

CRS Report for Congress

Comparison of Titles VI & VII of the Civil Rights Act of 1964; Americans with Disabilities Act; Age Discrimination in Employment Act; Title IX of Education Amendments of 1972; and Rehabilitation Act of 1973

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August 6, 1997



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SUMMARY

This report provides a side-by-side comparison of titles VI and VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Age Discrimination in Employment Act; title IX of the Education Amendments of 1972 and the Rehabilitation Act of 1973. The statutes are compared in terms of their scope (or coverage); statutory exceptions and limitations; enforcement procedures; and sanctions.

Comparison of Titles VI & VII of the Civil Rights Act of 1964; Americans with Disabilities Act; Age Discrimination in Employment Act; Title IX of Education Amendments of 1972; and Rehabilitation Act of 1973

Title VI - Civil Rights Act of 1964	Title VII - Civil Rights Act of 1964	Americans with Disabilities Act (ADA)	Age Discrimination in Employment Act (ADEA)	Title IX of Education Amendments of 1972	Rehabilitation Act of 1973, section 504
SCOPE					
<p>“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. § 2000d).</p> <p>This statute applies to recipients of Federal financial assistance including:</p> <ul style="list-style-type: none"> • the department, agency, special purpose district, or other instrumentality of a state or local government • the entity of a state or local government which distributes assistance • colleges, universities, local educational agencies, or public systems for higher education • certain corporations providing services such as education, health care, housing, social services, or parks and recreation. (42 U.S.C. § 2000d-4a). <p>(Continued in next row)</p>	<p>Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sex, race, color, religion, or national origin. It also prohibits an employer from retaliating against an employee who has protested an unlawful employment practice under that title.</p> <p>Private employers with fifteen or more employees and labor organizations with fifteen or more members are covered by the law. As a prerequisite; however, both must be engaged in an "industry affecting commerce".(42 U.S.C. § 2000e).</p> <p>"Employment agencies" are defined to mean anyone who "procures" employees for employers or work opportunities for employees, (42 U.S.C. § 2000e(c)) and are also subject to regulation by the law. Title VII applies only if otherwise unlawful discrimination is somehow related to employment.</p> <p>Included are states and local government employers and Federal departments and agencies within the Executive branch.</p>	<p>Prohibits discrimination against individuals with disabilities in employment (Title 1), public services (including public transportation) (Title 2), public accommodations and services provided by private entities (Title 3) and telecommunications (Title 4).</p> <p>The Congressional Accountability Act applies the ADA to the legislative branch (2 U.S.C. § 1301 et seq., Regulations at 143 Cong. Rec. S 30-61 (daily ed. January 7 1997) (Notice of Adoption and Submission for Approval)).</p> <p>The ADA does <u>not</u> apply to the executive branch, Postal Service or judicial branch. The Rehabilitation Act § 504 applies to the executive branch and Postal Service (see below).</p>	<p>The ADEA, which prevents employment discrimination against persons age 40 and older, makes it unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age. (29 U.S.C. § 623). It applies, not only in hiring, discharge and promotion, but also prohibits discrimination in employee benefit plans such as health coverage and pensions.</p> <p>The ADEA applies to private employers (with twenty or more employees), labor organizations, employment agencies, and state and local governments. (Id.) Most Federal government employees and congressional employees are also covered by ADEA provisions which prohibit age discrimination in personnel actions affecting employees. (29 U.S.C. § 633a; 2 U.S.C. § 1301). Federal employees include employees in certain military departments, executive agencies, the U.S. Postal Service, the Postal Rate Commission, certain D.C. employees, judicial employees in competitive service and employees in the General Accounting Office, Government Printing Office, and the Library of Congress.</p>	<p>Discrimination against any person on the basis of sex is prohibited in education programs or activities that receive Federal financial assistance. (20 U.S.C. § 1681). The law applies to elementary and secondary as well as postsecondary schools. (20 U.S.C. § 1681(c)). Elementary and secondary schools may not assign students to separate classrooms or activities, or prevent them from enrolling in a course of their choice, on the basis of sex. (34 C.F.R. § 106.34).</p>	<p>Prevents discrimination of qualified persons with disabilities in any program or activity receiving Federal financial assistance or operated by the Executive branch or the Postal Service. (29 U.S.C. § 794).</p>

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SCOPE continued					
<p>Specific examples of behavior recipients are prohibited from engaging in include:</p> <ul style="list-style-type: none"> • denying any individual of any service, financial aid, or other benefit provided under the program • providing service to an individual which is different or is provided in a different manner from the service which is provided to others in the program • subjecting an individual to any segregation or separate treatment in any manner related to the receipt of service, financial aid, or other benefit • restricting an individual in the enjoyment of any advantage or privilege which is enjoyed by others receiving the advantage or privilege • holding the individual to a different set of standards in determining whether the individual meets conditions which must satisfied in order to be provided any service or benefit under the program (14 C.F.R. § 1250.103-2; 13 C.F.R. § 112.3; 7 C.F.R. § 15.3; 5 C.F.R. § 900.404). 					

