

Disability Discrimination Under the ADA

The ADA prohibits an employer from treating a qualified employee or applicant unfavorably because of his/her disability. This applies to any aspect of employment, including:

- Hiring
- firing
- Level/rate of pay
- job assignments
- promotions
- layoff
- training
- fringe benefits
- any other term or condition of employment.

The ADA protects against discriminatory actions taken against persons with disabilities, but also against actions taken against a person because of a **perceived disability**.

Discrimination During the Hiring Process

- An employer may not ask an applicant if he/she has a disability during the interview/application process
- An employer may not ask an applicant to take a medical exam, but an employer **can ask an employee how they would perform a job function with or without accommodations.**

Harassment/Hostile Work Environment

Harassment can take different forms. It can include offensive remarks about a person's disability. It can also occur through actions by supervisors or other employees' interference with or obstruction of an individual's ability to work. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). Unlawful harassment may occur whether the harasser is the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer, if the employer is aware of the conduct and fails to take appropriate action.

Retaliation

Both prospective employees (applicants) and current employees are protected from retaliation for exercising their rights under the ADA. An individual is protected against adverse actions from an employer in response to any exercise of protected activity under the ADA, such as complaining about an employer's discrimination or making a request for reasonable accommodation. A complaint made to an employer or supervisor need not be formally made (e.g., in writing) to trigger the protections against retaliation afforded to an individual under the ADA.

