Disability Resources and Incentives

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FACT SHEET

U.S. Department of Health and Human Services • Office for Civil Rights • Washington, D.C. 20201 • (202) 619-0403

YOUR RIGHTS UNDER THE AMERICANS WITH DISABILTIES ACT

What Is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) of 1990 provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, state and local government services, public accommodations, transportation, and telecommunications.

Who Is Protected Under the ADA?

The ADA protects ***qualified individuals with disabilities***. An ***individual with a disability*** is a person who has a physical or mental impairment that substantially limits major life activities; has a record of such an impairment; or is regarded as having such an impairment. ***Major life activities*** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Under the ADA, ***a qualified individual with a disability*** is an individual with a disability who meets the essential eligibility requirements for receipt of services or participation in programs or activities. Whether a particular condition constitutes a disability within the meaning of the ADA requires a case-by-case determination.

Physical or mental impairments include, but are not limited to: visual, speech, and hearing impairments; mental retardation, emotional illness, and specific learning disabilities; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; orthopedic conditions; cancer; heart disease; diabetes; and contagious and noncontagious diseases such as tuberculosis and HIV disease (whether symptomatic or asymptomatic).

What Is Title II of the ADA?

Title II of the ADA prohibits discrimination against ***qualified individuals with disabilities*** on the basis of disability in all programs, activities, and services of public entities. Public entities include state and local governments and their departments and agencies. Title II applies to all activities, services and programs of a public entity.

The Office for Civil Rights (OCR) within the U.S. Department of Health and Human Services has been designated enforcement responsibility under Title II of the ADA for state and local health care and human service agencies.

Specific Requirements

Public entities **may not**:

- ✗ Refuse to allow a person with a disability to participate in, or benefit from, their services, programs or activities because the person has a disability.
- ✗ Apply eligibility criteria for participation in programs, activities and services that screen out or tend to screen out individuals with disabilities, unless they can establish that such criteria are necessary for the provision of services, programs or activities.
- ✗ Provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Public entities **must**:

- ✔ Provide services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

- ✔ Make reasonable modifications in their policies, practices and procedures to avoid discrimination on the basis of disability, unless they can demonstrate that a modification would fundamentally alter the nature of their service, program or activity.

- ✔ Ensure that individuals with disabilities are not excluded from services, programs and activities because buildings are inaccessible.

- ✔ Provide auxiliary aids to individuals with disabilities, at no additional cost, where necessary to ensure effective communication with individuals with hearing, vision, or speech impairments. (Auxiliary aids include such services or devices as: qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for the deaf [TDDs], videotext displays, readers, taped texts, brailled materials, and large print materials.)

Who May File a Complaint with OCR?

Any individual who believes that he or she or a specific individual or class of individuals has been subjected to discrimination on the basis of disability, in a health or human service program or activity conducted by a covered entity, may file a complaint with OCR. Complaints must be filed within 180 days from the date of the alleged discrimination. OCR may extend the 180-day deadline if you can show "good cause."

Include the following information in your written complaint, or request a Discrimination Complaint Form from an OCR Regional or Headquarters office (complaints must be signed by the complainant or an authorized representative):

- Your name, address, and telephone number.
- Name and address of the entity you believe discriminated against you.
- How, why, and when you believe you were discriminated against.
- Any other relevant information.

Send your complaint to the Regional Manager at the appropriate OCR Regional Office, or to the address below. Upon receipt, OCR will review the information provided. If we determine we do not have the authority to investigate your complaint, we will, if possible, refer it to an appropriate agency. Complaints alleging employment discrimination on the basis of disability against a single individual may be referred to the U. S. Equal Employment Opportunity Commission for processing.

Private individuals may also bring lawsuits against a public entity to enforce their rights under Title II of the ADA; and may receive injunctive relief, compensatory damages, and reasonable attorney's fees.

For Further Information, Contact:

Director
Office for Civil Rights
U. S. Department of Health and Human Services
200 Independence Avenue, SW - Room 506-F
Washington, D.C. 20201

Hotlines: 1-800-368-1019 (Voice) 1-800-537-7697 (TDD)
E-Mail: ocrmail@hhs.gov **Website: http://www.hhs.gov/ocr**

National Network
Information, Guidance and Training on the Americans with Disabilities Act

Call us toll-free
1-800-949-4232 V/TTY
Find your regional center at
www.adata.org

For the most current and accessible version, please visit
http://adainfo.us/adaoverview

An Overview of the Americans with Disabilities Act

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA is divided into five titles (or sections) that relate to different areas of public life.

Title I - Employment

- Helps people with disabilities access the same employment opportunities and benefits available to people without disabilities.
- Applies to employers with 15 or more employees.
- Requires employers to provide reasonable accommodations to qualified applicants or employees. A "reasonable accommodation" is a change that accommodates employees with disabilities so they can do the job without causing the employer "undue hardship" (too much difficulty or expense).
- Defines disability, establishes guidelines for the reasonable accommodation process, and addresses medical examinations and inquiries.
- Regulated and enforced by the U.S. Equal Employment Opportunity Commission. http://www.eeoc.gov/laws/types/disability.cfm

Title II - Public Services: State and Local Government

- Prohibits discrimination on the basis of disability by "public entities" such as state and local government agencies. .
- Requires public entities to make their programs, services and activities accessible to individuals with disabilities.
- Outlines requirements for self-evaluation and planning; making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination; identifying architectural barriers; and communicating effectively with people with hearing, vision and speech disabilities.
- Regulated and enforced by the U.S. Department of Justice. http://www.ada.gov

Title III - Public Accommodations and Services Operated by Private Entities

- Prohibits places of public accommodation from discriminating against individuals with disabilities. Public accommodations include privately owned, leased or operated facilities like hotels, restaurants, retail merchants, doctor's offices, golf courses, private schools, day care centers, health clubs, sports stadiums, movie theaters, and so on.
- Sets the minimum standards for accessibility for alterations and new construction of commercial facilities and privately owned public accommodations. It also requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty or expense.
- Directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities.
- Requires that businesses take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities.
- Regulated and enforced by the U.S. Department of Justice. http://www.ada.gov

Title IV - Telecommunications

- Requires telephone and Internet companies to provide a nationwide system of interstate and intrastate telecommunications relay services that allows individuals with hearing or speech disabilities to communicate over the telephone.
- Requires closed captioning of federally funded public service announcements.
- Regulated by the Federal Communication Commission. http://www.fcc.gov

Title V - Miscellaneous Provisions

- Contains a variety of provisions relating to the ADA as a whole, including its relationship to other laws, state immunity, its impact on insurance providers and benefits, prohibition against retaliation and coercion, illegal use of drugs, and attorney's fees.
- Provides a list of certain conditions that are not considered disabilities.

