



What is discrimination?

Note: This information does not constitute legal advice. The law is constantly changing and application of the ADA depends on the specific circumstances of each case. Consult an attorney when faced with legal issues.

The ADA prohibits employers from taking action because of your disability and requires employers to provide reasonable accommodations for qualified individuals with disabilities.

- Discrimination is not requiring you to work more hours, yelling, being "mean," or acting unfairly, unless the reason for the unfair treatment was your disability. If the employer was similarly abusive to all employees, it is less likely that your disability was the reason for the poor treatment.
- But, if your employer only treated you unfairly and did not impose similar requirements on nondisabled employees, courts may infer the reason was your disability.

Prohibited Discriminatory Practices

- The Americans with Disabilities Act (ADA) prohibits employers from discriminating against individuals with disabilities in all employment practices including:
 1. Recruiting;
 2. Hiring;
 3. Firing;
 4. Promotion;
 5. Pay;
 6. Benefits;
 7. Leave time; and

8. All other employment-related activities, including harassment on the basis of disability.
- The ADA also requires employers to provide reasonable accommodations to qualified individuals with disabilities. The failure to provide reasonable accommodations when requested also constitutes discrimination. You can find more information about reasonable accommodations by [following this link](#).

What is retaliation?

- Under the ADA, employers are also prohibited from retaliation against employees who have asserted their rights under the ADA, have opposed any practice made unlawful by the ADA, or have participated in an investigation or proceeding under the ADA.
- In order to show that you have been the victim of retaliation you must prove three things:
 1. You engaged in “protected activity.” “Protected activity” includes asserting your rights under the ADA, opposing a practice that you believe to be unlawful discrimination, and participating in employment discrimination proceedings.
 - a. For example: if you are terminated because you requested an accommodation.
 2. You were subject to an “adverse employment action.” “Adverse employment actions” include firing, denial of promotion, negative evaluations, and any actions that would deter a reasonable person from reporting ADA violations.
 - a. For example: you were given a negative performance evaluation for failure of loyalty after you filed a complaint about discrimination under the ADA.
 3. There is a “casual link” between the protected activity and the adverse employment action. A “casual link” is a connection that shows your employer’s adverse action was a result of your engaging in protected activity. Often the temporal proximity of the

adverse action to your protected activity can show this causation. For example: you filed a complaint with the EEOC and you were terminated the following day.

- a. The reason for the employer's action must be your protected activity. If the employer would have taken the same action anyway, it is not retaliation.
- Employers are not engaging in retaliation under the ADA if the adverse action was taken for a legitimate, non-discriminatory reason. For example: poor job performance.

What is a hostile work environment?

Certain workplace harassment or hostile work environment claims can be brought under the ADA even though it is not explicitly prohibited.

- Harassment on its own is not prohibited by the ADA.
- In order to bring an harassment claim there are four things you must show:
 1. The conduct was unwelcome;
 2. The conduct had the purpose or effect of unreasonably interfering with your work performance or creating a hostile work environment;
 3. The conduct was based on your status as a person with disabilities or your association with a person with a disability; and
 4. The harassment was severe and pervasive enough to alter the conditions of your employment and create an abusive work environment.
- Severe and pervasive means that both the nature and duration of the harassment are considered to determine whether it alters the terms and conditions of employment
- For example: an employee with intellectual disabilities is taunted by his co-workers for his disability on a daily basis to the point that it interferes with his ability to do his job.

- Isolated comments are unlikely to be considered pervasive harassment unless they are extremely severe.
 - For example, a supervisor demanding sex from an employee in order to keep her job could be sufficiently severe to constitute harassment in an isolated incident
 - But a co-worker reading a sexually-explicit joke in a job applicant's employment record is not sufficiently severe to constitute harassment.