



Employment Rights Under the ADA

Best Practices When Applying for Jobs as a Person with a Disability

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Equip for Equality



Overview of Equip for Equality

- Created as the Protection and advocacy (P&A) system for the State of Illinois
- **Mission:** Advance the human & civil rights of people with disabilities in Illinois
- **Free legal assistance** for people with disabilities about issues related to their disability
- **Legal teams:** Civil Rights Team, Special Education Clinic, Independent Monitoring Unit
- **Four offices:** Chicago, Springfield, Carbondale, Rock Island

(800) 537-2632 (voice) • (800) 610-2779 (TTY)

www.equipforequality.org

Agenda



- What is the Americans with Disabilities Act (ADA)?
 - ❖ Who is protected by the ADA?
- What are the rights of job applicants and employees with disabilities under the ADA?
 - ❖ Overview of Title I of the ADA
 - ❖ Addressing commonly asked questions about disclosing disability
 - ❖ Overview of right to reasonable accommodations
- Resources for job-seekers with disabilities
 - ❖ DRS VR services and Client Assistance Program
 - ❖ Other resources

Disability Discrimination Laws



Rehabilitation Act
of 1973



1973: The Rehabilitation Act

Prohibits discrimination by federal funding recipients

1990: The Americans With Disabilities Act (ADA)

Prohibits discrimination and ensures that people with disabilities have equality of opportunity, full participation and integration, independence, economic self-sufficiency

There are also similar **state and local laws!**

- Illinois Human Rights Act
- Cook County and Chicago Human Rights Ordinance

The Americans with Disabilities Act (ADA)



The ADA has 5 different Sections called “Titles”

- **Title I** – **Employment**
- **Title II** – **State and Local Government Services / Public Transportation**
- **Title III** – **Places of Public Accommodation and Commercial Facilities**
- **Title IV** – **Telecommunications**
- **Title V** – **Retaliation, Technical Assistance and Miscellaneous Provisions**

Who is Protected by the Law?



Individuals with disabilities:

-An applicant/employee has a “disability” if he or she:

- Has a **physical or mental impairment** that causes a **substantial limitation** of one or more **major life activities**
- Has a **record** of such an impairment
- Is “**regarded as**” having an impairment

Some protections for individuals “associated” with applicants/employees with a disability

Note: ADA Amendments Act of 2008 greatly expanded the definition of disability

Examples of Impairments That Can Be Disabilities



- Deafness
- Blindness
- Mobility impairments requiring wheelchair
- Intellectual disability
- Missing limbs
- Autism
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- Carpal Tunnel Syndrome
- Heart disease
- HIV Infection
- Learning disabilities
- Multiple Sclerosis
- Muscular Dystrophy
- Major Depressive Disorder
- Bipolar Disorder
- PTSD
- Obsessive Compulsive Disorder

Employment Rights (Title I of the ADA)



Which Employers Are Covered?

- **Title I of the ADA**

- ❖ Private employers with **15 or more employees**
- ❖ All state and local government employers
- ❖ Employment agencies
- ❖ Labor organizations

NOTE: The Illinois Human Rights Act prohibits disability discrimination by all employers in Illinois

Who is protected under Title I of the ADA?

- The ADA prohibits discrimination against **qualified** employees and applicants who have a disability
- **What does "qualified" mean?**
 - ❖ Able to meet the job's requirements – education, experience, license/certifications
 - ❖ Can perform the essential job duties **with or without reasonable accommodations**

How to Determine “Essential” Job Functions?

- Factors to consider:
 - ❖ Employer’s judgment
 - ❖ Job descriptions
 - ❖ Amount of time performing the function
 - ❖ Consequences of not requiring the person to perform the function
 - ❖ Terms of a collective bargaining agreement
 - ❖ Work experience of others who have had or currently hold the same or similar positions

NOTE: no single factor is determinative

What protections does the ADA offer to employees?



