



# Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

## FACT SHEET: Addressing Disability Harassment

### What is disability harassment?

Disability harassment is unwelcome behavior in the workplace that is **based on your disability**. Disability harassment usually takes one of two forms:

- Behavior that creates a hostile work environment (explained below)
- Behavior that results in an “adverse employment action,” such as a termination or demotion

### Is disability harassment illegal?

Yes. Although Title I of the Americans with Disabilities Act (ADA) does not talk about disability harassment, courts across the country, including in Illinois, have found disability harassment to be a form of unlawful discrimination under the ADA because it changes the terms and conditions of your employment.

### Does disability harassment have to come from my supervisor?

No. Harassment can also come from another supervisor, a co-worker, or someone who is not an employee, such as a customer or vendor.

### I’ve heard it can be difficult to prove harassment – is this true?

It can be. The following factors for **hostile work environment** claims tend to be the most challenging:

- The behavior must be **sufficiently severe or pervasive** to change the terms and conditions of your employment, as not all offensive behavior rises to the level of legally recognized harassment. The behavior must create a work environment that most other people would find to be intimidating, hostile or offensive.
  - Case example: Company president called new employee a “cripple” and when she objected to the use of the word, a “hysterical basket case.”
  - Case example: Manager told employee with a developmental disability to “shut up,” called her names, slapped her in the face, barked at her like a dog, and threatened violence.
- There must be a basis for your **employer to be legally responsible**. Your employer can become legally responsible if (1) you report the harassment, or your employer is or should otherwise be aware of the harassment, but your employer fails to take steps to try to stop it from happening again; or (2) the harassment comes from a supervisor and results in a negative change in your job.

## I think I am being harassed. What should I do?

### 1. Inform your employer

- **Why:** Most employers have a process for employees to report harassment, such as filing a complaint with human resources or an EEO office. It is important to take advantage of this process for two reasons: (1) hopefully your employer will try to stop the harassment; and (2) in most circumstances, you are required to use your employer's complaint process and give your employer the opportunity to stop the harassment before you can bring a claim.
- **How:** Some employers have policies about sexual harassment, but not other types of harassment. If this is the case for you, it is okay to follow the steps of the sexual harassment policy and make clear that you are complaining about disability harassment. If you are not sure if your employer has a process, you can check your employee handbook or ask human resources. You can also complain directly to your supervisor and/or other member of management about the harassment. Be sure to document your complaint.

### 2. Inform the harasser

- **Why:** This is a good practice even if the harasser already knows that his or her behavior is unwelcome. In the best case, the harasser did not know and will stop. In the worst case, you have created documentation that you objected to the behavior and the harasser is on notice.
- **How:** Inform the harasser in writing that his or her behavior is unwelcome. If you would prefer to have the conversation in person or by phone, that is okay, but be sure to document that the conversation took place.

### 3. Document the harassment

- **Why:** While it is always important to document discrimination, it is especially important for harassment. Proving harassment requires you to remember as much detail as possible about every harassing incident.
- **How:** Keep a record of all unwelcome behavior and all conversations with your employer about the harassment, including your employer's responses. Please see the Employment Rights Helpline Fact Sheet on [Documenting Discrimination](#) to learn more.

### 4. Don't miss the deadline to file a complaint with an enforcement agency

- **Why:** If you decide to pursue legal action, you must first file a charge of discrimination with either the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR). You must file with the EEOC within 300 days of the last harassing event, and with the IDHR within 180 days of the last harassing event. Please see the Employment Rights Helpline Fact Sheet on [How to File a Charge of Discrimination](#) to learn more.
- **How:** If you aren't sure whether you want to file, but don't want to miss the opportunity to do so, consider adding a note on your calendar so that you do not miss the deadline but still have time to consider your options.



## **DO YOU HAVE A QUESTION?**

Contact Equip for Equality's Employment Rights Helpline  
**1-844-RIGHTS-9** (toll free)  
844-744-4879 (toll free)

800-610-2779 (tty)  
employment@equipforequality.org  
[www.equipforequality.org/employment](http://www.equipforequality.org/employment)

**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 the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. The Employment Rights Helpline and these publications were made possible by a grant from the Chicago Community Trust. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the grantors.

©Equip for Equality, 2018 (v2, 10/2018)