



Employment Rights Helpline at Equip for Equality

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

FACT SHEET: Employment Rights for Job Seekers and Employees with a Traumatic Brain Injury

I have a traumatic brain injury (TBI). What laws might help me at work?

People who have a traumatic brain injury (TBI) are protected under several laws, the most well-known one being the **Americans with Disabilities Act (ADA)**. Other laws that may protect you include the Rehabilitation Act; Illinois Human Rights Act (IHRA); Cook County Human Rights Ordinance; and Chicago Human Rights Ordinance. These laws are all a little different, but all of them basically cover the same scope as the ADA, so this Fact Sheet focuses on the ADA.

Who is protected by the ADA?

To be covered by the ADA, you need to have one (or more) of the following:

- **A physical or mental impairment that substantially limits one or more major life activities.** This is the most common with a TBI because a TBI is an impairment. A person with a TBI may be substantially limited in the major life activities of walking, doing manual tasks, concentrating, seeing, thinking, sleeping, reading, learning, and other activities.
- **A record of a physical or mental impairment.** This is a group for people who have been called disabled when they are not and people who have had a substantial limitation in the past. Examples:
 - A person with a TBI may be incorrectly labeled as having intellectual or mental disabilities and be discriminated against because of that incorrect record.
 - A person with a TBI who recovered their major physical and mental ability but may be discriminated against based on their history.
- **Thought to have (“perceived as”) an impairment.** This category helps people who are treated by an employer as having an impairment. It could apply to people who do not have an impairment, but are their employer thinks they do. It could also apply to people who have an impairment, but one that is not substantially limiting to them. Examples:
 - An employee with a TBI has no substantial limitations, but his employer demotes him to a job with less demanding work thinking the employee can’t perform high-level tasks.
 - An employee has no actual impairments. Yet he walks differently, and the employer assumes he has had a TBI.

Which employers does the ADA cover?

- Employers with 15 or more employees.
- State and local government employers (of any size).
- Employment agencies.
- Labor unions.

Which employers does the ADA not cover?

- Employers with fewer than 15 workers. In Illinois, though, all small employers are covered by the Illinois Human Rights Act.
- The U.S. government. Federal employees are covered by the Rehabilitation Act, which has most of the same rules as the ADA.
- Private membership clubs.
- Indigenous tribal nations and corporations owned by them.

What parts of the employment process does the ADA cover?

The ADA covers all aspects of employment, including:

Interviewing and applying for a job: The ADA covers the entire process of looking for and trying to get a job.

Hiring: An employer cannot refuse to hire a qualified applicant because of a TBI.

Training: An employee with a TBI must get the same training sessions as employees without disabilities.

Promotion: An employee with a TBI has a right to apply and be considered for promotions, transfers, special assignments, and other development opportunities.

Salary and benefits: Income, benefits, bonuses, and chances for overtime must be given to employees with TBIs in the same ways as non-disabled employees.

Fired, demoted, or disciplined: An employee may not be treated negatively because of a TBI.

Workplace privileges: This may cover other parts of the job, such as the timing of shifts, access to off-site events, commuting, perks, and work travel.

Who is a “qualified individual” under the ADA?

An employee or job applicant is only covered by the ADA if they can do the job and are qualified for a job. This means that they meet the skills, experience, education, and other job-related needs of the job; and they can do the essential job functions of the position, with or without a reasonable accommodation.

Just because a person with a disability is qualified for and can perform a job does not mean that the employer is *required* to hire them. Instead, the ADA gives people with disabilities an *equal opportunity* to be employed as people who do not have disabilities.

What is a “reasonable accommodation” under the ADA?

A person with a TBI may need changes in the policies or workspace of the workplace to help them work. Under the ADA, we call these changes “reasonable accommodations.”

A reasonable accommodation means as any change an employer makes that lets a qualified person with a disability:

- Apply for a job and participate in the hiring process
- Do the important parts of your job (“essential job functions”)
- Enjoy the equal benefits and privileges of employment

See the **Helpline’s Fact Sheet on Requesting Reasonable Accommodations** to learn more: [Requesting a Reasonable Accommodation](#)

What accommodation might help me?

It depends on you, your job, and what type of help you need personally. Here are some examples of accommodations that have helped people with TBI.

- **Physical accommodations:** Get rid of physical barriers in the office, reduce noise or other distractions, install ramps and grip-bars.
- **Visual accommodations:** More or less lighting, and bigger or magnified monitors.
- **Productivity accommodations:** Allow recording or note-taking, give written and verbal instructions.
- **Job and policy changes:** Moving the times you need to come to or leave work, changing job tasks to get rid of less-essential tasks, lower noise or other distractions, job coaches, reduced hours, and remote work. Learn more about [Remote Work as a Reasonable Accommodation](#) and [Job Restructuring as a Reasonable Accommodation](#).
- **Allow a service, assistance, or emotional support animal.** Learn more about [Service Animals as a Reasonable Accommodation](#).
- **If needed, reassignment to another position.** Learn more about [Reassignment as a Reasonable Accommodation](#).

The **Job Accommodation Network** is a very helpful place to help you figure out what accommodations would work for you. [Job Accommodation Network: Brain Injury \(askjan.org\)](#)

How do I ask for a reasonable accommodation? What happens after I do?

There are some important things to know when asking for an accommodation:

- Nearly always, the employee must *ask* for an accommodation. In asking, it is usually best to put it in writing (an email is good) and say that “I am requesting a reasonable accommodation under the ADA, state, and local laws.”
- Once the employer knows that you need an accommodation, it must engage in an

“interactive process.” This helps decide if you get an accommodation and what kinds of accommodations you may be able to get.

