



The American Disabilities Act & People with Cancer

What is the Americans With Disabilities Act?

The Americans With Disabilities Act of 1990 (ADA) gives civil rights protections to people with disabilities. It can help people with disabilities gain equal opportunity in:

- Employment
- Public accommodations
- Transportation
- State and local government services
- Telecommunications.

What is a Disability Under the ADA?

The Americans With Disabilities Act may apply to you if:

- You have a physical or mental problem that substantially limits one or more of your “major life activities”
- You have a record of having had such a problem in the past.
- Other people think you have such a problem, even if you do not actually have it.

On January 1, 2009, the ADA Amendments Act of 2008 went into effect. This Act made some major changes to the way the definition of disability has been interpreted under ADA in the past. Some of the “major life activities” covered by ADA include but are not limited to caring for yourself, doing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

The 2008 amendment also includes major body functions, including but not limited to functions of the immune system, *normal cell growth*, digestive, bowel, bladder, central nervous system, brain, respiratory, circulatory, endocrine, and reproductive systems. These changes can help people with cancer, because in the past they often had a hard time meeting the definition of disability.

Q&AS ABOUT EMPLOYMENT DISCRIMINATION

This section deals only with employment discrimination, a potential problem for people who have had cancer. The section of the ADA that applies to jobs is called Title I. After the discussion of jobs, there is information about the ADA in settings and situations other than the workplace. The sections of the ADA that apply to these different settings and situations are Titles II through V.

FINANCIAL ADVOCACY NETWORK

Resources & Tools for the Multidisciplinary Team



Does the ADA Apply to my Employer?

The law applies to employers with 15 or more employees. Job discrimination against people with disabilities by these employers is not legal if practiced by:

- Private employers
- State and local governments
- Employment agencies
- Labor organizations
- Labor management committees.

Employees of the US government are not covered under the ADA. But they have the same protections under a different law, which is enforced by the Office of Federal Operations of the EEOC. To file a complaint, a federal employee must first contact an equal employment opportunity counselor at the agency in which they believe the discrimination took place. You can read more about these protections at: www.eeoc.gov/facts/fs-fed.html.

Whom Does the ADA Cover?

In order to be protected by the ADA at work, the ADA must apply to your employer. And, you must be qualified and able to perform the “essential functions” of the job. See the section called “What are the essential functions of a job under ADA?”

Although the ADA defines the term *disability*, it does not include a list of conditions that are always considered disabilities. Instead, each case must be looked at on its own merits. According to the United States Equal Employment Opportunities Commission (EEOC), cancer is not always considered a disability. The ADA can help protect you when cancer prevents or makes it very hard for you to do everyday tasks, such as household chores, bathing, and brushing your teeth. But this kind of disability must be permanent or long-term.

The ADA also protects you if you had cancer in the past, but are doing well now. An employer may not discriminate against you because you used to be sick. The ADA also prevents an employer from discriminating against you if he or she thinks you are sick, even if you aren't.



Association of Community Cancer Centers

Last Reviewed 11/10/14



Which Employment Practices Does the ADA Cover?

If you have a disability and are qualified for a job, the ADA does not allow the employers noted above to discriminate in employment practices, such as:

- Recruiting and advertising for job openings
- Job application and hiring
- Training
- Job assignments
- Tenure
- Promotions
- Pay
- Benefits
- Leave
- Firing
- Lay off
- All other employment-related activities, terms, conditions, and privileges.

An employer cannot take action against you because you ask for your rights under the ADA. The Act also protects you if you are discriminated against because of your family, business, social, or other type of relationship or association with a person who has a disability. For instance, this means an employer cannot discriminate against you because your spouse or child has cancer. Still, the ADA does not completely protect your job just because you have a disability and are qualified for the job. The employer can still fire or lay off (terminate) an employee with a disability for legitimate business reasons. For instance, a disabled worker would not be protected during downsizing.

What are the Essential Functions of a Job Under the ADA?

If you have a disability, you must be qualified to perform the *essential functions* of a job in order to be protected from job discrimination by the ADA. Essential functions are the fundamental duties required by the job itself. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job. But you must satisfy the employer's job requirements such as education, employment experience, skills, or licenses. Employers are not required to lower their job standards to accommodate someone with a disability. Nor do they have to provide personal-use items such as glasses or hearing aids.

You also must be able to perform the essential functions of the job either on your own or with reasonable accommodation (see definition of accommodation in the next section).



What is Reasonable Accommodation Under the ADA?

Reasonable accommodation is how an employer makes adjustments to a job that allow an employee with a disability to perform the essential functions of that job. But reasonable accommodation can start even before hiring; for example, it may be a change in procedure that allows a qualified disabled person to apply for a job. For those already working, reasonable accommodation can be a change that allows disabled people to enjoy benefits and privileges of employment the same as those enjoyed by employees without disabilities.

Examples of reasonable accommodations may include:

- Providing equipment or devices, or adapting them so the person with a disability can use them
- Restructuring a job
- Changing work schedules
- Reassigning the employee to a vacant position
- Adjusting or modifying tests, training materials, or policies
- Providing e-readers and/or interpreters
- Making the workplace easy to get into and use by people with disabilities.