Transportation

- Public Transportation offered by a state or local government is covered by Title II of the ADA. Publicly funded transportation includes, but is not limited to, bus and passenger train (rail) service. Rail service includes subways (rapid rail), light rail, commuter rail, and Amtrak.
- If transportation is offered by a private company, it is covered by Title III. Privately funded transportation includes, but is not limited to, taxicabs, airport shuttles, intercity bus companies, such as Greyhound, and hotel-provided transportation.
- The U.S. Department of Transportation, Federal Transit Administration releases information, guidance and regulations on transportation and the ADA. http://www.fta.dot.gov/ada

More information about the ADA

ADA National Network: http://www.adata.org

The ADA National Network provides information, guidance and training on the Americans with Disabilities Act (ADA), tailored to meet the needs of business, government and individuals at local, regional and national levels.

National Network Publications

- **ADA Questions and Answers:** http://adata.org/publication/americans-disabilities-act-faq
- **Disability Law Handbook:** http://adata.org/publication/disability-law-handbook

Web based self-study courses

- **ADA Building Blocks:** http://www.adabasics.org
  A free introductory webcourse that explores the legal requirements and spirit of the Americans with Disabilities Act of 1990 (ADA). The course takes 2-3 hours and includes quizzes and a Post Test. Presented by the Southeast ADA Center.
- **ADA Employment Course:** http://www.adaemploymentcourse.org
  A free, self-paced webcourse available 24/7 on the employment requirements in the Americans with Disabilities Act (ADA), including the important changes made to the ADA by the ADA Amendments Act of 2008. The course takes approximately 2.5 hours and includes real life scenarios, quizzes and a final exam. Presented by the New England ADA Center.
- **Disability Rights Course:** http://www.disabilityrightscourse.org
  A free, self-paced webcourse available 24/7 that provides an overview of federal disability rights laws. The course takes approximately 1.5 - 2 hours and includes real life scenarios, quizzes and a final exam. Presented by the New England ADA Center.

Content was developed by the Mid-Atlantic ADA Center, and is based on professional consensus of ADA experts and the ADA National Network.

Mid-Atlantic ADA Center
http://www.adainfo.org/

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EMPLOYERS AND THE ADA: MYTHS AND FACTS

ODEP
Office of Disability Employment Policy

The Americans with Disabilities Act (ADA) is a landmark federal law that protects the rights of people with disabilities by eliminating barriers to their participation in many aspects of living and working in America. In particular, the ADA prohibits covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement, to pay and benefits. The foundation for the ADA is America's promise of equal access to opportunity for all citizens.

Being inclusive of people with disabilities—in recruitment, retention, promotion, and in providing an accessible environment—gives businesses a competitive edge. Below are some of the common myths about how the ADA affects employers and research and facts that negate them.

Myth: The ADA forces employers to hire unqualified individuals with disabilities.
Fact: Applicants who are unqualified for a job cannot claim discrimination under the ADA. Under the ADA, to be protected from discrimination in hiring, an individual with a disability must be qualified, which means he or she must meet all requirements for a job and be able to perform its essential functions with or without reasonable accommodations.

Myth: When there are several qualified applicants for a job and one has a disability, the ADA requires the employer to hire that person.
Fact: An employer is always free to hire the applicant of its choosing as long as the decision is not based on disability. If two people apply for a data entry position for which both speed and accuracy are required, the employer may hire the person with the higher speed and level of accuracy, because he or she is the most qualified.

Myth: The ADA gives job applicants with disabilities advantages over job applicants without disabilities.
Fact: The ADA does not give hiring preference to persons with disabilities.

Myth: Under the ADA, employers must give people with disabilities special privileges, known as accommodations.
Fact: Reasonable accommodations are intended to ensure that qualified individuals with disabilities have rights in employment equal—not superior—to those of individuals without disabilities. A reasonable accommodation is a modification to a job, work environment or the way work is performed that allows an individual with a disability to apply for a job, perform the essential functions of the job, and enjoy equal access to benefits available to other individuals in the workplace.

Myth: Providing accommodations for people with disabilities is expensive.
Fact: The majority of workers with disabilities do not need accommodations to perform their jobs, and for those who do, the cost is usually minimal. According to the Job Accommodation Network (JAN), a service from the U.S. Department of Labor's Office of Disability Employment Policy, two-thirds of accommodations cost less than $500, with many costing nothing at all. Moreover, tax incentives are available to help employers cover the costs of accommodations, as well as modifications required to make their businesses accessible to persons with disabilities.

Myth: The ADA places a financial burden on small businesses that cannot afford to make accommodations for individuals with disabilities.
Fact: Businesses with fewer than 15 employees are not covered by the employment provisions of the ADA. Moreover, a covered employer does not have to provide a reasonable accommodation that would cause an "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an organization's size, financial resources and the nature and structure of its operation.

Myth: ADA lawsuits are flooding the courts.
Fact: The majority of ADA employment-related disputes are resolved through informal negotiation or mediation. The Equal Employment Opportunity Commission (EEOC), which enforces the ADA's employment provisions, carefully investigates the merits of each case and offers many alternatives to litigation as a way to resolve any potential problem. The number of ADA employment-related cases, whether filed privately or by the EEOC, represents a tiny percentage of the millions of employers in the U.S.