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Title VI - Civil Rights Act of 1964	Title VII - Civil Rights Act of 1964	Americans with Disabilities Act (ADA)	Age Discrimination in Employment Act (ADEA)	Title IX of Education Amendments of 1972	Rehabilitation Act of 1973, section 504
EXCEPTIONS					
<p>Two exceptions have been carved out of the statute:</p> <p>1. The statute does not apply to agencies with regard to their employment practices unless the primary objective of the Federal funds is to provide employment. (42 U.S.C. § 2000d-3). Thus, some agencies which do provide employment through the use of Federal funds are exempt from this statute's application.</p> <p>2. The statute does not affect programs in which Federal financial assistance is extended through insurance contracts or guarantees. (42 U.S.C. § 2000d-4).</p>	<p>Several entities are excluded from Title VII protection. In its definition of "employer", the law explicitly excludes "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 and Indian tribes. (42 U.S.C. § 2000e(b)). It also excludes elected officials, their personal staffs, and certain of their appointees and advisors. (42 U.S.C. § 2000e(f)).</p> <p>In addition, religious organizations, including educational institutions, are excluded from the law, (42 U.S.C. 2000e-1) as are employers employing aliens outside of the United States. (42 U.S.C. § 2000e-1(a)).</p> <p>Finally, Title VII protection is denied to members of the Communist Party (42 U.S.C. § 2000e-2(f)) and employers engaged in national security work. (42 U.S.C. § 2000e-2g). Under both of these provisions, protection is denied in specifically defined circumstances.</p>	<p>Title I:</p> <p>The ADA does not contain general "exceptions" but there are certain defenses to a charge of discrimination as well as other limitations. For example, in Title Five, there is a limitation stating that homosexuality and bisexuality are not impairments or disabilities under the ADA. The ADA is a complex statute. This chart is intended as an overview for general purposes of comparison:</p> <ul style="list-style-type: none"> Title 1 covers only employers who employ 15 or more. (42 U.S.C. § 12111(5)). Title 1 does not cover bona fide private membership clubs. (42 U.S.C. § 12111(5)). Reasonable accommodation need not be provided if it would be an "undue hardship" on the employer, i.e., an action requiring significant difficulty or expense. (42 U.S.C. §§ 12111(10), 12112(b)(5)). There are limitations on coverage for entities in foreign countries. (42 U.S.C. § 12112(c)). <p align="right">(continued in next row)</p>	<p>Age-related employment actions may be lawful if they are a bonafide occupational qualification reasonably necessary to the normal operation of a business. Certain bonafide seniority system and employee benefit plan age-related terms are permissible. The ADEA does not prohibit the compulsory retirement of a bona fide executive or high policy-maker who has reached age 65 and is entitled to a nonforfeitable annual retirement benefit of at least \$44,000. (29 U.S.C. § 631(c)(1)). Certain maximum hiring and mandatory retirement age limitations may be applicable to state and local firefighters and law enforcement officers. (29 U.S.C. § 623(j)).</p>	<p>Title IX is not applicable to military, (20 U.S.C. § 1681(a)(4)). Also see <u>United States v. Virginia</u>, 766 F. Supp. 1407, 1408 (W.D. Va. 1991), <i>vacated and remanded</i>, 976 F.2d 890, <i>aff'd</i>, 116 S. Ct. 2264 (1996). In this popular case, a female applicant filed a complaint with the Department of Education challenging the Virginia Military Institute's (VMI) admissions policy. The district court held that VMI was not in violation of Title IX because it was a historically single-sex and therefore exempt from the purview of Title IX.) religious, (20 U.S.C. § 1681(a)(3)) or single-sex schools. (20 U.S.C. § 1681(a)(5)). Title IX is not applicable to social fraternities or sororities and voluntary youth service organizations, (20 U.S.C. § 1681(a)(6)) Boy or Girl conferences, (20 U.S.C. § 1681(a)(7) and father-son or mother-daughter activities. (20 U.S.C. § 1681(a)(8)). Neither is it applicable to higher education scholarship awards in "beauty" pageants. (20 U.S.C. § 1681(a)(9)).</p> <p>Segregation of students by sex is allowed under certain circumstances. These exceptions are:</p> <p align="right">(continued in next row)</p>	<ul style="list-style-type: none"> Section 794 (The exceptions listed here are not defined as exceptions in the statute.) does not consider the following as disabilities: current use of illegal drugs, alcoholism that prevents the performance of job duties or is a direct threat to property or safety, having a contagious disease, homosexuality, and other sexual and psychological disorders. (29 U.S.C. §§ 706(8)(C)-(F)). Small providers are not required to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. (29 U.S.C. § 794(c)). Standards for employment discrimination are the same as Title I of the ADA. See ADA (above). (29 U.S.C. § 794(d)).

