

A survivor of domestic abuse, sexual assault or stalking may have physical and emotional disabilities caused by the abuse. Employers cannot discriminate against you if you have certain disabilities. This guide provides basic information about your right to protection against discrimination. It also tells you about your right to ask for changes in your workload, hours or space that are necessary because of your disability.

1. What rights does the Americans with Disabilities Act and other disability laws provide to survivors of domestic violence, sexual assault and stalking?

A federal law protects employees with qualifying disabilities from being fired or otherwise discriminated against at work. This law is called the **Americans with Disabilities Act (ADA)**. Physical or mental conditions related to domestic violence, sexual assault and stalking may qualify as *disabilities* under the law. The federal law only protects employees who work for employers with at least 15 employees.

Most states and local governments have similar laws that protect individuals with disabilities from discrimination. Some of these laws cover a wider range of disabilities than the federal law and/or smaller employers. It is important to check whether your state, county, or city has its own disabilities law. If it does, find out how it is different from the federal ADA.

If you are protected by the ADA, it is illegal for your employer to discriminate against you because of your disability. Discrimination may include harassing you, moving you to a lower position, lowering your pay or firing you. People protected by ADA may also get *reasonable accommodations*. *Reasonable accommodations* are changes in the workplace that makes it possible for people with disabilities to do their jobs (for examples, see Question #12). These changes are only *reasonable* if they are not too disruptive or expensive for the employer. The ADA also protects disabled people when they are looking for jobs. It is illegal for an employer to refuse to hire you because you are disabled and may need a *reasonable accommodation*.

2. What conditions qualify as disabilities under the ADA?

To be protected, an employee must have a *physical or mental impairment* (condition) that *substantially limits* (severely interferes with) the ability to engage in *major life activities*. It does not matter what the cause of your disability is.

The following are examples of ***physical and mental conditions*** that may qualify as disabilities under the ADA:

• Head injuries	• Depression	• Back injuries
• Panic, anxiety, and stress disorders	• Post-traumatic stress disorder	• Another physical or health disability

Major life activities under the ADA may include:

• Walking	• Learning	• Performing manual tasks
• Sitting	• Concentrating	• Interacting with others
• Standing	• Thinking	• Caring for oneself
• Seeing	• Working	• Breathing
• Hearing	• Lifting	• Sleeping
• Speaking	• Reaching	

If you have medical condition that substantially limits your ability to undertake one or more of the activities listed above, you may have a right to protection under the ADA. Recent court decisions, however, have interpreted these requirements quite narrowly – to show that you are disabled under the ADA, you need to be able to show that you have a very hard time conducting daily life. State and local disability laws may cover disabilities that are not covered by the federal ADA.

3. Do I still qualify for protection under the ADA if my condition can be treated with medication?

It depends. Courts look at each case individually. If taking medication permits you to perform regular activities of daily life, you may not be considered disabled. If the medicine causes serious side effects that significantly limit your ability to perform major life activities, you may still be considered disabled.

4. Can an employer ask me about my disability when I am applying for a job?

Generally employers cannot ask about disabilities before a job offer is made. They are not allowed to ask questions about specific disabilities such as “Do you have a bad back?” It is also illegal for them to ask about possible disabilities that are not related to the job, such as “Have you ever been unable to take care of yourself?” They are also not allowed to ask most questions related to prescription drug use, such as “Do you use antidepressants?” If the disability is obvious or you have spoken openly about the disability, the employer is allowed to ask limited questions about *reasonable accommodations*.

5. Am I required to tell a potential employer about my disability when I apply for jobs?

No. You are not required to tell a potential employer about your disability at the time you apply for a job.

6. What is an employer allowed to ask me after a job offer has been made, but before I start working?

An employer may ask you to take a medical examination or answer medical questions before you begin working. This information must be kept confidential. Also, they may only ask you to take

examinations that all new employees in your job category are required to take. If an employer uses the results of such examinations to withdraw the job offer, the employer must prove that its reasons are job-related, necessary for business reasons, and cannot be addressed by a reasonable accommodation. An employer cannot take the offer away just because you are disabled.