Myth: The ADA is frequently misused by people with vague complaints or diagnoses.
Fact: If an individual files a complaint of discriminatory treatment, denial of accommodation or harassment under the ADA and does not have a condition that meets its definition of disability, the complaint is dismissed. While claims by people with false or minor conditions may get considerable media attention, the reality is that these complaints are usually dismissed.

Myth: The ADA protects employees who have difficult or rude personalities or are troublemakers.
Fact: Improper behavior in and of itself does not constitute a disability, and having a disability does not excuse employees from performing essential job tasks and following the same conduct standards required of all employees. The courts have consistently ruled that "common sense" conduct standards, such as getting along with co-workers and listening to supervisors, are legitimate job requirements that employers can enforce equally among all employees.

Myth: Under the ADA, an employer cannot fire an employee who has a disability.
Fact: Employers can fire workers with disabilities under three conditions:

- The termination is unrelated to the disability or
- The employee does not meet legitimate requirements for the job, such as performance or production standards, with or without a reasonable accommodation or
- Because of the employee's disability, he or she poses a direct threat to health or safety in the workplace.

RESOURCES TO ASSIST EMPLOYERS

A number of resources are available to assist employers in understanding their responsibilities under the ADA:

Job Accommodation Network (JAN)

www.jan.wvu.edu
1-800-526-7234 (V/TTY)

JAN is a free, confidential service from the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) that provides individualized accommodation solutions and technical assistance on the ADA. Among the areas that JAN can address are:

- Accommodation options and low-cost solutions
- Hiring, retaining and promoting qualified employees with disabilities
- Employer responsibilities under the ADA
- Reducing workers' compensation and other insurance costs
- Addressing accessibility issues

Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov
1-800-669-4000 (V); 1-800-669-6820 (TTY)

The EEOC enforces the ADA's employment provisions. The section of its Web site titled "Disability Discrimination" provides access to numerous publications, including several specifically designed to answer employer questions and concerns.

U.S. Department of Justice (DOJ) ADA Home Page

www.ada.gov

The ADA Home Page includes many excellent resources for employers. The "ADA Business Connection" section of the site includes business briefs and tax incentive information.

ADA & IT Technical Assistance Centers

www.adata.org
1-800-949-4232 (V/TTY)

Ten regional ADA & IT Technical Assistance Centers, which are sponsored by the U.S. Department of Education's National Institute on Disability and Rehabilitation Research, provide ADA information, training and technical assistance across the nation.

Quick Tips: Disclosure vs. Self-Identification

Recent amendments to the American Disabilities Act (ADA) are putting pressure on employers to 'do better' regarding recruiting, hiring and retaining veterans and employees with disabilities. Typically, there are two ways people with disabilities will disclose their disability in the workplace and they are commonly referred to as:

1. Disclosure - when an employee discloses information about his or her disability to their employer during the process of requesting an accommodation needed to successfully perform the essential functions of their job.
2. Self-Identification - when an employee voluntarily identifies themselves to their employer as a person with a disability either informally or in response to a formal request from the employer.

Current Self-Identification Trends

The goal of the recent amendments to the ADA is to create more inclusive workplaces where employees feel safe disclosing their disabilities and disability becomes less of a barrier to successful employment. Companies are starting to broach this challenge and are considering conduits they can adopt to help them become more knowledgeable about their employees who may have a disability. Companies are:

- Including disability-focused questions within all employee and/or diversity surveys
- Providing the opportunity to self-identify during onboarding along-side other data collection
- Promoting self-identification mechanisms as part of diversity

There are documented best practices to increasing the representation of people with disabilities in the workforce and to creating a more disability-inclusive workplace including:

- Articulating a clear business case for why employing individuals with disabilities is important
- Putting a face on disability by sharing the successful stories of employees with disabilities
- Fostering a strong employee resource group/business network on disabilities
- Capitalizing on the convergence of aging workforce issues and disability issues
- Assisting managers and employees to become "disability confident"
- Communicating why the company is asking those with disabilities to self-identify, how the information will be used and how anonymity or confidentiality will be protected
- Conveying the benefits of self-identification for the employee
- Providing multiple avenues for employees with disabilities to self-identify

The point of creating an environment where applicants and employees feel free to discuss their whole selves is to create a workplace where talented and capable people that were carefully selected, hired, rewarded and developed are able to give their absolute best performance.

Source: The Conference Board Do Ask, Do Tell research report

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Self-Disclosure vs. Self-Identification

Aspect	Self-Disclosure	Self-Identification
Voluntariness	Always voluntary and typically needs-driven.	Voluntary, but often encouraged by employers for reporting.
Level of Detail	Involves specific details about the disability.	Broad acknowledgment without details.
Purpose	To request accommodations or clarify needs.	To track diversity and ensure compliance.
Timing	As needed for accommodations.	During application or onboarding.
Confidentiality	Shared with those providing accommodations.	Maintained in separate records for reporting only.

June 2015 (updated December 2019)

Unpaid Work Experiences, Volunteering, and Internships: What's Allowed.

What did the states request?

As SELN member states refine how employment services are defined, implemented, and reimbursed, questions arise about how to view certain work experiences, and how to strategically use volunteer opportunities and unpaid work options.

Background

Volunteer work, internships, and unpaid job exploration can be effective strategies for individuals with disabilities looking to gain work-related experience, as well as assessments and training at places of business. However, such activities must be undertaken carefully, with a clear understanding of the purpose of these activities. All parties must know what is permitted from a legal perspective, as well as practical considerations regarding the appropriate use of volunteer and unpaid work experiences.

This working document examines these issues, and provides guidelines on the role of volunteer activities, internships, and unpaid work when assisting and supporting individuals with disabilities. This information is based on interpretation of various federal requirements. However, if readers have questions regarding specific situations, they should consult with the United States Department of Labor (DOL) Wage and Hour Division. In addition, your state may have additional requirements, so it is important to also consult with your state department of labor to ensure compliance with all applicable state labor laws and regulations.

Understanding What's Allowed

The following are the types of experiences discussed in this publication, and the distinctions between them.

