

## 11.7: Disability Discrimination

Disability discrimination occurs when an [employer or other entity covered](#) by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual who is an employee or applicant unfavorably because he or she has a disability.

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because he or she has a history of a disability (such as a past major depressive episode) or because he or she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

*Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are the same.*

### Disability Discrimination and Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

### Disability Discrimination and Harassment

It is illegal to harass an applicant or employee because he or she has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

Harassment can include, for example, offensive remarks about a person's disability. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

### Disability Discrimination and Reasonable Accommodation

The law requires an employer to provide reasonable accommodations to employees and job applicants with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

While the federal anti-discrimination laws don't require an employer to accommodate an employee because he or she must care for a family member with a disability, the Family and Medical Leave Act (FMLA) may require an employer to take such steps. The Department of Labor enforces the FMLA. For more information, call: 1-866-487-9243.

### Disability Discrimination and Reasonable Accommodation and Undue Hardship

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. An employer may not refuse to provide an accommodation just because it involves some cost. An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

## Definition of Disability

Not everyone with a medical condition is protected from discrimination. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person has a disability if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function).
- A person has a disability if he or she has a history of a disability (such as cancer that is in remission).
- A person has a disability if he or she is subject to an adverse employment action and is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

## Disability-Related Questions and Medical Exams During Employment Application and Interview Stage

The law places strict limits on employers when it comes to asking any job applicants to answer disability-related questions, take a medical exam, or identify a disability.

For example, an employer may not ask a job applicant to answer disability-related questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

## Disability-Related Questions and Medical Exams After A Job Offer For Employment

After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain disability-related questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam.

## Disability-Related Questions and Medical Exams For Persons Who Have Started Working As Employees

Once any employee is hired and has started work, an employer generally can only ask disability-related questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

## Available Resources

In addition to a variety of [formal guidance documents](#), EEOC has developed a wide range of fact sheets, question & answer documents, and other publications to help employees and employers understand the complex issues surrounding disability discrimination.

- [Employer-Provided Leave and the Americans with Disabilities Act](#)
- [Recruiting, Hiring, Retaining, and Promoting People with Disabilities: A Resource Guide for Employers](#)
- [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#)
- [Your Employment Rights as an Individual With a Disability](#)
- [Job Applicants and the ADA](#)
- [Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)
- [Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce](#)
- [The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)
- [The ADA: A Primer for Small Business](#)
- [Your Responsibilities as an Employer](#)
- [Small Employers and Reasonable Accommodation](#)
- [Work At Home/Telework as a Reasonable Accommodation](#)
- [Applying Performance And Conduct Standards To Employees With Disabilities](#)
- [Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures](#)
- [The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work](#)
- [Employer Best Practices for Workers with Caregiving Responsibilities](#)
- [Reasonable Accommodations for Attorneys with Disabilities](#)

- [RESCINDED - How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers](#)
- [Final Report on Best Practices For the Employment of People with Disabilities In State Government](#)
- [Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights](#)
- [ABCs of Schedule A Documents](#)

#### The ADA Amendments Act

- [Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](#)

#### Veterans with Disabilities

- [EEOC Efforts for Veterans with Disabilities](#)
- [Understanding Your Employment Rights Under the Americans with Disabilities Act: A Guide for Veterans](#)
- [Veterans and the Americans with Disabilities Act: A Guide for Employers](#)
- [Hiring Veterans with Disabilities in the Federal Government](#)
  - [Tips for Applicants with Disabilities Applying for Federal Jobs](#)
  - [The ABCs of Schedule A](#)

#### The Questions and Answers Series

- [Use of Codeine, Oxycodone, and Other Opioids: Information for Employees](#)
- [How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed](#)
- [EEO Laws for Employees Affected by the Zika Virus](#)
- [Health Care Workers and the Americans with Disabilities Act](#)
- [Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act](#)
- [Blindness and Vision Impairments in the Workplace and the ADA](#)
- [The Americans with Disabilities Act's Association Provision](#)
- [Diabetes in the Workplace and the ADA](#)
- [Epilepsy in the Workplace and the ADA](#)
- [Persons with Intellectual Disabilities in the Workplace and the ADA](#)
- [Cancer in the Workplace and the ADA](#)
- [The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking](#)
- [Living with HIV Infection Your Legal Rights in the Workplace Under the ADA](#)
- [Helping Patients with HIV Infection Who Need Accommodations at Work](#)

#### Mediation and the ADA

- [Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act \(ADA\)](#)
- [Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act \(ADA\)](#)

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