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EXCEPTIONS continued					
		<ul style="list-style-type: none"> • An employer may exclude a person with a disability if it is job related and consistent with business necessity. (42 U.S.C. § 12113). • Religious entities can give preference in employment to individuals of a particular religion and may require applicants and employees to conform to the religious tenets of such organization. (42 U.S.C. § 12113(c)). • Qualification standards may include a requirement that the individual not pose a direct threat to the health or safety of other individuals in the workplace. (42 U.S.C. § 12113(b)). • Covered entities may refuse to assign or continue to assign certain individuals with infectious and communicable diseases to jobs involving food handling. (42 U.S.C. §§ 12113(b), (d)). <p>“Qualified person with a disability” does not include persons who are currently engaged in the illegal use of drugs. (42 U.S.C. § 12114(a)).</p> <p align="center">(continued in next row)</p>		<p>1) in music classes, schools may have requirements based on vocal range or quality, which may result in all-male or all-female choruses (20 U.S.C. § 1682);</p> <p>2) in elementary and secondary schools, portions of classes that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls (34 C.F.R. § 106.3);</p> <p>3) in physical education classes or activities, students may be separated by sex when participating in sports where the major purpose or activity involves bodily contact; (34 C.F.R. § 106.34(c));</p> <p>4) students may be grouped in physical education classes by ability, if objective standards of individual performance are applied, which may result in all-male or all-female ability groups (34 C.F.R. § 106.34(d); and</p> <p>5) if the use of a single standard to measure skill or progress in a physical education class has an adverse effect on members of one sex, schools must use appropriate standards that do not have such an effect.</p> <p align="center">(continued in next row)</p>	

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EXCEPTIONS continued					
		<ul style="list-style-type: none"> • Persons who test positive for illegal use of drugs or on duty impairment by alcohol may be removed from a safety sensitive transportation job. (42 U.S.C. § 12114(e)). <p>Title 2:</p> <ul style="list-style-type: none"> • If a public entity uses a historic vehicle for use on a fixed route system that includes an area on the National Register of Historic Places, modifications to the vehicle which would not “significantly alter” the historic character of the vehicle would only be required for compliance with Title 2. (42 U.S.C. § 12142(c)(2)). • The public entity would not be required to provide paratransit service to the extent it causes an undue financial burden if the public entity demonstrates such a burden to the Secretary of Transportation. (42 U.S.C. § 12143(c)(4)). <p>(continued in next row)</p>		<p>If a school system operates separate educational programs or activities for members of each sex in accordance with the mentioned exceptions, it must ensure that the separate course, services and facilities are comparable.</p> <p>An exemption from these requirements may be requested by educational institutions controlled by religious organizations whose tenets conflict with requirements of Title IX. (34 C.F.R. § 106.34(b)).</p> <p>An employment decision based on sex does not violate Title IX if it is shown that sex is a bona fide occupational qualification for employment and that “consideration of sex with regard to such action is essential to successful operation of the employment function concerned.” (34 C.F.R. § 106.61).</p>	

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EXCEPTIONS continued					
		<ul style="list-style-type: none"> • Alterations of existing facilities are required only to the "maximum extent feasible." (42 U.S.C. § 12147). • The requirements of Title 1 apply for employment of state and local governments. (28 C.F.R. § 35.140 (1997)). <p>Title 3:</p> <ul style="list-style-type: none"> • Eligibility criteria may be imposed if shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered. (42 U.S.C. § 12182(b)(2)(A)(i)). • Reasonable modifications in policies, practices or procedures are not necessary if the entity can demonstrate that making such modifications would fundamentally alter the nature of goods, services, facilities, privileges, advantages or accommodations. (42 U.S.C. § 12182(b)(2)(A)(ii)). <p>(continued in next row)</p>			