- **Volunteering** – Volunteering refers to typical unpaid activities with non-profit groups that are open to all citizens. These might include making phone calls for a political campaign, serving as an assistant coach in a sports league, helping at a food bank, serving on a board or in an advisory group, or working on a clothing drive for a faith-based organization.
- **Internships** – Internships are temporary positions, either in for-profit or nonprofit organizations, with an emphasis on job training. This publication looks primarily at unpaid internships.
- **Unpaid work experiences** – Under certain circumstances, individuals with disabilities are permitted to work for a short period at any type of business without pay for job exploration, assessment, and training purposes. This is permitted only within very specific parameters.

SELN working documents contain information collected in response to SELN state member requests. An SELN working document is intended to share work in progress and may not be a comprehensive analysis or compilation.

The DOL has clear rules and guidelines on volunteering, internships, and unpaid work experiences. Each state has additional laws and regulations. It is important for service providers (including schools) not to dive in to the world of volunteer work, internships, and unpaid work experiences without having a strong understanding of what is and is not permitted.

Awareness of these parameters is critical for service providers, individuals with disabilities, and family members. These rules ensure that people with disabilities are being treated fairly, that their rights are not being violated, and that when placing individuals with disabilities into volunteer or unpaid positions, all applicable wage and hour laws are being followed.

Lack of awareness of these parameters can result in possible action by the federal or state labor department against both the service provider, and the volunteer organization or business where the individual is participating in activities. Consequences may include legal and financial penalties, including payment of back wages.

Volunteering: What it is and What's Permitted

As with anyone else who volunteers, it's important to think through the reasons that someone with a disability is giving his or her time and talents for free. What are the benefits to the individual?

- Volunteering may be a step towards employment. It is a way of exploring interests, developing skills, gaining experience, building a resume, and making connections that lead to future paid jobs. At the same time, volunteering should not be a long-term substitute for paid employment.
- Volunteer activities should be based on an individual's interests and preferences.
- When individuals are not working or are underemployed, they may chose to volunteer in order to keep busy and active while looking for paid work.

Where Individuals Can Volunteer

Individuals may volunteer only at non-profit organizations. Volunteering is not permitted at for-profit, private-sector businesses. Per the DOL, individuals may volunteer or donate their services for "public service, religious or humanitarian objectives" without expectation or receipt of payment.

These additional factors can also help determine if an activity meets the DOL's definition of volunteering:

- The activity is generally part-time.
- The activities are the kind typically associated with volunteer work rather than paid employment.
- Services are offered freely and without pressure or coercion--i.e., the person is truly volunteering.
- Regular employees have not been displaced to accommodate the volunteer.
- The individual does not receive or expect to receive any benefit (beyond the experience itself) from the organization where he or she is volunteering. Volunteers may receive reimbursement for expenses, discounts on services, refreshments, small appreciation gifts, etc. They may also be paid a nominal fee, but it cannot be a substitute for paid compensation, or based on productivity. The amount of the fee/stipend cannot exceed 20% of what an individual would have been paid for the same job. In addition, if the individual receives more than $500 per year, they no longer have liability protections under the Federal Volunteer Protection Act. In general, organizations should be cautious in providing any sort of payments beyond expense reimbursement to volunteers.

Parent/Guardian Consent Requirements

An individual with a disability must be legally competent to freely volunteer his or her services. Per the DOL, individuals under 18, and those over 18 who are not their own legal guardian, cannot volunteer without the consent of their parent or legal guardian.

Unpaid Internships

Unpaid internships are distinct from volunteering, and are intended to allow an individual to gain job-related experience. Per USDOL, individuals may participate in unpaid internships at for-profit organizations, if they are not considered to be an employee. The primary issue is the "economic reality" of who is the primary beneficiary. If the primary beneficiary is the individual, an unpaid internship is okay. If the primary beneficiary is the business, an unpaid internship is not okay. The following criteria are considered in terms of determining the primary beneficiary.

1. The extent to which the intern and the employer clearly understand there is no expectation of compensation.
2. The extent to which the internship provides training that would be similar to that in an educational environment.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship

provides the intern with beneficial learning.

6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

These criteria are considered flexible. No one single factor will determine if an unpaid internship is okay, and the unique circumstances of each case needs to be considered.

See ***www.dol.gov/whd/regs/compliance/whdfs71.htm*** for further details.

The DOL guidance specifies that it applies to "for-profit" organizations. An individual can work at a nonprofit as a volunteer, if they meet the criteria discussed earlier. However, if an individual is working at a nonprofit as an unpaid intern (e.g., a student receiving credit), rather than strictly as a volunteer, then the 7 factors regarding primary beneficiary would also apply. As with volunteering, nonprofit organizations can pay stipends to interns, but the amount of the stipend cannot exceed 20% of what an individual would have been paid for the same job.

Unpaid Work Experiences for Job Exploration, Assessment and Training

Using businesses for exploration, assessment, and training is considered best practice in the field of disability employment, rather than using simulated work environments (such as facility-based services and sheltered workshops). When undertaking an assessment, these types of experiences at an employer's place of business are typically called "situational assessments." (See the resource section on the last page for information on conducting situational assessments.)

Under DOL provisions, individuals with disabilities can spend a limited number of hours engaged in unpaid work experiences at a business for job exploration, assessment, and training. Per the DOL, these types of unpaid work experiences are permitted when all seven of the following criteria are met:

1. The individual is a person with physical and/or cognitive disability for whom competitive employment at or above minimum wage is not immediately obtainable, and who will need intensive ongoing support to succeed in employment.
2. The time spent at the place of business is for vocational exploration, assessment, or training. It must be conducted under the general supervision of staff from a rehabilitation organization (community rehabilitation provider, public vocational rehabilitation, or other public disability agency), or in the case of a student with a disability, under the supervision of public school personnel.
3. Employment in the community must be a specific goal of the individual's plan of service, specifying the need for exploration, assessment, or training activities. This must be written into the individualized plan for employment (IPE) or individual education plan (IEP).
4. The individual's activities cannot result in an "immediate advantage" to the business. "Immediate advantage" includes the following, all of which are not permitted.
   - ❖ Displacement of regular employees.
   - ❖ Filling of a vacant position by the participating individual with a disability instead of regular employees.
   - ❖ Relieving regular employees of assigned duties.
   - ❖ The participating individual performs services that, although not ordinarily performed by employees, are of clear benefit to the business.
   - ❖ The individual is under direct supervision of employees of the business, rather than a rehabilitation or school professional.
   - ❖ The activities are conducted to accommodate the labor needs of the business rather than according to the requirements of the individual's service plan.
   - ❖ The individual's service plan does not

specifically limit the time spent at any one employer site, or in any specific job classification (i.e., the planning document needs to be specific regarding intent of the person's time at the employer site in terms of duties and how long they spend there).

