



Disability Discrimination Fact Sheet

Introduction

The Americans With Disabilities Act (ADA) prohibits employment discrimination on the basis of an employee's physical or mental disability. The ADA also prohibits the employer from asking job applicants questions about their past or current disability conditions. The ADA limits the extent to which an employer can require job applicants and existing employees to take medical exams. The ADA could also require the employer to create or maintain worksites that are accessible and usable for people with disabilities.

The ADA covers employers with 15 or more employees. Its coverage broadly extends to private employers, state and local governments, employment agencies, and labor unions.

In addition to the protections offered under the ADA, many state laws protect against discrimination based on physical or mental disability.

Protections

The ADA's protections extend to qualified disabled workers regardless of whether they work part time, full time, or have not yet become permanent employees.

To be considered disabled and therefore protected by the ADA, the applicant or employee must:

- have a physical or mental impairment that substantially limits one or more major life activities
- have a record of impairment
- be regarded as having an impairment

Impairment includes physical disorders, such as cosmetic disfigurement or loss of a limb, as well as mental and psychological disorders.

The ADA protects job applicants and employees who, although disabled as defined above, are still qualified for a particular job. In other words, they would be able to perform the essential functions of a computer or a customized workspace. As with other workers, whether a disabled worker is deemed qualified for a given job depends on whether he or she has appropriate skill, experience, training, or education for the position.

Reasonable Accommodations

The ADA points to several specific accommodations that are likely to be deemed reasonable. They include:

- making existing facilities accessible and usable by disabled employees—for example, by modifying the height of desks and equipment, installing computer screen magnifiers, or installing telecommunications for the deaf
- restructuring jobs—for example, allowing a ten-hour, four-day work week so a worker can receive weekly medical treatments
- modifying exams and training materials—for example, allowing more time for taking an exam or allowing it to be taken orally instead of in writing
- providing a reasonable amount of additional unpaid leave for medical treatment
- hiring readers or interpreters to assist an employee
- providing temporary workplace specialists to assist in training

These are just a few possible accommodations. The necessary accommodations are to be determined by the employer and the employee.

Unreasonable Accommodations

The ADA does not require employers to make accommodations that would cause them an undue hardship. This is a concept defined in the ADA only as "an action requiring significant difficulty or expense."

The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing the ADA, has set out some of the factors that will determine whether an accommodation presents undue hardship on an employer. They include:

- the nature and cost of the accommodation
- the financial resources of the employer (a large employer may be expected to foot a larger bill than a "mom-and-pop" business)
- the nature of the business (including size, composition, and structure of the workforce)
- accommodation costs already incurred in the workplace



It is not easy for employers to prove that an accommodation is undue hardship, as financial difficulty alone is not usually sufficient. Courts will look at other sources of money, including tax credits and deductions available for making some accommodations, as well as the disabled employee's willingness to pay for all or part of the costs.

Taking Action

The ADA mandates that you notify your employer that you need an accommodation for a medical condition. You neither have to do this in writing, nor need to use any fancy legal terms. Just telling your employer what you need is enough.

The ADA also requires you to work with your employer in finding an accommodation that is suitable to both of you. If, after notifying and working with your employer, you still cannot get a reasonable accommodation, you can seek assistance from the EEOC, which enforces the ADA. To start an investigation of your claim, file a complaint at the local EEOC office. Call 800-669-4000 to find the office nearest you or refer to the EEOC's Website at www1.eeoc.gov/field.

If you live in a state with laws that protect workers against discrimination based on your physical or mental disability, you can choose to file a complaint under your state's law, the ADA, or both.

This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit arlegalservices.org. For information specific to Legal Aid of Arkansas, Inc., visit arlegalaid.org. Apply for services online or by calling 1-800-9-LAW-AID (1-800-952-9243).

The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

**Content provided by:
Center for Arkansas Legal Services**

Updated January 2017