- The employer need not agree to your specific ask. A reasonable accommodation must be *effective*, yet it does not have to be exactly what you asked for.
- An employer may refuse to give you an accommodation if it poses an undue hardship (it is very hard or expensive) or a direct threat (big risk to the health or safety of the person with a disability or others).

You should keep written records of all communications with your employer (backed-up in off-line storage or printed out/copied so they are not accidentally deleted) in case you need them later. Learn more about [Documenting Disability Discrimination](#).

What can my employer ask me about my TBI?

The ADA has rules about what employers can ask applicants and employees about their disabilities. These rules are different depending on what part of the hiring process you are in.

Stage 1: Pre-Employment - Before you are given a conditional job offer

The ADA says employers may not ask any medical questions or do any medical test. Employers may only ask about an applicant’s ability to do the essential functions of the job.

Examples of pre-employment questions that may not be asked:

- Do you have a disability?
- Have you ever filed for workers’ compensation?
- What prescription drugs are you taking?
- Have you ever been treated for mental health problems?
- How many sick days did you take in the last year?

Examples of pre-employment questions that may be asked:

- Can you perform the functions of this job with or without a reasonable accommodation?
- Please describe or demonstrate how you would perform these functions.
- Can you meet the attendance requirements of the job?
- Do you have the required license to perform this job?

Stage 2: After you get a conditional job offer, but before you start work

An employer may ask medical questions or make you take a medical test, but may not refuse to hire a person with a disability based on results of those things unless the reason is job-related and related to business necessity. All applicants at that employment level must go through the same tests, regardless of whether they have a disability. For example, an employer could not

ask only a person with a TBI to do a medical test, unless every applicant at that employment level also must take the test.

Stage 3: During employment

Any medical test or questions asked of an employee must be job-related and justified by business necessity. This means they can only ask for medical information or tests if you ask for a reasonable accommodation or there is a problem on the job that the employer reasonably and objectively thinks is because of your disability. Exceptions include voluntary tests conducted as part of employee health programs or that may be required by other federal laws.

What other rights do I have as a person with a TBI at work?

You have a right not to be harassed or be subjected to a hostile work environment because of your disability. This includes harassment by a boss, co-workers, or other people like customers or contractors. [Learn more about Addressing Harassment.](#)

You also have the right to not face retaliation, intimidation, threats, or interference while using the rights these laws give you. Learn more about [Addressing Retaliation.](#)

I think I have been discriminated against. I want to file a complaint. What do I do?

People who think an employer violated their rights may file a complaint, this is also called a “charge”, with the Equal Employment Opportunity Commission (EEOC) or the Illinois Department of Human Rights (IDHR). In Illinois, a charge must be filed with the EEOC or the IDHR within **300 days** of the time you first learned that your rights were violated. (You can file the same charge with more than one agency at the same time by checking a box on the form.) If you do not file a charge in time, it means that it will not be investigated, and you will not be able to file a lawsuit in court later. Learn more about [Filing a Charge of Discrimination.](#)

If you live in Chicago or Cook County, both have a human rights ordinance that protects your rights and has its own agency that will investigate and determine disability discrimination. You may file a charge with the Cook County Human Rights Commission within 180 days of time you think your rights were violated or the Chicago Commission on Human Relations within 300 days. These agencies are **not the same as** the EEOC and IDHR. Filing a complaint with these local commissions will **not** let you to file a lawsuit later.

What will the EEOC or the IDHR do with my charge?

The EEOC will first offer you and your employer a chance to solve your case with mediation. If either you or your employer do not agree, or if the mediation does not work, the EEOC will investigate the charge. If it finds you were discriminated against, it will try to reach a settlement and to make the employer change its policies. If a settlement cannot be reached and the employer refuses to stop the breaking the law, the EEOC may file a lawsuit in court against the employer. The EEOC may also end its investigation and send you a letter saying that you can bring a lawsuit against the employer within the next 90 days.

The IDHR may also first offer you and your employer a chance to fix your case through

mediation. If either you or your employer do not agree, or if the mediation is does not work, the IDHR will investigate the charge. The IDHR may look into a claim, hold a fact-finding meeting, or try to solve the problem. After an investigation has ended, or 365 days after the filing of a charge without a solving the problem by the IDHR, you can file a lawsuit or continue file a complaint with the Illinois Human Rights Commission.

What might happen if I bring a case against my employer?

Remedies for violations of the ADA include:

- Changing the employer's illegal hiring methods
- Getting a job
- Getting a promotion
- Getting f pay lost after discriminatory actions
- Getting benefits back
- Reasonable accommodation
- Attorneys' and expert witness fees
- Court costs
- Money if the employer discriminated on purpose or did not event try to give you a reasonable accommodation

Learn more with the [Helpline's Fact Sheet about Remedies Under the ADA.](#)

What other workplace protections should I know about as a person with a TBI?

- **Were you injured on the job?** If so, you may have rights under state workers' compensation laws. Federal employees hurt on the job have equal protection under Federal Employee Compensation Act, or FECA.
- **Do you need time off of work?** Many employers are covered by the Family and Medical Leave Act (FMLA) that gives up to twelve weeks of unpaid leave for people to get medical help and to heal. Learn more about the [FMLA](#).
- **Are you no longer able to work?** You may also be able to get long- or short-term disability from your employer no matter where you got your TBI.



DO YOU HAVE A QUESTION?

CONTACT THE HELPLINE FOR FREE LEGAL ADVICE

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (1-844-744-4879) (toll free - voice)

employment@equipforequality.org

www.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.

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