Title I prohibits discrimination in all aspects of employment:

- Job application procedures
- Hiring / Firing
- Benefits and Compensation
- Advancement
- Training
- Any terms, conditions, or privileges of employment

Discrimination under Title I includes:

- Requiring certain medical exams and making certain **disability-related inquiries**
- Refusing to provide **reasonable accommodations**



Disclosing a Disability

- **Question:** Are applicants with disabilities required to disclose their disability to prospective employers?
 - ❖ A person is not required to disclose their disability on an employment application or during a job interview, unless they need a reasonable accommodation for the application or interview process.
 - ❖ If someone will need an accommodation once they are hired in order to perform the job, they can wait until after they are hired to request it
- **Question:** Are employees with disabilities required to disclose their disabilities after they are hired?
 - ❖ No, unless they need a reasonable accommodation to perform the job.



Disclosing a Disability

- **Question:** *Should* applicants with disabilities disclose their disability to prospective employers?
 - ❖ Whether or not to disclose a disability is a highly personal decision that depends on a person's specific circumstances.

Can employers ever ask somebody to disclose a disability?

- In some limited circumstances, employers may be able to ask job applicants or employees if they have a disability or make disability-related medical inquiries.
- The sort of questions/inquiries employers that employers are permitted to ask job applicants depends on what stage the applicant is at in the job application process

Pre-Employment Application and Interview Stage

- **Employers cannot:**
 - ❖ Request any disability-related information
 - ❖ Give any medical exams
 - ❖ Ask questions that may elicit disability-related information
- **Limited exceptions:**
 - ❖ **Voluntary questions for affirmative action**
 - ❖ Questions about accommodations if reasonable to assume need for a known disability
- **Employers can:**
 - ❖ Ask about ability to perform specific job functions
 - ❖ Ask applicant to describe/demonstrate how he or she would perform specific functions

After the applicant has received a Conditional Job Offer

- **Employers can:**
 - ❖ Ask disability-related questions and require medical exam IF this is done across the board for all applicants
- **Employers cannot:**
 - ❖ Withdraw a job offer unless the disability prevents the individual from performing the essential functions and a reasonable accommodation cannot be provided

Current Employees

- **Employers can:**
 - ❖ Seek disability-related information when it is job-related and consistent with business necessity
 - ❖ In other words, when there is a reasonable basis to believe that employee is:
 - Unqualified to do the job
 - Needs a reasonable accommodation
 - Poses a direct threat to the health or safety of others

When might someone be required to disclose a disability?

- A job applicant may be required to disclose their disability if they need a **reasonable accommodation** for the job application or interview process.
- An employee with a disability may be required to disclose their disability if they need a **reasonable accommodation** in order to perform their job.

Reasonable Accommodations

- The ADA defines discrimination to include failure to provide reasonable accommodations for known limitations caused by a disability. This means that employers must provide reasonable accommodations to job applicants and employees with known disabilities.
- **Reasonable accommodations** are “Modifications or adjustments to the work environment, or ... to the manner or circumstances under which the position is customarily performed ... that enable a qualified individual with a disability to perform the essential functions of that position ... or ... enjoy equal benefits and privileges of employment.” 29 C.F.R. § 1630.2(o)(1)
- Reasonable accommodations tend to fall into three broad categories:
 - ❖ Accommodations for the job applicants
 - ❖ Accommodations that allow you to successfully perform your job
 - ❖ Accommodations that ensure equal enjoyment of the benefits and privileges of employment

Examples of Reasonable Accommodations

- Sign language interpreter for someone who is deaf
- Extended time to take pre-employment test
- Allowing break periods
- Permitting a job coach
- Instructions about how to perform the job in writing instead of verbally (or vice versa)
- Extended meal breaks or breaks to take medications
- Time off work to attend medical/ therapy appointments
- Being allowed to park in a reserved space close to front entrance

Accommodation Facts

- Costs of providing accommodations:
 - ❖ 59% accommodations cost nothing
 - ❖ 36% accommodations: one-time cost
 - ❖ 4% accommodations: ongoing, annual cost
 - ❖ **Typical one-time expenditure: \$500 or less**

Job Accommodation Network

Work Accommodations: Low cost, high impact
(Updated 2017)

