



Have You Been Treated Unfairly At Work?

Find Out If The Americans with
Disabilities Act (ADA)
Can Help You

Self-Help Guide

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People with disabilities can face many barriers at work. Here are a few examples of barriers:

- A person who uses a wheelchair may have trouble getting into and around an office or have a hard time using some of the equipment at a work site.
- A person with a mental illness may have trouble getting a job or getting a better job in his company because of other people's fears or wrong ideas about how well he can do a job and whether he can safely do the job.
- A person living with HIV may be fired from a job because the employer is afraid that he will drive up the costs of the insurance plan.



If you have run into one of these barriers or other problems related to your disability at your work place or when trying to get a job, you may be able to get help under the Americans with Disabilities Act.

The Americans with Disabilities Act

The Americans with Disabilities Act (or the “ADA”) says that an employer covered by the ADA may not discriminate against a qualified person with a disability who is applying for a job or is already employed. If your employer discriminates against you or treats you unfairly because of your disability, you have the right to file a complaint (known as a charge) of discrimination with the Equal Employment Opportunity Commission or the EEOC. For more information on how to file a charge, take a look at our guide titled, “Taking Action: How to File A Charge When You’ve Been Treated Unfairly Because You Have A Disability.” It is important to file a charge within 300 days of the date of the discrimination to later be able to file a lawsuit under the ADA.

Can the ADA Help You?

You must answer 4 questions when trying to figure out whether or not the ADA can help you in taking action against an employer who has treated you unfairly. The questions are:

#1 -- Is the employer who treated you unfairly a covered employer under the ADA?

#2 -- Do you have a disability under the ADA?





#3 -- Do you have the skills and abilities that are needed to do the job?

#4 -- Has the employer discriminated against you or treated you unfairly on the basis of your disability?

#1 -- Is the employer who treated you unfairly a covered employer?

Covered employers under the ADA are:

- Private (non-government) employers with 15 or more employees. (some examples include restaurants, retail stores, school districts, hospitals)
- State and local governments, no matter what size. (examples include the City of Tucson and the AZ Department of Transportation). However, there are limited remedies available against State governments.

The ADA does not apply to:

- The Federal government.
- Indian tribes.

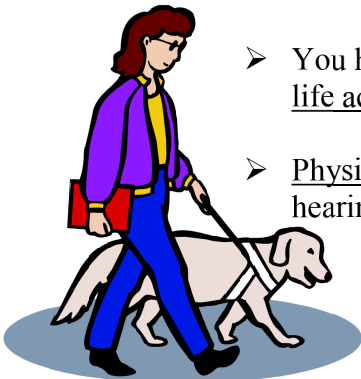
Note: While the ADA does not apply to the federal government, a law called the Rehabilitation Act does apply to federal employers. Because the ADA and the Rehabilitation Act are both federal laws that prohibit discrimination against qualified individuals with disabilities, the information in this guide also applies to employees and applicants who work for the federal government.

There is one important difference between the ADA and the Rehabilitation Act and that is what you do if you believe that you have been treated unfairly by your employer. If you believe you have been treated unfairly because of your disability by a federal employer, please call the employer's EEO office or the Center for Disability Law for information about how to make a complaint.

#2 -- Do you have a disability according to the ADA?

You can receive protection from the ADA if...

- You have a physical or mental impairment that substantially limits one or more major life activities.
- Physical impairments include impairments such as: epilepsy, diabetes, paralysis or hearing or loss of eyesight.



- Mental impairments include impairments such as: mental retardation, depression, anxiety, dyslexia and other learning disabilities.
- Substantially limits means that you cannot perform, or are very limited in your ability to perform, one or more of the major life activities listed below.
- Major life activities include: seeing, hearing, speaking, walking, breathing, lifting, maintaining normal social relationships, standing, learning, performing manual tasks, caring for oneself, working (not just in a single job but many different jobs), sexual relations and bearing children.

Example:

Alan has dyslexia and reads at a 2nd grade level. The dyslexia has a significant impact on his ability to learn, which is one of the major life activities covered by the ADA. Alan is a person with a disability under the ADA. Sheila, on the other hand, has a mild learning disability. Because of the learning disability, it takes her more time to read, but she can read at the 12th grade level. Sheila would probably not qualify as an individual with a disability under the ADA.