5. Although the number of hours does not exclusively determine whether an unpaid work experience is permitted, per the DOL, as a general rule, unpaid work experience is permissible if the following hour limitations are not exceeded.
   - ❖ Vocational explorations: 5 hours per job experienced
   - ❖ Vocational assessment: 90 hours per job experienced
   - ❖ Vocational training: 120 hours per job experienced

   In the case of students, these limitations apply during any one school year.
6. The participating individual is not entitled to employment after the unpaid work experience is completed. However, if the individual becomes an employee at that business, he or she cannot be considered a trainee (i.e., unpaid for up to 120 hours) at that particular employer unless working in a different, clearly distinguishable occupation.
7. Upon request, documentation will be provided to the DOL Wage and Hour Division, indicating that the individual is enrolled in a community-based placement program, that this enrollment is voluntary, and that there is no expectation of payment.

Further details of unpaid work requirements are available under Section 64c08 at:
www.dol.gov/whd/FOH/FOH_Ch64.pdf

Considerations in Unpaid Work Experiences

There are a number of practical considerations in the use of unpaid job experiences under these DOL guidelines:

- The use of unpaid work experiences must connect clearly with the goals and objectives of an individual's service plan, and there should be a particular rationale why the specific activities at that particular place of business are occurring, documented within the service plan. Simply having an individual participate in unpaid work experiences to "stay busy," or because it's a standard part of the employment program for everyone, is not acceptable.
- The planning document (IPE, IEP) must state the specific intent and purpose of the individual's time at the employer site in terms of the duties and number of hours that will be spent there.
- On the surface, some of the factors in terms of "immediate advantage" may seem to be a challenge to comply with. For example, if an individual is filing as part of an assessment, the business is benefiting from having some filing completed. To address any concerns in this regard, be clear that the purpose of the activity is for exploration, assessment, or training; be explicit that whatever benefit there is to the business is incidental and immaterial; and ensure that all other requirements are fully complied with (supervision by rehabilitation or school personnel, limitations on hours, no displacement of business personnel, documentation, etc.).
- A type of unpaid work experience that is generally not permitted under these guidelines is taking a group of students or adults on an ongoing basis to a business to perform job duties for no pay, unless each individual's service plan specifically states how this unpaid work experience is connected to the individual's employment goals, and specifies the number of hours of the unpaid work experience. All other requirements within the guidelines must also be complied with.

The DOL does not define the terms "vocational exploration," "vocational assessment," or "vocational training," although these terms are defined in the rehabilitation literature. The following are practical applications of these terms:

- **Vocational exploration:** Identifying types of jobs an individual may be interested in.
- **Vocational assessment:** Evaluating an individual's overall employment skills and interest in/suitability for specific occupations.

- **Vocational training:** Developing an individual's skills for a specific occupation, with the expectation that he or she will work in that occupation.

It is highly recommended that there be clear documentation in the individual's file regarding each unpaid work experience. This should indicate the type of experience (exploration, assessment, training), location, specific tasks, number of hours, and recording and analysis of the results. This documentation is useful in using these experiences to guide the career exploration and placement process. This can also support the required documentation for unpaid work experiences (noted above) and address any potential concerns about the nature of these experiences and compliance with DOL requirements.

Many of the issues regarding unpaid work experiences can be resolved simply by having a mechanism in place for payment by the agency or school to the individual (minimum wage or higher), for the time spent at the place of business. An organization may have existing funds available, or could potentially get funding from community foundations or civic groups. Given that the funding goes directly to the person with a disability, and is designed to lead to employment success, funding of these types of work experiences is a relatively simple "sell."

It important to recognize that if the service provider is paying the individual, then an employment relationship exists. This means that the individual would fall under the coverage of the service provider's workers' compensation insurance.

Assessment as "Job Tryout"

Much of the discussion in this document has focused on use of business settings for exploration and assessment to determine the focus of job development activities. When appropriate, consideration can also be given to use of assessments as a "job tryout" as part of the actual hiring decision. Under this type of strategy, if a potential position looks promising, the employer is offered an opportunity to fully evaluate the individual's ability to perform the tasks of the position. This entails allowing the job seeker to try the job for a few hours, a day, or even a couple of days, prior to a hiring decision by the business.

Worker's Compensation and Liability Coverage

One area that is important to consider regarding unpaid work experiences of all types is workers' compensation and liability coverage. Even if an individual is not considered an employee under the wage and hour laws, they may be considered an employee under the state's workers' compensation law, and as such the employer may be responsible for providing workers' compensation coverage. (For example, in Massachusetts employers must provide workers' compensation coverage for students in work based learning experiences even if they aren't being paid.) In addition, there may be liability concerns regarding the possibility of an individual damaging a piece of employer's equipment during an unpaid work experience. The following are recommendations to address these issues:

1. Consult with the office in your state department of labor responsible for workers' compensation laws, and review any laws and regulations in your state regarding responsibility for coverage in unpaid work experiences.
2. Check with your organization's insurance carrier regarding coverage.
3. Have information readily available to provide to an employer regarding workers' compensation and liability issues, and work with them to resolve any concerns.

While the employer's standard hiring process is generally the preferred choice, this process (application, interview, testing, etc.) does not always create awareness by the potential employer about the strengths and abilities of an applicant with a disability. Due to physical challenges in communicating, difficulties in verbally articulating their thoughts, or simply lack of experience in interviewing, some people with disabilities perform poorly in interviews, which can pose a significant barrier in obtaining employment.

