

MAINE STATE LEGISLATURE

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Date August 30, 1977

To Terry Ann Lunt-Aucoin, Director

Dept. Human Rights Commission

From Sarah Redfield, Assistant

Dept. Attorney General

Subject _____

This is in response to your request for an opinion as to whether the federal regulations concerning physical or mental handicap may apply to insurance companies which have a contract with the federal government.

The Rehabilitation Act provides as to contracts:

"(a) Any contract in excess of \$2,500 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 706(6) of this title. The provisions of this section shall apply to any subcontract in excess of \$2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

"(b) If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto." 29 U.S.C. Sec. 793 (emphasis supplied)

It should be noted that this section and all regulations promulgated for its administration and enforcement apply only to discrimination in employment by contractors.

The Act further provides as to recipients of federal financial assistance that:

"No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title,

shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. 794

To the best of my knowledge the only federal agency which has issued regulations pursuant to section 794 is HEW. Each federal agency will presumably, eventually, issue its own regulation following the standards set by HEW, see Executive Order #11914.

The HEW regulations are applicable to recipients of federal financial assistance. Recipient is defined as:

"(f) 'Recipient' means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 45 C.F.R. Sec. 84.3(f).

"Federal financial assistance" is defined as:

"(h) 'Federal financial assistance' means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty)," 45 C.F.R. Sec. 84.3(h).

Without further information, I cannot ascertain whether the "contract" you have indicated is within the exception for insurance and procurement contracts or not. I hope, however, the above will be of some assistance; if you wish to discuss further, let me know.



SARAH REDFIELD
Assistant Attorney General

SR:jg

cc: Donald G. Alexander ✓
John M. R. Paterson