

FAQs About Accessibility and the Law

An Interview with Robert “Bobby” Silverstein, Principal, Powers Pyles Sutter & Verville, PC



TalentWorks Tip Sheet

In today's business world, eRecruiting tools are everywhere. Also known as “online recruiting,” eRecruiting refers to the practice of using technology—in particular, web-based resources—to support tasks involved with finding, attracting, assessing, interviewing, and hiring new personnel.

As eRecruiting tools become more and more commonplace, employers are asking important questions about the legal responsibilities they may have to make those tools accessible to all users, including job seekers with disabilities.

To help clarify and address these questions, the Partnership on Employment & Accessible Technology (PEAT) spoke with Robert “Bobby” Silverstein, attorney and director of the Center for the Study and Advancement of Disability Policy. Mr. Silverstein has more than 30 years of experience analyzing employment policy issues affecting people with disabilities and is the author behind many of the nation's legislative and regulatory solutions that aim to address them.

(Editor's Note: This interview provides informational content only and is not a substitute for professional legal advice. Any views expressed in this interview are solely those of Mr. Silverstein's. For in-depth guidance on the laws and regulations discussed below, contact your own legal professional.)

Q: Why should employers care about the accessibility of their eRecruiting technology—especially from a legal or compliance standpoint?

A: Many employers know that information and communications technology (ICT) used in the workplace—like websites, online systems, and other forms of technology—should be accessible to employees with disabilities. But not everyone thinks about the technology used during the recruiting process. Online job applications, for instance, have become a major gateway to employment, and oftentimes, the only way to search and apply for a job these days is online. So it's essential for employers to use and provide eRecruiting tools that are accessible to and usable by people with disabilities. If they don't, they're excluding certain individuals from applying for jobs at their company. This not only limits their talent pool—it can also expose them to legal risk.

If you want proof of this, consider the fact that the U.S. Department of Justice (DOJ) has entered into numerous settlement agreements with employers who were cited for having inaccessible web sites and online application systems. These settlements included provisions that the employers update their systems in accordance with the international accessibility standards maintained by the World Wide Web Consortium, also known as the [Web Content Accessibility Guidelines \(WCAG 2.0 AA\)](#).

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Q: Which accessibility laws apply to employers and their eRecruiting tools?

A: That depends on the type of employer you are. Laws governing accessible technology include the [Americans with Disabilities Act \(ADA\)](#) and Sections [503](#) and [508](#) of the Rehabilitation Act of 1973. PEAT's article, "[Accessible Technology and the Law](#)," explores these laws and regulations in-depth and can help you determine which ones apply to you.

Q: Does the ADA specifically mention eRecruiting technology?

A: Not specifically, but certainly in spirit. When the ADA was signed into law, the Internet as we know it today did not exist. However, in the preamble to the original 1992 ADA regulations, the U.S. Department of Justice (DOJ) made it clear that the regulations should be interpreted to keep pace with developing technologies. So, while you won't find specific requirements and standards applicable to accessible ICT in the current ADA regulations, you will find general rules designed to guarantee individuals with disabilities equal, effective, and meaningful access to all of the important areas of American civil and economic life. This includes technology accessibility during the recruitment and hiring phase of the employment lifecycle, as well as during the retention and advancement phases. Again, DOJ has entered into [numerous settlement agreements](#) requiring employers to make their web sites and online application systems accessible in accordance with the Web Content Accessibility Guidelines (WCAG 2.0 AA).

Q: Where does Section 503 intersect with accessible eRecruiting?

A: Section 503 of the Rehabilitation Act prohibits employers who do business with the federal government from engaging in discrimination on the basis of disability and requires them to take affirmative action to recruit, retain, and advance qualified individuals with disabilities. Under revisions to the rules implementing Section 503 that took effect in 2014, federal contractors now have clear guidelines and goals for measuring their success in meeting these prohibitions and requirements.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which enforces Section 503, has explained that contractors must ensure that applicants with disabilities have equal access to its personnel processes, including those implemented through information and communication technologies. Contractors are encouraged to make their information and communication technology accessible, even in the absence of a specific request for reasonable accommodation. Also, OFCCP points out that there are a variety of resources that may assist contractors in assessing and ensuring the accessibility of its information and communication technology, such as WCAG 2.0.

Q: What about Section 508? How does it play into eRecruiting?

A: Section 508 of the Rehabilitation Act focuses on accessible ICT. It requires that when federal agencies develop, procure, maintain, or use electronic or information technology, they must ensure that the technology is accessible to and usable by employees and members of the public with disabilities, unless an "undue burden" would be imposed on the department or agency. So it ensures that federal employees with disabilities have access to, and use of, the information and data they need to do their job in order to reduce barriers to job success and upward mobility. It also ensures that members of the public with disabilities have equal access to government information and services—including access to job opportunities with the federal government. So that's one clear area where eRecruiting comes into play; if you're a government agency, Section 508 mandates that your online job application and other related tools be accessible. And if you're a private business that sells eRecruiting technology to the federal government, those products must be built to meet the Section 508 accessibility standards issued by the U.S. Access Board.

Q: In cases where explicit guidance on eRecruiting tool accessibility is not spelled out within the letter of the law, how should employers respond?

A: In my opinion, the letter of the law and the spirit are virtually the same. The general requirements in the ADA require that when employers use websites and online systems as a means of communication to its applicants and employees, they must ensure that opportunities for people with disabilities are as effective and meaningful as those provided to persons without disabilities. This includes online job applications and other eRecruiting tools. But what is not explicit in the current regulations are the standards and guidelines for what constitutes accessible ICT. But the writing is on the wall, since several related regulatory updates are on the horizon. And, in the interim DOJ has entered into numerous settlement agreements with employers requiring that websites and online application systems are accessible in accordance with WCAG 2.0 AA.

Q: Tell us about those impending regulatory updates to laws governing accessible ICT and eRecruiting technology. What should we expect?

A: Well, DOJ has already issued an Advance Notice of Proposed Rulemaking (ANPRM) asking whether the ADA regulations should be updated to require the accessibility of websites and online application systems. And as a next step, the agency is expected to issue an NPRM outlining proposed updates on website and online system accessibility. The proposed requirements are likely to be consistent with accessibility standards set out in WCAG 2.0 AA, so employers and technology developers who are following these standards already will be ahead of the game. This is truly an exciting development since the updated requirements will ensure ICT accessibility for people with disabilities, regardless of whether or not a person with a disability requests it as a reasonable accommodation.

Q: What are your thoughts on accessibility compliance versus culture? And how can employers make ICT accessibility a core element of their culture?

A: While it is certainly important to comply with the law, I strongly believe that compliance is not enough to ensure that websites, online systems, eRecruiting tools and other forms of ICT are accessible to and usable by people with disabilities. It truly is all about culture and ensuring an accessibility mindset at all levels of an organization. That means budgeting for ICT accessibility, forming a leadership team to manage it, setting priorities, and creating a set of measurable goals to work toward the improvements. Employers also need to understand that accessibility is an ongoing process that requires the involvement and perspectives of actual technology users with disabilities. By making accessibility an engrained part of your workplace culture, legal compliance will follow naturally—and so will the greater benefits of fostering an accessible workplace.