



## THE AMERICANS WITH DISABILITIES ACT IN JAIL & PRISON

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) are federal laws that protect people with disabilities, including people who are incarcerated, from discrimination on the basis of their disability. This means that jails and prisons may not discriminate against you because of your disability. It also means that they must take reasonable steps to give prisoners with disabilities equal access to the programs, services, and benefits of the correctional center. Courts generally interpret the Section 504 consistently with the ADA, so when we discuss the requirements of the ADA, the same is true under the Section 504.

Title II of the ADA states:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. *See also* 29 U.S.C. § 794 (Section 504) (“no otherwise qualified individual with a disability in the United States ...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”).

### **The Legal Elements for Disability Discrimination**

The ADA and Section 504 apply when the following elements are met (each is explained more below):

1. You have a disability within the meaning of the law.
2. You are otherwise qualified for the program, service or benefit.
3. Because of your disability, you are being excluded from or denied access to the program, service, or benefit. In other words, you have been subjected to discrimination in the program as a result of your disability.
4. For cases under the Section 504: the defendant (such as the IDOC) receives federal funding. *See* 29 U.S.C. §794(b); C.F.R. § 27.1.<sup>1</sup>

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<sup>1</sup> The IDOC is a state agency that receives federal funding and therefore meets this element. *See Norfleet v. Walker*, 684 F.3d 688, 690 (7th Cir. 2012). Most jails also receive federal assistance.

## **1. DISABILITY**

The ADA defines a disability as a “physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A). Therefore, to have a disability within the meaning of the law, both requirements must be met: (1) a physical or mental impairment (2) that substantially limits one or more major life activities.

### ***What are major life activities?***

Some examples of major life activities include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. § 12102(2).

### ***What does “substantially limited” mean?***

The term “substantially limited” is defined broadly under the law. An impairment does not need to prevent a major life activity, or even severely or significantly restrict it, in order to “substantially limit.” Whether an impairment substantially limits a major life activity is based on the specific individual and how the impairment impacts that individual’s life.

For example, one person has depression but is not limited in his ability to function and cope. He is able to get up in the morning and get to work on time. He is able to socialize with his friends and care for his family. Another person, however, might have a hard time getting up in the morning, caring for himself, or interacting with others due to depression. For the first person, his depression does not substantially limit a major life activity; but for the second person, the depression does limit the ability to get to work or school on time, to care for himself, and to socialize and engage with others.

### ***What if I’m not substantially limited when I’m on my medications, or when I have my cane?***

The legal analysis as to whether a person is substantially limited by the impairment does not consider the help that is received from medications, devices or other aids. In other words, whether you are substantially limited by your impairment is analyzed as if you do not have medication or do not have a cane. Without those things, does the impairment substantially limit a major life activity?

The legal terminology is this: whether an impairment substantially limits a major life activity is determined “without regard to the ameliorative effects of mitigating measures” such as medications, assistive devices, or other aids. 42 U.S.C. § 12102(4)(E).

For example, whether a person’s hearing loss substantially limits the major life activity of hearing is determined without consideration of the benefit the person receives from a hearing aid. Another example is whether anxiety disorder or PTSD substantially limits major life activities of a person is decided by considering how that anxiety or PTSD impacts that person when they are *without* medications.

## **2. QUALIFIED**

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2).

This means that you must be eligible for the program or service in order to be qualified for it. For example, if a work program requires you to have a release date within five years and your release date is 10 years away, then you are not qualified for the program because you are not eligible for it.

## **3. EXCLUSION FROM PROGRAMS, SERVICES, AND BENEFITS**

Exclusion from programs, services or benefits because of your disability is discrimination in violation of the ADA and Section 504. For example, it would be disability discrimination for a work program to exclude all prisoners who are blind. Another example is that it would be disability discrimination if a facility did not allow persons with mental illness to participate in early release programs.

“Programs, services, and benefits” cover a broad range of activities. They can include meals, showers, groups, access to telephones, and vocational and educational programs. The program must already exist and other prisoners must have access to the program. The law does not require correctional facilities to create new programs for people with disabilities.

### **Reasonable Accommodations**

In order to prevent discrimination against people with disabilities, the ADA and the Section 504 require that prisons provide “reasonable accommodations” to allow a person with disabilities to fully and equally participate in a program, service, or benefit.

For example, if a prison gives a standard test in writing, a person who has a visual impairment would not be able to take the test and would therefore be excluded on the basis of his or her disability. The prison would therefore have to provide the prisoner with a “reasonable accommodation” to allow him or her to take the test. This might include providing the test in a large format; allowing the prisoner extra time to complete the test; or giving the test in an audio format. Some other examples of accommodations are TTY phones (for people who are hard of hearing), special diets (for those with severe allergies or eating disorders), audio books (for those with visual impairments), and cells on the first floor (for those with physical impairments).