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EXCEPTIONS continued					
		<ul style="list-style-type: none"> • Services may be denied if an entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden. (42 U.S.C. § 12182(b)(2)(A)(iii)). • Architectural and communications barriers that are structural in nature in existing facilities and certain transportation barriers must be removed only if the removal is readily achievable. (42 U.S.C. § 12182(b)(2)(A)(iv)-(v)). • Certain alterations must be made accessible to the maximum extent feasible. (42 U.S.C. § 12183(a)(2)). • Installation of an elevator is not required for certain buildings. (42 U.S.C. § 12183(b)). <p>(continued in next row)</p>			

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EXCEPTIONS continued					
		<ul style="list-style-type: none"> • Certain new vehicles for public transportation services need not be readily accessible if the system in its entirety provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public. (42 U.S.C. § 12184(b)(3)). • Historical vehicles do not have to be altered if such alteration would significantly alter their historic or antiquated character. (42 U.S.C. § 12184(c)). • Over the road buses do not have to have accessible restrooms if such installation would result in a loss of seating capacity. (42 U.S.C. § 12186(a)(2)(c)). • Title 3 does not apply to private clubs or religious organizations. (42 U.S.C. § 12187). <p>Title 4: None specified.</p>			

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ENFORCEMENT					
<p>Each Federal agency authorized to extend Federal financial assistance is directed to promulgate rules to carry out the purposes of the statute. Compliance may be effectuated by the termination, suspension, or refusal of Federal financial assistance after notice of the failure to comply has been provided and the agency determines that compliance cannot be achieved by voluntary means. (42 U.S.C. § 2000d-1).</p> <p>In addition, prevailing judicial precedent adds an implied private right of action into the statute. (<i>See Guardians Assn. v. Civil Service Commission</i>, 463 U.S. 582 (1983); <i>Cannon v. University of Chicago</i>, 441 U.S. 667 (1979)).</p>	<p>Title VII of the Civil Rights Act of 1964 created the Equal Employment Opportunity Commission (EEOC) to enforce the provisions of the law for private and state and local governments. It is empowered to receive and act upon complaints of employment discrimination, which must be filed by an aggrieved individual or on the Commission's own initiative within 180 days of the alleged unlawful practice. Title VII imposes specific time limits for processing charges which may be extended for up to 60 days to accommodate deferrals to state or local fair employment practices agencies with jurisdiction to hear the charges. If the EEOC finds that there is "reasonable cause" to believe a charge, it is required to seek to eliminate the discrimination through conciliation. If that fails, EEOC may file a civil action in Federal district court, except where the respondent is a government, governmental agency, or political subdivision named in the charge. In those cases, the EEOC must refer the case to the Attorney General who may bring a civil action in the appropriate United States district court. (42 U.S.C. § 2000e(c)).</p> <p align="center">(continued in next row)</p>	<p>Title 1: Enforcement provisions of Title VII are available to the EEOC, the Attorney General and to any person alleging discrimination on the basis of disability. (42 U.S.C. § 12117(a)). <i>See</i> Title VII of the Civil Rights Act (above).</p> <p>Title 2: The enforcement provisions of Title VI of the Civil Rights Act (above) apply for general provisions. (42 U.S.C. § 12133). <i>See</i> 29 U.S.C. § 794a(a)(2). The Department of Transportation has enforcement authority for Transportation provisions. (42 U.S.C. § 12164).</p> <p>Title 3: The enforcement provisions of Title II of the Civil Rights Act of 1964 are applicable. The Attorney General shall investigate and undertake periodic reviews. (42 U.S.C. § 12188).</p> <p>Title 4: The Federal Communications Commission resolves complaints it receives. (47 U.S.C. § 225(e)).</p>	<p>The EEOC is responsible for enforcement of the provisions of the ADEA. (29 U.S.C. § 626(a)). It investigates and conciliates charges of unlawful discrimination and may institute court action to secure compliance by private employers. (29 U.S.C. § 626(b)). Court actions against governmental entities are referred to the Attorney General. A claimant under the ADEA may bring a civil action in state or Federal court, unless the EEOC brings suit on behalf of the aggrieved, in which case his right to bring suit yields to the EEOC. (29 U.S.C. § 626(c) and (d)).</p>	<p>The Office of Civil Rights, Department of Education, enforces the law prohibiting specific discriminatory activities. (20 U.S.C. § 1682). If a finding of discrimination is made, the recipient will take whatever remedial action the Secretary determines will overcome the effects of discrimination. (34 C.F.R. § 106.3). If the recipient does not remedy the effects of discrimination, the Department may terminate or refuse to grant or to continue to grant further assistance to the educational program. (20 U.S.C. § 1682). Such decisions of an agency or department are subject to judicial review. (20 U.S.C. 1682; 20 U.S.C. § 1683). Otherwise, complainants have the right to file private civil actions. (<i>Id.</i>)</p>	<p>Same provisions as Title VI of the Civil Rights Act (above). (29 U.S.C. § 794a(2)).</p>