Another challenge is that people with disabilities often lack the work experience that demonstrates their ability to perform successfully in a potential job. Additionally, limited academic skills can create challenges in performing on tests. Therefore, a job tryout approach can be an effective strategy--and can be considered an accommodation within the hiring process under the Americans with Disabilities Act.

If assessment is used as an alternative to the standard

hiring process, the following guidelines are important:

- It is imperative that the parameters of the assessment are clear to all involved, including the length of the assessment, and at what point the hiring decision will be made.
- The person with a disability must be absolutely comfortable with the idea of assessment as a job tryout.
- When using assessment as a job tryout, it should be clearly explained to the employer that the purpose is to determine whether the individual has the potential to successfully perform in the job over the long term. The employer should not necessarily expect the individual to have mastered the job at the end of the assessment, particularly if he or she has a longer learning curve.
- If the job tryout is unpaid, it must comply with the DOL requirements for unpaid work experiences noted earlier.

General Guidelines Regarding Volunteering, Internships, and Unpaid Work Experiences

Volunteering, internships, and unpaid work experience can be part of efforts by individuals with disabilities to develop skills, abilities, and experience that allow them to succeed in paid employment. The following are suggested guidelines for service providers in supporting individuals in these types of activities:

1. Make sure that all activities are based on an individual's skills, preferences, and interests, not simply to provide them some type of activity.
2. Be clear about the type of activity, and distinguish between volunteer activity, internship, and unpaid exploration, assessment, or training.
3. Have a clear rationale for why these specific types of activities are being undertaken, and how they support an individual's goals and plans.
4. Use internships and unpaid exploration, assessment, and training only as necessary and for specific reasons, with careful thought about how these will lead to paid employment. Do not spend time and resources on these types of activities if the individual can successfully obtain employment without them.
5. Reinforce to all participants that volunteering is not an alternative to paid employment, but rather an activity for the individual's personal enjoyment and fulfillment. It may also be an avenue for building skills and connections that may lead to paid employment.
6. Know the laws and regulations that apply to the particular situation.

Conclusion

It's well worth your time to familiarize yourself with the rules and guidelines regarding volunteering and unpaid employment. Understanding the nature of the experience (volunteering, internship, unpaid exploration, assessment, or training), the nature of the setting it will take place in (nonprofit, for-profit), and the nature of the activity can ensure that the necessary rules and guidelines are being applied.

Most important is avoiding situations that are in clear violation of the labor laws (e.g., an individual "volunteering" at a for-profit sector employer).

If you have questions regarding a specific situation, visit the US Department of Labor Wage and Hour Division website for contact information (***www.dol.gov/whd/america2.htm***), or call them at 1-866-487-9243 or TTY: 1-877-889-5627. Also check with your state department of labor regarding any state rules or regulations that might apply.

Resources

Resources from the US Department of Labor

- **Volunteer guidelines:** ***www.dol.gov/elaws/esa/flsa/docs/volunteers.asp***
- **Trainee guidelines:** ***www.dol.gov/elaws/esa/flsa/docs/trainees.asp***
- **Internship fact sheet:** ***www.dol.gov/whd/regs/compliance/whdfs71.htm***
- **Guidelines on unpaid work exploration, assessment, and training for people with disabilities: Section 64c08:** ***www.dol.gov/whd/FOH/FOH_Ch64.pdf***

Situational assessment information

- ***www.thinkcollege.net***
  (search for "situational assessment" in search box)

Note: The information in this publication is based on interpretation of US Department of Labor laws, regulations, and guidelines. It should not be considered as official legal guidance.

How Does This Play Out?
Sample Scenarios

The following are examples of situations regarding volunteering and unpaid work, and whether such a scenario is permitted or not permitted.

- Joachim begins "volunteering" in a clerical position that is vacant at a non-profit organization and hopes to eventually get hired. This is not permitted, unless it is done within the DOL guidelines for unpaid assessments and training. In such a scenario, meeting the requirements for avoiding "undue advantage" would likely be a challenge.

- As part of a school or service provider's employment program, a group of six individuals goes to a for-profit business on an ongoing basis to do cleaning for no pay. Such a scenario would generally not be permitted, unless: a) the service planning document for each of the six individual specifies that a cleaning position is part of their job exploration, assessment, or training activities; b) the number of hours in the cleaning position are specified in the service plan and limited to those permitted under DOL guidelines; c) all other DOL requirements for unpaid work are complied with.

- Leonora has expressed interest in working with flowers and plants. Her service provider approaches a local garden center about using the garden center as an unpaid assessment site. Duties are identified, and the service provider notes in Leonora's service plan the specific job duties and number of hours that will be used for the assessment. The staff are clear with the garden center that this activity is strictly for assessment, and it is not "free labor." Leonora performs the assessment at the garden center, under the supervision of service provider staff. This is permitted as an unpaid assessment.

- Tomeka has extensive work experience, but recently lost her job. She has typically required limited post-placement supports. Her service provider tells an employer that they can either interview Tomeka or do a short-term unpaid job tryout. Generally this would not be permitted, as Tomeka has already demonstrated that she has the ability to work at above minimum wage, and doesn't need intensive ongoing support.

- Louis wants to work in the health care field. A volunteer opportunity has been identified at a hospital, distributing periodicals to patients, an activity always done by volunteers. This is permitted as a volunteer opportunity to begin to expose Louis to a health care environment and build connections.

Development of the original version of this publication was funded by the Massachusetts Department of Developmental Services (DDS) as part of the DDS Employment First Initiative.

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The State Employment Leadership Network (SELN) is a cross-state cooperative venture of state ID/DD agencies that are committed to improving employment outcomes for adolescents and adults with developmental disabilities. Working documents contain information collected in response to state requests, and federal, state and local initiatives of interest to the SELN membership. They are intended to share work in progress but may not be a comprehensive analysis or compilation. Working documents are updated over time as information changes.

The SELN is a joint program of the Institute for Community Inclusion at UMass Boston and the National Association of State Directors of Developmental Disabilities Services.