7. What may an employer ask after I start working?

Generally, nothing. However, employers can ask questions about your disability if the questions are **“job-related and consistent with business necessity.”** If the employer has a good reason to believe that your disability will keep you from doing your basic job duties, the employer may ask limited questions or request that you have a medical exam. Also, if the employer has a reasonable belief that your disability may cause you to harm the health and safety of others, or if you are injured at work, the employer may ask limited medical questions or request that you receive a medical examination.

Additionally, if you ask for a reasonable accommodation, your employer might have the right to ask for *reasonable* documentation from a doctor showing that you have a right to the accommodation.

Unless your situation is similar to one of the examples above, your employer probably does not have the right to ask about your health. Even if there is a job-related reason, employers can only ask for reasonable information that is related to the situation. All medical information must be stored in a separate medical file and kept confidential.

8. What information do I have to give my employer about my disability?

If you do not need a reasonable accommodation, you do not need to tell your employer that you have a disability at all. If you *do* need a reasonable accommodation, you must provide the employer with enough information to show that you have a condition that seriously limits your ability to do a major life activity. To be safe, you should use words such as “disability,” “impairment,” “substantially limiting,” and “major life activities.”

Deciding to tell your employer about your disability is a personal decision. There may be benefits to speaking about your disability. For example, some people may find that the work environment actually feels more supportive after they have been honest about their disability. They can protect their health and do their job better once changes have been made. However there may also be risks to telling your employer, such as the loss of privacy. If you need an accommodation but do not want to tell your employer about your disability, you may want to think about other ways to ask for the accommodation. (If, however, your employer does not know about the disability, it is not legally required to make the accommodation.)

9. Do I have to ask for an accommodation in writing?

No. You can ask for an accommodation in writing, in conversation, through e-mail, or by any other form of communication. However, it is a good idea to keep a record of your request.

10. Do I have to tell my employer about my DSM* diagnosis to get an accommodation?
**Diagnostic and Statistical Manual of Mental Disorders*

Usually not. You must provide enough information for the employer to understand that you have a serious condition that limits your ability to perform major life activities. Just saying you have “stress” or an “emotional” problem may not be enough. However, sharing your DSM diagnosis is not usually necessary. It is more important that you explain why the condition makes it hard for you to do your job.

11. Do I have to tell everyone at work about my disability?

No. You must tell someone in a supervisory or management position, such as a supervisor or a human resources person. You do not have to tell co-workers. It is illegal for employers to reveal this information to co-workers who do not need to know about the condition. Employers must keep all your medical information confidential.

12. What happens after I ask for an accommodation?

Your employer will consider how it can *reasonably* accommodate your need. You may have to help with that decision. You may be asked to do things such as get medical documentation (such as records or a doctor’s note), attend meetings and share ideas about possible accommodations. If you do not help, you can lose your ADA rights. If you have a mental health disability, it is a good idea to get someone to help you with this process.

To protect ADA rights, employees should do the following things:

- Ask for accommodations in writing.
- Suggest ideas for accommodations.
- Tell your employer about accommodation organizations like the Job Accommodation Network (1-800-526-7234) or the Disability and Business Technical Assistance Centers (DBTACs) (1-800-949-4232).
- Plan and/or attend meetings to talk about accommodations.

The following are examples of accommodations that might be reasonable in certain situations:

- **Change of workspace:** An employee with an anxiety problem might need a more private workspace.
- **Equipment or devices:** An employee with a bad back or neck may need a standing desk or a special chair.
- **Part-time work schedule:** An employee with a mental health disability that causes over-tiredness might need a part-time schedule.
- **Modified work schedule:** An employee who takes psychiatric medications that causes tiredness at a certain time of day might need a more flexible schedule.
- **Time away for therapy:** An employee who goes regularly to a mental health professional might need time away from the workplace to go to appointments.
- **Unpaid leave of absence:** An employee who needs limited time off, e.g., to address post-traumatic stress disorder, might be able to take time off without pay.