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ENFORCEMENT continued					
	<p>Different administrative and judicial enforcement procedures exist to eliminate discrimination in Federal service. The EEOC has authority to enforce the nondiscrimination policy through "appropriate remedies, including reinstatement or hiring of employees with or without back pay." Each Federal department and agency, in turn, is required to prepare annually a "national and regional equal employment opportunity plan" containing internal grievance procedures, programs for upgrading personnel, and the like, for Commission review and approval.</p> <p>The primary administrative forum for investigation, conciliation, and resolution of Federal employee charges is the agency against whom the charge is brought. Agency action on grievances are appealable to the EEOC which is authorized to grant appropriate relief.</p> <p>Title VII provides complainants with the right to file private civil actions in the Federal district courts if their complaints are not resolved by EEOC or, with respect to Federal employees, by their department or agency.</p>				

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REMEDIES					
<p>Remedial measures include the suspension or termination of Federal financial assistance and injunctions and other equitable relief. Unresolved by the courts is whether compensatory damages may be sought for a violation of Title VI.</p>	<p>Broad remedial relief is available under Title VII. Courts may not only enjoin an unlawful practice, but may "order such affirmative action as may be appropriate." (42 U.S.C. § 2000e-2(g)). These equitable remedies may include, but are not limited to, reinstatement, back pay, front pay, and attorney's fees. Liability for back pay is limited to the two years prior to the filing of the complaint. In addition, a plaintiff is entitled to a jury trial if compensatory or punitive damages are sought.</p> <p>Punitive damages are available to a plaintiff who proves intentional discrimination with malice or reckless indifference to the plaintiff's rights. (42 U.S.C. § 1981a). Compensatory and punitive damages are limited based on the size of the defendant's workforce. These limits do not apply to back pay, interest on back pay, front pay, or pecuniary losses. In addition, if a jury hears the case, they will not be informed of these limitations.</p>	<p>Title 1: The remedies available are the same as those available under Title VII of the Civil Rights Act. (42 U.S.C. § 12117(a)). See Title VII of the Civil Rights Act (above)</p> <p>Title 2: For employment, the remedies available are those available under Title VII of the Civil Rights Act (above). (42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(1)). For other forms of discrimination, the remedies are those available under Title VI of the Civil Rights Act (above). (42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2)).</p> <p>Title 3: Remedies of Title II of the Civil Rights Act are applicable. (42 U.S.C. § 12188). The Attorney General may seek equitable relief including monetary damages to aggrieved persons (not to include punitive damages) and civil penalties. (42 U.S.C. § 12188 (b)(2)(B), (b)(4)).</p> <p>Title 4: None specified.</p>	<p>The prevailing plaintiff may be entitled to legal and equitable relief, including reinstatement, promotion, and payment of wages lost. (29 U.S.C. § 626(b)). Reasonable attorney's fees may be awarded in private civil actions. (<i>Id.</i>) A wilful violation of the Act gives rise to liquidated damages. (<i>Id.</i>) Plaintiffs in private actions are entitled to a jury trial on issues of fact. (29 U.S.C. § 626(c)). However, Federal employees are not entitled to a jury trial. (<i>Lehman v. Nakshian</i>, 453 U.S. 156 (1981)). The Court held that the ADEA did not grant the right to a jury trial to an employee suing the Federal government.).</p>	<p>Suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. (<i>Id.</i>) Title IX is enforceable through implied private right of action for monetary damages, attorneys fees as well as injunctive relief.</p>	<p>Same provisions as Title VI of the Civil Rights Act (above). (29 U.S.C. § 794a(2)).</p>