<http://askjan.org/media/lowcosthighimpact.html>

Step 1: Requesting a Reasonable Accommodation

- Requests do not need to be in **writing**, but it helps to have a record
- There are no **magic words** that must be used
- Talk to your supervisor or to Human Resources Dept.
- Another person may request accommodation on the employee or applicant's behalf
- Request should describe:
 - ❖ Explanation of your disability
 - ❖ Need for an accommodation
 - ❖ Specific accommodation that you need (if known)

Example of a Reasonable Accommodation Request

- Dear _____: I am deaf and will need an American Sign Language (ASL) interpreter at my interview for this position so that I can communicate with the interviewer. I am asking for an ASL interpreter as a reasonable accommodation under the ADA.



Step 2: Interactive Process

- After an employee requests an accommodation, the employer must engage in an **interactive process** with the employee or applicant.
- The interactive process is a dialogue between employer and employee where parties work together to find an effective and reasonable accommodation
 - ❖ Discuss employee or applicant's limitation and/or current work issue and explore possible accommodation ideas, consideration given to employee's preferred accommodation.
 - ❖ Exchange *reasonable* information
 - ❖ Consult with others, as appropriate, including doctors, computer experts, vocational rehabilitation experts, etc

Interactive Process: Medical Documentation

- Can an employer ask for medical support?
 - ❖ **Yes!** If employee's disability or need for accommodation is not obvious
 - ❖ **No!** If employer already has sufficient information

Interactive Process: Preferred vs. Effective Accommodations

- **General rule:** employers must provide an *effective* accommodation, not the employee's *preferred* accommodation
- However, it is best practice to consult with employee and defer to employee's request when possible

Interactive Process: Employer's Claim of Undue Hardship

- **General rule:** employers do not need to provide a reasonable accommodation that poses an undue hardship
- Factors to consider:
 - ❖ Nature and cost of accommodation needed
 - ❖ Overall financial resources, size, number of employees, and type and location of facilities of the employer
 - ❖ Type and operation of the employer
 - ❖ Impact of the accommodation on the operation of the facility

Steps 3 and 4: Selecting and Implementing Accommodation



- **Step 3: Employer chooses accommodation**
- **Step 4: Employer and employee implement accommodation and evaluate its effectiveness**
 - ❖ The duty to accommodate is ongoing – changes may be needed over time as individual's disability or job changes

Resources for Job-Seekers with Disabilities

Illinois Department of Human Services – Division of Rehabilitation Services (DRS)

- Division of Rehabilitation Services (DRS) provides vocational rehabilitation services for people with disabilities to assist with educational and/or employment goals
- Goal of the VR program is to help people with disabilities “prepare for, secure, retain, advance in or regain employment” 34 CFR 361.42(A)(1)(III)
- Call (800) 843-6154 to find local DRS office

Who is eligible for DRS services?

- To qualify for DRS VR services an individual must:
 - ❖ **Want to work AND**
 - ❖ **Have a disability that causes a substantial physical or mental impairment AND**
 - ❖ **Disability makes it difficult to work**
- Applicant must be able to “benefit” from VR services
- SSDI/SSI beneficiaries are presumed eligible

How can you apply for DRS Services?

- To apply for DRS services, an individual can submit an online referral form or contact their local DRS office
 - ❖ [Find the DRS office closest to you](#)
 - ❖ Or call (877) 581-3690
 - ❖ Or complete an [online application for service](#)
- After contacting DRS, a counselor will contact you to set up an appointment to complete the application process. During this appointment, the counselor will discuss your goals

Overview of VR Process: Individualized Plan for Employment (IPE)

- If you apply for VR Services and are found eligible, your DRS counselor will work with you to create an **Individualized Plan for Employment (IPE)**. An IPE is a document outlining an individual's employment goal and the services DRS will provide to help them reach that goal.
- If someone is unsure about their employment goal, DRS can do assessment to help individual find out what type of job they want.
- The individual must be given **informed choice** throughout this process, meaning that the individual must have a say in selecting their employment goal, and that the counselor must work collaboratively with the individual to determine what services will be provided. The IPE must be signed by both the VR counselor and individual.
- IPEs are reviewed whenever necessary but at least annually