- **Changing of job duties:** An employee with certain mental health problems might want to avoid contact with the public or ask that someone else lead a monthly meeting. Changes like these are reasonable only if they do not get in the way of the employee's basic job duties.
- **Training:** An employee with a disability that makes it hard to concentrate or learn may need additional training.
- **Changes in employee supervision:** An employee with certain mental health disability may want different forms of supervision from the standard, such as regular positive and negative feedback, more frequent performance reviews, or more detailed instruction or task assignment. The employee may also want to change the way she communicates with supervisors. Such changes might include a switch to or away from e-mail, more written instructions, or more face-to-face meetings.
- **Job coach:** An employee certain disabilities might ask to bring a job coach to work to help them learn the job. In some cases, an employer might provide such a coach.
- **Policy changes:** An employee with back pain might need more frequent breaks than permitted under an employer's policy.
- **Education for co-workers:** An employee with certain disorders may feel that her co-workers do not understand about the disability and that this interferes with her ability to do her job. She might ask co-workers and supervisors to take disability education classes that will fight stereotypes.
- **Change of positions:** An employee who is not able to do her current job functions may want to move to a different empty position. This kind of change would only be reasonable if she also has the relevant skills and experience to work in that position.

13. What if I have a problem with condition my medication or my behavior changes at work?

It depends. If your behavior gets in the way of your job or you break basic and important workplace rules, then you may not be protected under the ADA. If you have broken a rule that is job related and necessary then there is a good chance your employer can fire you, even if your behavior is caused by the disability. Your employer might first be able to ask you questions about your disability and request that you undergo an examination.

14. Which rules are “job-related and necessary?”

Safety rules and rules against violence are always job-related and necessary. Whether or not other rules are job related and necessary depends on the job. Dress codes, for example, are probably job-related and necessary for employees in customer service positions. They may not be necessary, however, for employees who work away from the public. Rules about getting to work on time are likely to be job-related and necessary for receptionists and drivers, but they may not be necessary for someone working on projects alone.

15. What if other employees break the same rules and get away with it?

An employer is not allowed to be stricter with a disabled employee than it would be with a non-disabled employee. If you feel that your employer has treated you differently than non-disabled individuals, you may have been discriminated against. The ADA protects you against this discrimination.

16. What can I do if I feel like my rights under the ADA have been violated?

1. Use your employer's complaint procedure for discrimination complaints.

Your workplace should have a complaint or grievance procedure for discrimination. First, find out whether your employer has a complaint procedure. Then ask about the procedures for filing a complaint. Second, **file a complaint and tell a supervisor or someone with authority to change the situation.** Resolving the problem internally will save you the time and effort of filing an administrative complaint or lawsuit. Also, even if you end up filing an administrative complaint or a law suit, you often must show that you filed an internal complaint before doing so. If you believe your complaint has not been handled satisfactorily by your employer, you may want to file an administrative complaint or lawsuit.

2. File an administrative complaint.

You can file an administrative complaint with the federal Equal Employment Opportunities Commission (EEOC) or with the government agency in your state or city that enforces state or city laws against discrimination. These governmental agencies generally have strict deadlines for filing a complaint. There is no charge for filing a claim with an administrative agency. Generally, you must file an administrative complaint before you file a lawsuit. **To contact the EEOC, call (800) 669-4000, TTY (800) 669-6820 to be connected to the nearest EEOC District office.**

3. File a lawsuit.

If you are not satisfied with the outcome of your workplace's complaint procedure or your administrative claim, or if you would like to file a lawsuit, you have the right to do so. Be aware that lawsuits take many years and are expensive and time consuming. It is not easy to find a lawyer who will take your case for free or for a low fee. There are strict deadlines for filing lawsuits and you may have to file an administrative claim first. There may also be specific requirements to prove your claim, such as showing that your employer was aware of the harassment and that you gave your employer the opportunity to resolve the claim.

17. Consult the appropriate agency or an attorney about your rights.

This guide tries to provide accurate, general information regarding disability laws. Yet, because laws and legal procedure change frequently and are interpreted differently, Legal Momentum cannot guarantee the information in this guide is current. Legal Momentum also cannot be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your particular situation. If you need assistance in finding a lawyer, contact Legal Momentum, the bar association in your state, or your local legal services office, domestic violence coalition, sexual assault coalition, or service provider.

For more information or assistance, please contact 212-925-6635 or ehrsa@legalmomentum.org.

This guide is available for downloading at www.legalmomentum.org.

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