An employer must accommodate a qualified applicant or employee with a disability unless the employer can show that making the accommodation would not be reasonable. That means that the accommodation would be very difficult or expensive (an “undue hardship” or unreasonable). These factors include the type and cost of the accommodation in relation to the size, resources, nature, and structure of the employer’s operation. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

The facts of your case will help determine whether an accommodation will make it possible for you to do the job and, if so, what kind of accommodation is needed. Employers do not have to know about every kind of disability to know whether or how to make a reasonable accommodation. They are required to accommodate only those disabilities they know about and that do not cause too much hardship for the employer. The requirement is usually triggered by a request from a person with a disability, who often can suggest a workable accommodation.

Accommodations must be made on a case-by-case basis because the type and extent of a disability and the requirements of the job will vary in each case. If you do not ask for an accommodation, the employer is not required to provide one. If you ask for an accommodation, but cannot suggest one that will work for you, you and the employer should work together to identify one. There are also many public and private resources that can provide help without cost.



What are Employers Allowed to Ask Job Applicants with Disabilities Under the ADA?

When you apply for a job, employers can't ask you if you are disabled. They also cannot ask about the type or how severe a disability you have. *Employers may not ask you if you have or have ever had cancer.* But they can ask you about your ability to perform certain job tasks. An employer can ask you to describe or show them how, with or without reasonable accommodation, you will perform the duties of the job.

If all new employees in similar jobs are required to have a medical exam, you may be offered a job conditionally, pending the results of a medical exam. The medical exams must be related to the job and in line with the employer's business needs. But an employer cannot reject you because of information the medical exam reveals about your disability unless the reasons for rejection are related to the job and necessary to conduct the employer's business. The results of all medical exams must be kept confidential. Medical files must be kept separate from work or personnel files.

Should I Tell My Employer I Have a Disability?

If you think you will need accommodation in order to apply for a job or to perform essential job functions, you should tell the employer that you have a disability. Employers are only required to provide reasonable accommodation if they know about the disability. Generally, the employee is the person who must tell the employer that an accommodation is needed. *But you are not required to offer information about having cancer or another disability when you apply for a job.*

Does My Employer Have to Provide Any Accommodation I Request?

No. There is some flexibility built into the reasonable accommodation requirement under the ADA. For example:

- Employers can choose among effective accommodation options and do not always have to provide the accommodation that the employee requests.
- Employers do not have to provide accommodations that pose an undue hardship for them.
- Employers do not have to provide personal-use items that are needed for daily activities both on and off the job.
- Employers do not have to make an accommodation for a person who is not otherwise qualified for the job.
- Employers do not have to remove essential functions, create new jobs, or lower production standards to accommodate a disabled employee.



Under the ADA, Does the Employer Have to Hire a Qualified Applicant with a Disability Over Other Qualified Applicants?

No. The ADA does not require an employer to hire a person with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability just because he or she is disabled. It's also unlawful to refuse to hire the qualified person because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

Do I Have to Pay for It If I Need Reasonable Accommodation Under the ADA?

Generally, no. The ADA requires the employer to provide the accommodation unless doing so would cause an undue hardship on the employer's business. If the cost of providing the needed accommodation would be too much, you must be given the choice of

- Providing the accommodation yourself, or
- Paying for the portion of the accommodation that causes the undue hardship.

An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar jobs.

If the Health Insurance Offered by My Employer Does Not Cover All Medical Expenses Related to My Disability, Does the Company Have to Get Extra Coverage for Me Under the ADA?

No. The ADA only requires an employer to provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees. The same is true for employees with cancer or for employees who have family members with cancer or a history of cancer.

What Agency Enforces ADA Job Protections?

The Equal Employment Opportunities Commission (EEOC), along with state and local civil rights enforcement agencies, enforces the part of the ADA that covers employment protection.

What Should I Do If I Think I'm Being Discriminated Against in a Work Situation Because of My Disability?

If you think you have been discriminated against at work because of a disability, you can file a complaint with an EEOC field office located in certain cities throughout the United States. If your employer is a state or local government, you should contact the US Department of Justice.

FINANCIAL ADVOCACY NETWORK

Resources & Tools for the Multidisciplinary Team



A discrimination charge generally must be filed with the EEOC within 180 days of the action that you believe to be discriminatory. If a state or local law covers discrimination on the basis of disability, the charge must be filed with the proper state or local fair employment practice agency within 300 days of the discriminatory action. EEOC field offices can refer you to the agencies that enforce those laws. But to protect your rights, it is best to contact the EEOC right away if you suspect discrimination, at 1.800.669.4000. If you work for the US government, you have only 45 days to contact your agency EEOC officer, and the process is somewhat different from that for private employers.

If the EEOC decides that you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay, or reasonable accommodation, including reassignment. You also may be entitled to payment of your legal fees. Keep in mind that these decisions may take a long time depending on the nature of the claim and how it is resolved.

If the EEOC does not believe discrimination has occurred, or when attempts to resolve the problem have failed and the EEOC decides not to sue on your behalf, you can request a “right to sue” letter from the EEOC 180 days after filing your complaint. After you get this notice of right to sue, you have 90 days to file the suit. If you sue, you may want to hire a private attorney to represent you.