

WHAT YOU NEED TO KNOW ABOUT THE AMERICANS WITH DISABILITIES ACT *

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Employment discrimination against people with disabilities is illegal if engaged in by:

- Private employers
- Local governments
- Employment agencies
- Labor organizations
- Labor-management committees.

Title I of the American with Disabilities Act as amended prohibits employment discrimination by all employers, including state and local government employers, with 15 or more employees.

Title II of the Americans with Disabilities Act prohibits discrimination in local government programs and activities, including employment discrimination by all local governments, regardless of the number of employees, after January 26, 1992.

Title I of the Americans with Disabilities Act is enforced by the Equal Employment Opportunity Commission (EEOC). Title II of the Act is enforced by the Dept. of Justice (DOJ).

Are You Protected By the ADA?

If you have a disability and are qualified to do a job, the ADA protects you from discrimination on the basis of your disability. Under the ADA as amended, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The definition of “substantially limits” has been expanded by the ADA Amendments Act of 2008 in that the Amendments make clear that you need not be completely unable to perform an activity in order to be disabled. You may also be protected if you have a history of such a disability or if an employer believes that you have such a disability, even if you don’t.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from employment discrimination under the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

What is a Reasonable Accommodation?

A reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in a job application process, to perform the essential functions of a job or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- Providing or modifying equipment or devices, including providing assistive technology, job restructuring, part-time or modified work schedules, reassignment to a vacant position, adjusting or modifying examinations, training materials, or policies.
- Providing readers and interpreters.
- Making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue hardship – that is, that it would require significant difficulty or expense.

What Employment Practices are Covered?

The ADA as amended makes it unlawful to discriminate in all employment practices such as:

- Recruitment
- Hiring
- Job assignments
- Pay
- Layoff
- Firing
- Training
- Promotions
- Benefits
- Leave
- All other employment-related activities.

It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA. The Act also protects you if you are not disabled, but you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

Can an Employer Require Medical Examinations or Ask Questions About a Disability?

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or demonstrate how, with or without reasonable accommodation; you can perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. Nor can the employer refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability

unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examinations that are part of an employee health program, and may provide medical information required by state worker's compensation laws to the agencies that administer such laws.

The results of all medical examinations must be kept confidential, and maintained in separate medical files.

What Do I Do If Think I Am Being Discriminated Against?

If you think you have been discriminated against in employment on the basis of a disability you should contact the Equal Employment Opportunity Commission (EEOC). A charge of discrimination must be filed within 300 days of the alleged discrimination. If you think you have been discriminated against in state and local government programs and activities, including employment, you should contact the Department of Justice. The EEOC can be contacted at 1-800-669-4000. The Department of Justice can be contacted at 202-514-0301.

* This article is adapted for the EEOC's booklet on the American with Disabilities Act published in 1991, and the EEOC's guidance on the ADA Amendments Act of 2008 (effective January 1, 2009).