Whether an accommodation is reasonable depends on many factors and the specific circumstances. Some of the factors that are generally considered in deciding whether a requested accommodation is reasonable include: the benefit that the prisoner would receive from the accommodation, the security of the prison, and the cost. A prison does not have to provide an accommodation that places an “undue burden” on the facility or requires a “fundamental alteration” to the program.

### **Exhaustion of Administrative Grievances:**

The Prisoner Litigation Reform Act, 42 U.S.C. § 1997e(a), requires that prisoners file a grievance and pursue all available administrative appeals before he or she can bring a federal lawsuit. This requirement applies to the ADA and the Section 504, as it does to other federal laws.

You should carefully follow the prison's policy for filing and appealing grievances, including all deadlines and time limits.

Generally, it is important to file a grievance for each claim (or issue) that you wish to bring against each wrong-doer (or defendant). You should be as specific as possible in your grievance, including dates and names to the extent they are available. Make sure that you appeal it all the way through each step available in the review process, regardless of the result.

### **Requesting a Reasonable Accommodation:**

If you need to request an accommodation to a policy or procedure in order to have equal access to a program, service or benefit, start by reviewing the facility's policy on disability accommodations (if they have one).

Here are some general guidelines to requesting accommodations:

- It is always best to put the request in writing.
- The law does not require you to use any particular language or legal terms, but it may be helpful if you use the phrase "I am requesting a reasonable accommodation under the ADA and the Rehabilitation Act."
- It is important to explain why you need the accommodation.
- Sometimes the specific accommodation that you have in mind might not be available, but there could be another way to address the issue. Therefore, if your request is denied, you might want to ask whether the facility/staff can provide you with a different accommodation.
- If your request is denied, remember to file a grievance with the date of your request and the date of the denial, and exhaust (complete) the grievance review process.

## CASE NOTES

- In *Pierce v. D.C.*, No. 13-CV-0134, --- F.Supp.3d ----, 2015 WL 7574750, at \*3 (D.D.C. Nov. 25, 2015), the court granted summary judgment to the plaintiffs finding that the prison had an affirmative duty under the ADA and the Section 504 to evaluate the accommodation needs of obviously disabled prisoners (there, deaf prisoners).
- In *Norfleet v. Walker*, 684 F.3d 688, 690 (7th Cir. 2012), the plaintiff—a prisoner with a nerve condition who used a wheelchair—stated a claim against IDOC for violation of the Section 504 with allegations that he was denied access to yard, or other recreation because of his disability.
- In *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667 (7th Cir. 2012), the appellate court found that a prisoner who walked with a cane stated claims under the Section 504 for denials of access to meals and showers, as well as for his exclusion from a work release program, on the basis of his disability.
- In *Phipps v. Sheriff of Cook Cty.*, 681 F. Supp. 2d 899, 916 (N.D. Ill. 2009), the court found that showering, toileting, and lavatory use are programs and/or services under the ADA.
- In *Armstrong v. Davis*, 275 F.3d 849, 857–58 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005), the appellate court held that the state had failed to accommodate numerous disabilities including vision impairment during its parole and parole revocation hearing process by, among other things, relying too heavily on written forms.
- In *Rainey v. County of Delaware*, No. 00-548, 2000 WL 1056456, at \*2 (E.D. Pa. Aug. 1, 2000), the district court permitted to go forward a claim from a paraplegic prisoner who alleged he was denied food and medical treatment because he was not given enough time to travel to the dining hall and dispensary.
- In *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998), the U.S. Supreme Court held that Title II of the ADA applied to state correctional facilities, and that a prisoner could not be excluded from an educational opportunity (a “Motivational Boot Camp” for first-time offenders) because of his disability, in this case hypertension.
- In *Duffy v. Riveland*, 98 F.3d 447, 454–55 (9th Cir. 1996), the appellate court allowed a claim from a deaf prisoner to go forward when the prisoner alleged that he was denied a qualified sign language interpreter at disciplinary hearings and classification proceedings.
- In 2013, the U.S. Department of Justice found that the Pennsylvania prison system violated the ADA with its use of solitary confinement for prisoners with serious mental illness. Prisoners in other states, including Illinois, have brought ADA claims relating to the use of segregation for people with mental illness.



**DO YOU HAVE QUESTIONS?**

Contact Equip for Equality (all services are free of charge)

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[Contactus@equipforequality.org](mailto:Contactus@equipforequality.org)

This resource material is intended as a guide for people with disabilities.

Nothing written here shall be understood to be legal advice.

**For specific legal advice, an attorney should be consulted.**

Equip for Equality, an independent nonprofit organization, is the Illinois State Protection & Advocacy System whose mission is to advance human and civil rights of children and adults with disabilities.