Examples of VR Services

- Job training and job coaching
- Assistance finding a job
- Paying for supplies needed for employment
- Paying for college or training program
- Providing assistive technology
- Paying for vocational evaluations
- Providing independent living support (transportation and housing)
- All “other goods and services determined necessary for the individual with a disability to achieve an employment outcome” (broad catch all)

Equip for Equality's Client Assistance Program (CAP)

- **CAP:** Established by the Rehabilitation Act
- **What CAP does generally:**
 - ❖ Helps people who apply for or receive services under the Rehabilitation Act, including vocational rehabilitation services and independent living services
 - ❖ Advises and informs people about their rights under Title I of the Americans with Disabilities Act (ADA)
- Across the country, most CAPs are housed outside of state government, many within the state P&A
- **As of July 1, 2022, CAP was redesignated from within DRS to Equip for Equality**

CAP assistance to DRS applicants and customers

- **Examples of client cases:**
 - ❖ Person wants to work and is looking for services to help
 - ❖ Person can't figure out how to open a referral for DRS services
 - ❖ Person created a referral but no one from DRS has followed up yet
 - ❖ Person found ineligible for DRS services
 - ❖ Person disagrees with goals in IPE
 - ❖ Disagreement between person and DRS about services needed to meet employment goals
 - ❖ DRS counselor does not communicate effectively
 - ❖ DRS closes a person's file

CAP Assistance with Title I ADA Issues

- **How we can help:**
 - ❖ Answer questions about disability disclosure, reasonable accommodations, challenge discrimination
 - ❖ Help write requests for accommodation
 - ❖ Help brainstorm solutions when dealing with challenging employers

Independent (new) Client Assistance Program (CAP)

- **Phone:** (855) 452-2725
- **Email:** cap@equipforequality.org
- **Website:** www.equipforequality.org/cap
- **Reach out to CAP advocacy team:**
 - ❖ **Rachel Weisberg**- CAP Director & Managing Attorney
rachelw@equipforequality.org
 - ❖ **Sarah Huttenlocher** – CAP Advocate & Staff Attorney
sarahh@equipforequality.org
 - ❖ **Megan Sorey** – CAP Advocate & Staff Attorney
megans@equipforequality.org
 - ❖ **Emily Wilson** – CAP Advocate & Staff Attorney
emilyw@equipforequality.org

Equip for Equality's Employment Rights Helpline

- The helpline provides advice on the employment rights of job seekers and employees with disabilities.
- Helpline staff can:
 - ❖ **Discuss** your rights under the ADA
 - ❖ **Answer** your employment rights questions
 - ❖ Assist with **reasonable accommodation** requests
 - ❖ Help you understand your **options**
 - ❖ Share **fact sheets, sample letters** and **forms**
 - ❖ Provide **referrals** and other assistance as needed

(844) RIGHTS-9 (toll-free) • (844) 744-4879 (toll-free)

**www.equipforequality.org/employment
employment@equipforequality.org**

Job Accommodation Network (JAN)



- Fact sheets / accommodation ideas for almost every impairment and disability:
<http://askjan.org/media/atoz.htm>
- Technical assistance:
<http://askjan.org/JANonDemand.htm>
- JAN's Employers' Practical Guide to Reasonable Accommodations: <http://askjan.org/Erguide/>
- JAN's Sample Reasonable Accommodation Form for Employers <http://askjan.org/media/raemployersform.htm>

Highlight: Two New(ish) Programs

- **Legal Assistance Removing Re-Entry Barriers**
 - ❖ Funding from Access 2 Justice – helping people with disabilities overcome barriers to reentry from jails and prisons
 - ❖ Ruben Bautista: ruben@equipforequality.org
- **Training on Cannabis Legalization and Expungement**
 - ❖ Funding from the Illinois Equal Justice Foundation – free training seminars about new Illinois cannabis legalization laws
 - ❖ Barry Taylor: barryt@equipforequality.org

Questions???

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