

Self-advocacy in the workplace: Know your Rights

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Disability Rights New Jersey

- Disability Rights New Jersey is the designated Protection and Advocacy agency for New Jersey
- We advocate for and advance the human, civil and legal rights of residents of New Jersey with disabilities



Learning objectives

- What is the ADA?
- What is the NJ Law Against Discrimination?
- How can you request a reasonable accommodation?
- When, if ever, do you need to disclose your disability?



Americans with Disabilities Act (ADA)

The ADA is a civil rights and federal anti-discrimination law that provides and protects, among other things, the right to a reasonable work accommodation for a qualified person with a disability.



What rights does the ADA give YOU as an employee?

The ADA says an employer cannot discriminate against a qualified individual because of a disability when it comes to

- job application procedures
- the hiring, advancement, or discharge of employee
- employee compensation, job training, and other terms, conditions, and privileges of employment.



But what is a “qualified person”?

A person who -

- Has a disability (includes IDD)
- With or without a reasonable accommodation, can perform the essential functions of the job. 42 U.S.C. § 12111(8).



What are “essential functions”?

Essential functions are the basic job duties you as an employee must be able to perform, with or without reasonable accommodation.

- Deciding what the essential functions are is fact sensitive.



What is the definition of disability under the ADA?

a person-

- who has a physical or mental impairment that substantially limits one or more major life activities

OR

- a person who has a history or record of such an impairment

OR

- a person who is perceived by others as having such an impairment.

42 U.S.C. § 12102(2)



What is a major life activity?

The ADA defines it as:

related to “one’s five senses, ability to ambulate and substantial cognitive deficiencies.” 42 U.S.C. 12102(2).



Major life activity examples

Some examples:

- Reading
- Interacting with others
- Speaking
- Learning
- Thinking



Does IDD qualify under the ADA's definition?

Yes.

- As long as the disability substantially limits one or more major life activities; the person who has a history or record of such an impairment (qualifies for SSI); the person who is perceived by others as having such an impairment (individual does not need to actually have a disability).



Do ALL employers have to comply with the ADA?

Employers bound under the ADA includes private employers with 15 or more employees, state and local government employers, employment agencies, labor organizations, and joint labor-management.

42 U.S.C. 12111(2) and (5).



ADA state equivalent: NJ Law Against Discrimination

The NJ Law Against Discrimination, also known as the NJ LAD is a state law that protects employees and job applications from discrimination.

- It provides MORE protection to MORE people than the ADA.



NJ LAD: Disability definition is broader than ADA

Under the LAD, disability means:

“[P]hysical or sensory disability, infirmity, malformation, or disfigurement...which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.”

N.J.S.A. § 10:5-5(q).



NJ LAD: Disability definition does not require substantial limitation of major life activity

- **Unlike the ADA requirement, the disability DOES NOT need to result in a substantial limitation of a major life activity.**



But how is it the same as the ADA?

- You must still meet the job qualifications and be able to perform essential job functions.
- You can ask for a reasonable accommodation for a disability to perform those tasks or apply for a job.



Case example

- Alessandro, a 47-year-old man with I/DD
- Works in a warehouse
- Needs instructions written out and recorded meetings to remember important information
- Recently, got disciplined because he misunderstood directions his supervisor
- Received no written instructions from his supervisor
- Was told he can no longer record meetings because his coworkers so not feel comfortable



Case example cont.

Some questions you might be asking yourself:

- Is Alessandro protected under the law?
- What is the best way Alessandro could have protected himself?
- What should he do now?
- Did his employer break the law?



What are “Reasonable Accommodations”?

- Any modification or change to the **application**
- or **hiring process**,
- to the **job**,
- to the **way the job is done**,
- or the **work environment** that allows a person with a disability who is qualified for the job to perform the essential functions of that job.



Requesting a Reasonable Accommodation

Remember the acronym FAIR

1.) Find the right person.

Find out who you have to speak to in order to make the request.



Requesting a Reasonable Accommodation cont.

2.) Ask for the Accommodation in writing.

➤ You do not need to make the request in writing but it is **HIGHLY** recommended



Requesting a Reasonable Accommodation (Step 2 cont.)

- You do not need to use special words like “reasonable accommodations” but you have to give the employer enough information so the employer knows
 1. you have a disability
 2. why you need help to do your job.



Requesting a Reasonable Accommodation cont.

3. Interactive Process.

- The interactive process is a meeting you will have with your supervisor where both sides will try to figure out what can be done to help you do your job.



Requesting a “Reasonable Accommodations” (Step 3 cont)

- You don't have to explain exactly what you need but you need to be able to explain the problem you are having which could help you and your employer find a reasonable accommodation.



Requesting a Reasonable Accommodation cont.

4.) Reach out to your employer to follow-up on your request.

- If you don't hear back, follow up with your employer.
- You may need to provide a medical note.



Additional resources (Reasonable Accommodations)

Askjan.org is a fantastic site with resources for requesting a reasonable accommodation including advice on how to structure a letter. This information can be found at:

<https://askjan.org/media/accommrequestltr.cfm>



Disability disclosure

- Is disclosure ever required?
- Pros and cons?
- What other issues are implicated?



Do I have to tell my employer I have IDD: What are the rules?

- Pre-employment: employer cannot request but employee can disclose if in need of a reasonable accommodation
- After a conditional offer: medical examinations can be required and disability-related information can be sought.
- Once hired: employer can only request if reasonable basis 1. employee unqualified; 2. in need of a reasonable accommodation; 3. poses a direct threat to the health or safety of the employees or others



How much do I need to tell my boss?

- You only need to disclose enough for the employer to know you are a person with a disability and how this disability the essential function of the job.
- The employer may not ask questions that are either unrelated to the functions of the job or relate to the applicant's underlying condition **apart from the need for an accommodation.**



But remember

- An employer is not required to provide a reasonable accommodation if unaware of the disability (knowledge can be assumed if employer had reason to know).
- The employee must still be able to perform the essential functions of the job.
- The employer does not have to provide a reasonable accommodation if to do so would cause an undue burden.



If an employer has reason to know

- An employer may have a duty to ask the employee if the employee is in need of a reasonable accommodation.
- An employer's questions must **STILL** be limited to finding out whether you are a person with a disability who needs an accommodation to perform that **SPECIFIC JOB**; if the disability has nothing to do with being able to do your job, they **CANNOT** ask you.



Confidentiality

- Under the ADA, employers must keep all your medical information private or confidential.
- The information must be collected on a separate form and kept in a separate medical file, apart from an employee's file.
- Only staff that needs to know the medical information, usually direct supervisors and managers, should know this information.



When can an employer deny an accommodation?

- Employer must prove “undue hardship.”
- Employer must decide this on an individual basis and must determine whether other financial assistance is available to accommodate the employee (DVRS).



Time frame to file ADA claim

- In order to file a claim under the ADA, you must first file a complaint with the Equal Employment Opportunity Commission within 300 days of day you were discriminated against.
- The EEOC will give you a right to sue letter which gives you 90 days to file your law suit in federal court.
- You will still get a right to sue letter even if the EEOC thinks you do not have a case.
- If you don't file within 90 days, you will not be allowed to sue in federal court anymore.



How long do you have to file a NJ LAD claim?

- You can choose a discrimination claim with the New Jersey Division on Civil Rights, or you can file a lawsuit in state court.
- NJLAD claims must normally be filed within 180 days of the date you were discriminated against.
- NJLAD lawsuits in state court must normally be filed within two years of the violation.



Questions?



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