION OF APPROPRIATIONS

SECTION 11. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SECTION 12. This Act shall be effective 180 days after the date of its enactment.