Example:

Janet has mild depression. As a result, Janet sometimes has trouble thinking clearly at work. For the most part, though, Janet is able to control the depression by eating healthy foods and getting enough sleep. Janet would probably not qualify as a person with a disability under the ADA. Michael, however, has severe depression. The depression affects his ability to perform many major life activities, including having normal social relationships and learning and caring for himself. Michael is a person with a disability under the ADA.



In some cases, a person does not have to have a disability to be protected by the ADA. The ADA also protects certain people without disabilities, including:

- 1) A person who has a history of a disability, such as a person who has recovered from a past drug addiction.
- 2) A person who is thought of or regarded as having a disability. One example would be a person who has mild depression that does not substantially limit him in any major life activity, but his employer assumes that, because he has depression, he is disabled.
- 3) A person who has a relationship with a person with a disability, if the employer knows about it and treats the person unfairly because of that relationship. This can apply if the person is a parent, spouse, partner, business associate or friend of a person with a disability.

4) A person who has: 1) opposed an employer's unfair treatment of himself or another employee because of disability, 2) filed a charge or a lawsuit under the ADA, or 3) been a witness or assisted in an investigation of the charge.

#3 - Do you have the skills and abilities needed to do the job?

Usually, the ADA only protects people with disabilities who are qualified to do the job. A person is qualified under the ADA if:

- She meets the minimum qualifications of the job. In other words, if the job requires a college degree, but she does not have a college degree, she would not meet the minimum qualifications of that job.
- He is able to do the job with or without reasonable accommodations.

A reasonable accommodation is a change that is made to a job or to a workplace that allows a person with a disability to perform the job.

Reasonable accommodations can include things like:



Adding a ramp to the office building so a person who uses a wheelchair can access the building.

Allowing an employee to work a different work schedule.

Buying equipment or devices that could help an employee do a job.

Providing a sign language interpreter or reader.

Providing work materials in a different format, such as audiotape.

Letting the person take leave to get medical treatment.

*Note to persons who have been fired, laid off or placed on unpaid medical leave because of their disabilities: If you want to apply for Social Security benefits and also bring a claim under the ADA, you should call the Center or a private attorney before doing so. If you already receive Social Security and an employer tells you that you cannot work or that you have no rights under the ADA, you should call the Center or a private attorney for advice.

#4 -- Has the employer discriminated against you or treated you unfairly on the basis of your disability?

You must also determine whether the employer has treated you unfairly on the basis of your disability. An employer can discriminate against you or treat you unfairly on the job in many different ways. They include things like:

- Passing you over when you apply for a better job because, although you have always done well and you have the skills for the new job, the employer believes that your disability might prevent you from carrying out the duties of the new job.
- Using an employment test that you cannot pass because of a disability, even though you can do the job.
- Denying your requests for reasonable accommodations, even if they would not be too costly or disruptive to your employer's business.
- Having a relationship with another business that would result in discrimination. An example would be a company that contracts with a hiring firm and asks the hiring firm to not refer people with disabilities.
- Denying you a job opportunity because you have a relationship or association with a person with a disability.
- Employment tests that measure your disability rather than your abilities. For example, a company might refuse a request from a person with a mental illness who has trouble concentrating in loud places to take an employment test in a separate, quieter room.
- Treating you unfairly or discriminating against you because you 1) have opposed an employer's unfair treatment of another employee on the basis of his or her disability, 2) have filed a charge or a lawsuit under the ADA, or 3) have been a witness or assisted in an investigation of the charge.



These are just some of the ways that an employer can discriminate against people with disabilities. If you feel that you have been treated unfairly when applying for a job or at work, please call the Arizona Center for Disability Law for help. You can reach us at 1-800-927-2260 (voice/TTY, toll free outside of Phoenix) or at 602 274-6287 (voice/TTY).

If you have questions about this guide or other questions about your legal rights as a person with a disability, please write or call the Arizona Center for Disability Law at:

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602-274-6287 (voice or TTY)
800-927-2260 (toll free)
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To get a list of our trainings or look at other Center self-advocacy guides, visit our website at www.azdisabilitylaw.org

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

- This guide is available in alternative formats upon request.

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