

Americans with Disabilities Act (ADA) and Reasonable Accommodation

Northern Virginia Resource Center for the Deaf and
Hard of Hearing Persons

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Employment Opportunity Commission

What is EEOC's Role?

- ▶ Enforce federal laws prohibiting discrimination in employment
- ▶ Educate and encourage voluntary compliance
- ▶ Investigate and resolve charges of discrimination (against employers in private sector, state and local governments)
- ▶ Litigate in federal court, when necessary

What laws are enforced by the EEOC?

- ▶ Title VII of the Civil Rights Act (Title VII)
- ▶ Age Discrimination in Employment Act (ADEA)
- ▶ Equal Pay Act (EPA)
- ▶ Americans with Disabilities Act (ADA)
- ▶ Genetic Information Nondiscrimination Act (GINA)

What are the protected categories?

- ▶ Race
 - ▶ Age (40 or older)
- ▶ Color
 - ▶ Genetic information
- ▶ National origin
 - ▶ Retaliation
- ▶ Religion
 - ▶ Disability
- ▶ Sex, including
 - Pregnancy
 - Sexual Orientation
 - Gender Identity

Who is protected?

- ▶ An employee
- ▶ A temporary employee
- ▶ A job applicant
- ▶ A former employee
- ▶ Non-U.S. citizens, regardless of immigration status

Who are covered employers?

- ▶ Private sector employers with 15 or more employees
 - 20 or more under the ADEA (age)
- ▶ Educational institutions
- ▶ State and local governments
- ▶ Employment agencies
- ▶ Labor organizations
- ▶ Joint Labor- Management Apprenticeship and Training Com (Title VII & ADA)
- ▶ Federal agencies (separate process)

Americans with Disabilities Act of 1990

- ▶ prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities

What is a “disability?”

Individual With a Disability:

- ▶ Has a **PHYSICAL** or **MENTAL** impairment that **SUBSTANTIALLY LIMITS** one or more **MAJOR LIFE ACTIVITIES**
- ▶ Has a **RECORD** of such impairment
- ▶ Is **REGARDED** as having such impairment

Who is a “qualified individual?”

- ▶ Has the necessary skills, experience, education, and other job-related requirements
- ▶ Able to perform the essential functions with or without reasonable accommodation

Common Types of ADA Discrimination

- ▶ Failure to provide a Reasonable Accommodation
- ▶ Disparate Treatment
- ▶ Hostile Work Environment/Harassment
- ▶ Retaliation

What is a Reasonable Accommodation?

- ▶ **Modification to the job or work environment**
- ▶ **Enables employee with a disability to perform essential functions**
- ▶ **Assures employee with a disability has the same rights and privileges as all other employees**

Who is entitled to a Reasonable Accommodation?

- ▶ Employee who has a disability that needs to be accommodat

Examples of Reasonable Accommodation for Deaf employees

- ▶ Sign Language Interpreter
- ▶ Real Time Captioning (CART)
- ▶ Notetakers
- ▶ Videophone
- ▶ Instant Messaging/Skype
- ▶ Flashing/Vibrating Emergency Alarms/Alerts
- ▶ “Deaf-space” work area

What is the employer's responsibility?

- ▶ Engage in the interactive process
- ▶ Identify a reasonable accommodation (does not have to be the exact accommodation requested)
- ▶ Unless providing the accommodation will cause an undue hardship

What is an undue hardship?

- ▶ The accommodation is too expensive or too difficult to acquire
- ▶ Employer must prove undue hardship, based on their financial resources and size of the business
- ▶ Employer must show that the expense was burdensome on the business

What is the employee's responsibility?

- ▶ Employee must disclose their disability and request for a reasonable accommodation.
- ▶ Employee must be responsive to the interactive process.
- ▶ Employee **must** be reasonable in finding a solution that satisfies "effective communication"

What is effective communication?

- ▶ Ensures communication with Deaf employees are enabled to receive and convey information as effectively as hearing employees

How to Request an Accommodation

- ▶ Identify what you need
- ▶ Talk to your supervisor
- ▶ Look in handbook for the company's ADA policy
- ▶ Talk to HR if necessary
- ▶ No magic words

Case examples

- ▶ **Wal-Mart Stores, East, LP will pay \$100,00 to Settle Disability Discrimination Suit**
 - **Discrimination against two deaf employees when employer failed to provide reasonable accommodations**
 - **Walmart refused to provide communications accommodations such as sign language interpreters and closed-captioned training videos**

Case examples

- ▶ **FedEx Ground to Pay \$3.3 Million to Settle Disability Discrimination Suit**
 - Employer denied deaf and hard-of – hearing package handlers reasonable accommodations and discriminated against applicants in the package handler position.
 - Suit includes 229 individuals that were affected.

Disparate Treatment

- ▶ An individual of a protected group being singled out and treated favorably than others.

Disparate Treatment

- ▶ An individual who is Deaf or hard of hearing is not invited to core functions when all hearing employees are invited.
- ▶ An individual who is Deaf is given less desirable tasks or heavier than other equally qualified hearing employees in the same position.
- ▶ Example: Near the end of the shift, hearing employees are allowed to socialize the last 10 minutes. Deaf employees are ordered to find work to do and not allowed to socialize or relax during this time.

Disparate Treatment

- ▶ Example: Deaf employees who are qualified are not promoted while less qualified hearing employees are promoted.
- ▶ Example: Deaf employees are disciplined more severely or regularly than hearing employees who commit the same

Hostile Work Environment/ Harassment

- ▶ Negative work environment due to coworker or manager's behavior
- ▶ Changed the terms and conditions of the position
- ▶ Or makes the workplace intolerably uncomfortable

Hostile Work Environment/ Harassment

- ▶ Severe or pervasive
- ▶ Example: Hearing employees talk about the death of an employee, mocking with gestures or laughing at sneering

Retaliation

- ▶ Adverse employment action after a complaint about discrimination.
- ▶ Termination
- ▶ Demotion
- ▶ Reduction in pay
- ▶ Change schedule
- ▶ Denied accommodation request

ASL Video Phone: (844) 234-5122

- ▶ EEOC enforces federal laws against job discrimination.
- ▶ If you have suffered workplace discrimination or harassment as an applicant or employee, file a complaint with us.
- ▶ We can investigate, mediate, litigate and educate.
- ▶ Our services are free.
- ▶ Email: info@eeoc.gov
- ▶ Voice calls: (800) 669-4000

Resources

- ▶ Deafness and Hearing Impairments in the Workplace and Americans with Disabilities Act I U.S. Equal Employment Opportunity Commission (eeoc.gov)
- ▶ <https://www.eeoc.gov/laws/guidance/deafness-and-hearing-impairments-workplace-and-americans-disabilities-act>

Resources (conti.)

- ▶ **Enforcement Guidance: Reasonable Accommodation and Hardship under the ADA**
- ▶ **<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-act>**
- ▶ **Job Accommodation Network**
- ▶ **[JAN - Job Accommodation Network \(askjan.org\)](http://askjan.org)**

Questions?



Thank you!



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