

Teaching Case

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Columbia Medical Center
and the
Cocaine-Addicted Pharmacist

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Columbia Medical Center and the Cocaine-Addicted Pharmacist

INTRODUCTION

Carmen Estrada had seen a lot of eye opening events in her time as Human Resources Director at the Columbia Medical Center – East hospital in El Paso, TX, none of which had prepared her for handling Tom Zenor. As she looked through his personnel file she wondered how Tom went from a promising young pharmacist, to cocaine addict, to possibly suing his employer for alleged Americans With Disabilities Act (ADA) violations.

BACKGROUND

Tom Zenor was hired to work as a pharmacist for Columbia Medical Center-East Hospital in El Paso in 1991. Two years later, in 1993, Zenor was provided a copy of the Hospital's Drug Free/Alcohol-Free Workplace Policy. Another interesting fact occurred later in 1993; Tom Zenor became addicted to cocaine.

As Estrada continued to peruse Zenor's personnel file she recalled several key incidents that led to Zenor's dismissal. During his first three years with Columbia, Zenor had positive yearly performance evaluations. That changed with his evaluation for the 1994 year (year ended July 8, 1994). The results of this evaluation were not discussed with Zenor until October of 1994. The 1994 evaluation revealed performance that was below average. This rating resulted in Zenor being placed on a two month probation. Zenor's pharmacy director, Eduardo Ramirez had a brief discussion with Zenor about his performance evaluation and probationary situation. Ramirez informed Tom that if his performance did not significantly improve over the next two months of the probationary period, he was running a real risk of being discharged. Zenor acknowledged the need for improved performance and subsequently successfully completed the two month probationary period.

The threat of discharge, however, did not stop Zenor from his cocaine use. Zenor left the pharmacy on the morning of August 15, 1995 after working the night shift and injected himself with cocaine. Later the same day, Zenor was preparing to return to work but he experienced dizziness and had trouble walking. Zenor then phoned the pharmacy director, Ramirez, with the news that he was not feeling well and would not be able to work that night. Ramirez questioned Zenor about the reason for his absence and he got the shocking reply that Zenor had injected himself with cocaine earlier in the day and was not handling it well.

Ramirez held the phone in stunned silence, not sure what to do next. He eventually asked Zenor if he planned on going into the employee assistance program for help with his substance abuse problem. Zenor replied that he needed help to beat his addiction and that he would enter the program. A shaken Ramirez instructed Tom to contact Evelyn Torres, Ramirez's supervisor, with this news. After a phone conversation with Zenor, Torres

advised Tom to contact Tom's personal physician. Zenor was admitted to R.E. Thomason General Hospital for emergency treatment and was transferred to the El Paso Alcohol and Drug Abuse Service Detox Center the next morning. Zenor had no contact with anyone at Columbia Medical Center until August 23, 1995. Surprisingly, no one at the medical center knew where Tom Zenor was or had been for eight days.

As Carmen came towards the end of Zenor's file she recalled her first conversation with Tom, which was Tom's first contact with any representative or employee of Columbia Medical Center, while he was in the detox center. During the conversation Zenor informed Carmen that he was about to get out of detox but that his doctors and counselors wanted him to transfer to a rehab center and enter a program. Tom then asked if his job would be safe until he was able to return to work.

Carmen informed Zenor that his job would be safe until he completed his rehabilitation program. She also informed Tom that he was eligible for a twelve week leave of absence under the Family Medical Leave Act (FMLA).

Carmen looked at Tom's FMLA paperwork in his file. She also read a note in the file that Tom had checked into Landmark Adult Intensive Residential Services Center following his stay in detox, which was not affiliated with the Hospital's employee assistance program.

During Tom's stay at Landmark, Carmen, Eduardo and other hospital administrators and lawyers met and discussed the Zenor situation. They believed that terminating Tom was the best thing for the hospital and pharmacy to do, due in no small part to the availability of pharmaceutical cocaine in the hospital's pharmacy. However, they also knew that they were opening up the possibility for Tom to sue the hospital. The decision was made to terminate Tom at the end of his twelve week FMLA leave.