State Employment Leadership Network

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NEW YORK STATE | Department of Civil Service

55-B/C

THE GOVERNOR'S PROGRAM TO HIRE INDIVIDUALS AND VETERANS WITH DISABILITIES

The 55-b/c Program is a coordinated effort initiated by the governor to place individuals and veterans with disabilities in entry-level State jobs.

The 55-b program allows for up to 1,700 positions normally filled through competitive examination to be filled through the appointment of qualified persons with disabilities. In general, an entry-level position that is filled only through an open-competitive examination (one open to the public) may be used for a 55-b appointment.

No initial written examination is required for appointment. To qualify for either program, you must first submit a formal application. A medical evaluation may be necessary for program certification.

To apply for the 55-b Program, you must submit a completed application, Physicians Questionnaire (Form DPM-60) and Current Resume to: SSDRecruitServices@cs.ny.gov

Contact

Phone: 518-473-8961
or 866-297-4356

For more information:
cs.ny.gov/rp55

NEW YORK STATE | Department of Civil Service

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LOWER YOUR LABOR COSTS

Employers that do business in New York State can trim their labor costs through several workforce and economic development programs. Employment-based tax credits may save your business money by cutting federal or state tax liability.

WORK OPPORTUNITY TAX CREDIT

The Work Opportunity Tax Credit (WOTC) offers employers up to $2,400 in federal tax savings for hiring individuals with barriers to employment. Qualified individuals must complete at least 120 hours of work to qualify for the partial WOTC credit of $1,500, and over 400 hours for the full $2,400 credit. To qualify businesses for the credit, individuals must be verified as members of a targeted group.

The groups include:

- People who receive Temporary Assistance for Needy Families (TANF)
- Veterans who:
  - Receive Supplemental Nutrition Assistance Program (SNAP) benefits
  - Have a service-related disability
  - Have been unemployed for at least four weeks in the previous calendar year
- Ex-felons
- People (age 18-39) who live in a federal empowerment zone or rural county
- Disabled persons receiving rehabilitation services
- Youth (age 16-17) who live in a federal empowerment zone (summer employment only)
- People (age 18-39) who receive Supplemental Nutrition Assistance Program (SNAP) benefits
- People who receive Supplemental Security Income (SSI)
- People who receive Long-Term Family Assistance
- Long Term Unemployment Recipients (LTUR)

WORKERS EMPLOYMENT TAX CREDIT (WETC)

Businesses that employ people with disabilities who currently receive vocational rehabilitation services (or people who received them up to two years prior to hire) may earn $2,100 more in state tax credits. You get the credit during the second year of employment and can combine it with the WOTC credit.

NEW YORK YOUTH JOBS PROGRAM

The New York Youth Jobs Program helps young people entering the world of work have a successful start. The program encourages the hire of unemployed, disadvantaged youth. Businesses may earn tax credits of up to $7,500 per youth for full-time employment, and up to $3,750 per youth for part-time employment. To qualify, both businesses and youth must be certified by the New York State Department of Labor. Businesses may be eligible for certification if they are in good legal standing, and have a physical location in New York State. Youth may be eligible who are unemployed, between ages 16-24, live New York State and meet one of the designated risk factors.

HIRE-A-VET CREDIT

The Hire-a-Vet Credit encourages the hire of qualified veterans. Businesses must employ a qualified veteran for no less than 35 hours per week for one full year. A qualified veteran is someone who served on active duty in the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, Reserves, National Guard, New York Guard or New York Naval Militia, and was released from active duty by general or honorable discharge after September 11, 2001. Qualified veterans must attest that they were not employed for 35 or more hours in the previous 180 days. Businesses may earn up to $15,000 for hiring a qualified veteran and up to $20,000 for hiring one who is disabled.

WORK FOR SUCCESS

The Work for Success Program helps businesses earn up to $2,400 in federal tax credits (WOTC) for each formerly incarcerated person they hire. This helps to reduce recidivism, promote economic development and improve public safety throughout New York State. Work for Success sends businesses only the most qualified and appropriately trained applicants for open jobs.

HOW TO APPLY FOR CREDITS

Call the New York State Labor Department at **888-469-7365** or go to our website at **www.labor.ny.gov**.

The New York State Department of Labor is an Equal Opportunity Employer/Program.
Auxiliary aides and services are available upon request and free of charge to individuals with disabilities TTY/TDD 711 or 1-800-662-1220 (English) / 1-877-662-4886.

2026 – Current Status of Work Opportunity Tax Credit

WOTC Program | Department of Labor

Program Overview

The **Work Opportunity Tax Credit (WOTC)** is a federal tax credit available to businesses that hire individuals from certain target groups who have consistently faced significant barriers to employment. Businesses can receive a credit ranging from $1,200 to $9,600 for hiring qualified individuals.

The Consolidated Appropriation Act, 2021 authorized the extension of the Work Opportunity Tax Credit (WOTC) until December 31, 2025.

A WOTC credit equal to 40% of the first $6,000 in qualified first year wages, for a maximum credit of $2,400. Qualified individuals must complete at least 120 hours of work to qualify for the partial WOTC credit of $1,500, and over 400 hours for the full $2,400 credit.

Employers must apply for and receive a certification verifying the new hire is a member of a targeted group before they can claim the tax credit. After the required certification is secured, taxable employers claim the WOTC as a general business credit against their income taxes, and tax-exempt employers claim the WOTC against their payroll taxes. The IRS Form 8850 and ETA Form 9061 should be retained at your business for auditing purposes for a period of four years.

WOTC Hiatus

The Work Opportunity Tax Credit (WOTC) program was authorized until December 31, 2025 (Section 113 of Division EE of P.L. 116-260 -- Consolidated Appropriations Act, 2021) and has now gone into hiatus. At this time, the Employment and Training Administration (ETA) has no indication of when Congress will pass legislation reauthorizing the WOTC program.

ETA's WOTC Procedural Guidance, Training and Employment Guidance Letter (TEGL) 16-20, Change 1 specifies that "States can continue to review and prepare WOTC certification requests when there is a WOTC authorization lapse but may not issue a certification."