AMERICANS WITH DISABILITIES ACT

In discussing the potential lawsuit they thought about which claims Zenor might make against the hospital. The area about which they were most concerned was the Americans with Disabilities Act (ADA) and whether or not a court would consider Tom's cocaine addiction a disability. If it was considered a disability, Columbia was likely in a great deal of legal hot water.

From various training seminars and her years of experience Carmen knew some key elements of the ADA that would likely be addressed in a potential suit by Zenor. First, she knew that Title I of the ADA only protected *qualified* individuals from employment discrimination. While Tom Zenor was certainly a qualified, licensed pharmacist when he was hired, there was some question in her mind as to whether or not he was still qualified. She made a note of this and continued to think about some other key areas of the ADA.

Carmen recalled that the ADA provided a specific definition of what is considered a disability. However, she was frustrated that she could not remember the specifics of that definition. Carmen recalled that she had attended an ADA seminar and quickly found her notes from the seminar. Those notes stated that the Equal Opportunity Employment Commission (EEOC) had defined “major life activities as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (EEOC/Robinson et al., 2002: 168). She felt good about that definition until the last word; “working.”

In Carmen’s mind, something was missing. She kept thinking that there was something in the ADA that addressed drug use and rehabilitation programs. However, she could not find any quick answers in any of her training materials. Tired of searching for a needle in a haystack, Carmen pulled out her copy of the ADA (Exhibit 1) and began reading, searching, and hoping to find something that they could use to protect Columbia from the lawsuit that was likely to come.

EXHIBIT 1

Source: <http://www.usdoj.gov/crt/ada/pubs/ada.txt>

Exhibit 1 contains excerpts from Title I of the Americans With Disabilities Act of 1990

AMERICANS WITH DISABILITIES ACT of 1990

S. 933

One Hundred First Congress of the United States of America
AT THE SECOND SESSION
Begun and held at the City of Washington on Tuesday, the twenty-third
day of January, one thousand nine hundred and ninety

An Act

To establish a clear and comprehensive prohibition of discrimination on
the basis of disability.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the "Americans with
Disabilities
Act of 1990".

(b) Table of Contents.--The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I--EMPLOYMENT

Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal use of drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.--The Congress finds that--

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose.--It is the purpose of this Act--

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) Auxiliary aids and services.--The term "auxiliary aids and services" includes--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices;

and

(D) other similar services and actions.

(2) Disability.--The term "disability" means, with respect to an individual--

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State.--The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 101. DEFINITIONS.

As used in this title:

(1) Commission.--The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) Covered entity.--The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat.--The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee.--The term "employee" means an individual employed by an employer.

(5) Employer.--

(A) In general.--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 person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar

weeks in the current or preceding year, and any agent of such person.

(B) Exceptions.--The term "employer" does not include--

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) Illegal use of drugs.--

(A) In general.--The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs.--The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) Person, etc.--The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) Qualified individual with a disability.--The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation.--The term "reasonable accommodation" may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship.--

(A) In general.--The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered.--In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with

respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

(a) General Rule.--No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction.--As used in subsection (a), the term "discriminate" includes--

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration--

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results

accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Medical Examinations and Inquiries.--

(1) In general.--The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment.--

(A) Prohibited examination or inquiry.--Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.--A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.--A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if--

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that--

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) Examination and inquiry.--

(A) Prohibited examinations and inquiries.--A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries.--A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement.--Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

(a) In General.--It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) Qualification Standards.--The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious Entities.--

(1) In general.--This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement.--Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of Infectious and Communicable Diseases.--

(1) In general.--The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall--

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) Applications.--In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction.--Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) Qualified Individual With a Disability.--For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of Construction.--Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who--

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of Covered Entity.--A covered entity--

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that--

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug Testing.--

(1) In general.--For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction.--Nothing in this title shall be construed to

encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation Employees.--Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to--

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

(a) Powers, Remedies, and Procedures.--The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) Coordination.--The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.