During an authorization lapse, the New York SWA will:

- Accept and fully process (i.e., issue certifications or denials) all timely submitted WOTC applications for individuals with **start dates on or before December 31, 2025**.
- WOTC applications for individuals with **start dates on or after January 1, 2026**, will be accepted but SWAs **may not** issue certifications with respect to these certification requests until otherwise informed by ETA.

We appreciate your patience and understanding. We will post updates as we receive them from ETA.

How to Apply

There are two forms that a business must complete to submit a full application:

IRS Form 8850 Pre-Screening Notice and Certification Request for the Work Opportunity Credit

ETA Form 9061 Individual Characteristics Form (ICF) Work Opportunity Tax Credit

These forms MUST be submitted within 28 days of the new hire's first day of work. If these forms are received later than that they are considered late and will be denied for tardiness.

Individuals that have previously worked for the business (aka rehires) do not qualify and will be denied.

WOTC forms can be submitted via US Mail, Email or Fax:

NYS Department of Labor
Attn: WOTC Unit
State Office Campus, Bldg 12, Rm 436
Albany, NY 12226

OR

FAX: 518-485-1359
EMAIL: AskNYWOTC@labor.ny.gov

Business can apply for WOTC program directly. However, should they choose to use the services of a Tax Consultant, a current **Power of Attorney** form designating who is authorized to represent the business in WOTC matters must be on file with the NYS Department of Labor's WOTC Unit.

NOTE: Effective May 31, 2024, WOTC Offices can no longer accept IRS Form 2848 Power of Attorney as authorization of representation. All Tax professionals must switch over to ETA Form 9198: WOTC Employer Representative Declaration by June 1, 2024.

Businesses are strongly encouraged to file their WOTC forms electronically through our **Online Services Page**. You will need an NY.GOV ID to log in, and you will need to add the WOTC form to your Online Forms page. This **Navigation Guide** will help get you started.

Tax Consultants interested in bulk importing should contact us at AskNYWOTC@labor.ny.gov

Disability Resource Coordinators (DRCs)

As a result of NY SCION, there will soon be Disability Resource Coordinators (DRCs) available in nearly every local area across New York State.

Some examples of what DRCs do:

- Provide credentialed benefits advisement and work incentive counseling to job seekers who receive Social Security Administration (SSA) benefits (e.g., Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) via the Ticket to Work Program (TTW));
- Ensure job seekers with disabilities have access to necessary programs and services including career and training services offered through the Career Centers and Workforce Systems;
- Increase the number of individuals with disabilities, including SSA Beneficiaries interested in work, using the Career Center services system to participate in career pathways programs, including funded career pathways training;
- Advise the workforce development system on how to effectively promote the participation of individuals with disabilities in career pathways systems and programs;
- Promote the web-based career exploration tool, "Your Dream, Your Team." This career exploration toolkit introduces the concept of Integrated Resource Teams, or IRTs. Integrated Resource Teams bring together a team of diverse service providers to strategize how employment services can be coordinated to reach and maintain an employment goal;
- Promote and support the concept of IRTs, which aids in the development a coordinated approach to employment-related service delivery across multiple services systems;
- Make sure that individuals with disabilities are able to access all the different programs and services they need, including career and training services offered through the Career Centers to participate in career pathways programs;
- Help the Career Center and surrounding career pathways programs and staff to serve individuals with disabilities;
- Assist and train Career Center staff, businesses, community colleges, and other training providers on topics including, but not limited to rights under the Americans with Disabilities Act, TTW, accommodations, assistive technology, and assessments;
- Identify and work with disability-related resources and partners to support collaboration around the employment and/or training goal(s) of job seekers with disabilities. Such partners could include but should not be limited to:
    - NYS Education Department's (NYSED) Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR)

    - NYS Office of Children and Family Services/NYS Commission for the Blind (OCFS/NYSCB);
- Coordinate with career pathway programs' direct service delivery staff, including career coaches;
- Identify career, training, and employment opportunities for individuals with disabilities using assessments;
- Help to expand the workforce development system's participation as an Employment Network (EN) under the TTW Program, including the assignment of appropriate Tickets to the Career Center under the New York Employment Services System (NYESS) Administrative Employment Network (AEN);
- Use best practices and available resources necessary for individuals with disabilities to fully participate in existing career pathway programs and to achieve their employment and/or training goal(s).

For a list of DRCS across NYS, see the table

RESOURCES – EMPLOYEE RIGHTS AND EMPLOYER RESOURCES
The American's Disability Act [ADA]
• 411 on Disability Disclosure
• 411 on Disability Disclosure: Families, Educators
• https://askjan.org/
• Northeast ADA Center
Disclosure of Disability
• How to tell Employers about your Disability
• One-page guide to Disability Disclosure
• Disclosure Conversation Checklist
• Creating a Disclosure Script
• Disclosing a Disability for Employment
• VCU – Disclosure Decisions To Get The Job
• Frequently Asked Question (FAQ)
• Section 503
Fair Labor Standards Act [FLSA] / State Employment Leadership Network [SELN]
• Guide to the FLSA
• Digital Handy Reference Guide to FLSA
• Brochure – Rights for Workers with Disabilities
• Facts-Workers with Disabilities paid at Subminimum Wage
• State Employment Leadership Network [SELN]
55a/b Programs
• ACCES-VR Business Relations Team
• ACCES-VR Public Employers
• 55—b/c FAQ page
• DPM – 1 55b/c application
• Workers with Disabilities (55a)
NYS and Federal Tax Incentives
• Work Opportunity Tax Credit

• AskJan Tax Incentive Topics
• Workers with Disabilities Employment Tax Credit
• Disabled Access Credit
• Barrier Removal Tax Deduction
• Work for Success Program
• Recovery Tax Credit Program
• Form 8850 [Not currently available]
• WOTC Program – Department of Labor
• WOTC Individual Characteristics Form [Use this during hiatus]
• ACCES-VR Business Relations Team
Career One-Stops & Disability Resource Coordinators [DRCs]
• Disability Resource Coordinators (DRCs)
• Career One Stop [Find yours]