

What are My Employment Rights Under the Americans with Disabilities Act?

The Americans with Disabilities Act (“ADA”) was signed into law on July 26, 1990. It is the United States’ most comprehensive pieces of civil rights legislation.¹ The ADA prohibits discrimination against people with disabilities and ensures that they are given the same opportunities as a person without disabilities to live, work, and participate in the community.²

WHO IS PROTECTED UNDER THE ADA?

The ADA protects persons with disabilities. Under the ADA, the term disability is defined as a person (1) with a physical or mental impairment that substantially limits one or more major life activities, (2) with a history or record of such impairment, or (3) regarded by others as having such impairment.

Major life activities are defined broadly. They include, but are not limited to, caring for oneself, seeing, hearing, reading, communicating, learning, lifting, or standing. It also includes limitations of major bodily functions, such as, neurological, and reproductive functions.

TITLE I OF THE ADA - EMPLOYMENT

While the ADA protects all persons with disabilities, Title I of the ADA specifically protects workers with disabilities from discrimination based on their disability. Employers must provide qualified persons with disabilities an equal chance to benefit from all of the opportunities provided through

¹ <https://www.ada.gov>

² Id.

employment that is available to persons without disabilities. It applies to all employers that employ 15 or more employees people.

Qualified Persons with Disabilities

To be protected under Title I of the ADA, a person must be a “**qualified individual with a disability.**” A qualified individual with a disability is a person who, with or without an accommodation, can perform the essential functions of the job. Essential functions of a job vary from job to job. Essential job functions are the requirements of the job that make it possible for performance to be executed.

For example, a job loading delivery trucks may require 50 lbs or less of lifting by the employee. Without the lifting requirement, the performance of the lifting job (loading the delivery truck) cannot be executed. Therefore, the lifting requirement in this case would likely be an essential job function.

YOUR RIGHTS UNDER TITLE I OF THE ADA

ADA Rights When Applying for a Job

Title I of the ADA restricts an employer from asking certain questions on an application or during an interview for employment.

For example, an employer may not ask:

1. Whether a person has a disability.
2. About a person’s health.
3. About medications.
4. Whether a person has been in the hospital.

However, an employer may ask a person with disabilities about his or her health and require a medical examination IF:

(1) it is BEFORE the person starts the job OR after the employer OFFERS the person the job, AND

(2) ALL new employees are asked and required to go through medical examinations.

ADA Rights During Employment

Under Title I of the ADA, a person with a disability has the right to:

1. Request reasonable accommodations for the hiring process and on the job.
2. Be free from harassment based on his or her disability.
3. Not be disciplined or fired based on his or her disability.

Requesting a Reasonable Accommodation from Your Employer

Title I of the ADA allows a worker with a disability to request a reasonable accommodation from his or her employer. A reasonable accommodation is a change, exception, or adjustment to an employer's rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to work. Examples of reasonable accommodations may include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by workers with disabilities.
- Modifying work schedules or reassignment to a vacant position.
- Acquiring or modifying equipment or devices.
- Adjusting or modifying examinations, training materials, or policies.
- Providing qualified readers or interpreters.

Reasonable accommodations cannot impose an "undue hardship" on the employer. This means that if the accommodation requested is too expensive or too difficult to manage, it can be denied by the employer.

To request a reasonable accommodation, you will need to determine who is designated as the ADA coordinator for your office. You can ask your supervisor or Human Resources Department who is responsible for putting in place accommodations for employees.

To request an accommodation, you will need to tell the employer about your disability and why you require an accommodation to assist with your disability. Make sure to make this request in writing. When the employer agrees to provide you with accommodations, you may want to send a thank you letter, in writing. This letter is useful to show that they received your request, acknowledged your disability, and have agreed to provide job accommodations.

EMPLOYMENT DISCRIMINATION BASED ON A DISABILITY

If you feel you have been discriminated against based on your disability by an employer, **Do Not Wait!** In Nebraska, **you must file your discrimination complaint within 300 days** of the date on which you were discriminated against by an employer.

You can file a discrimination complaint by filing with the Nebraska Equal Opportunity Commission (NEOC).

Before filing a complaint, it is helpful to review NEOC's information about how to file a complaint before you file on their website:

1. **File a Complaint:** <http://www.neoc.ne.gov/complaint/complaint.html>
2. **Frequently Asked Questions:** <http://www.neoc.ne.gov/faq/faq.html>

FILING A STATE COMPLAINT

You may file a complaint to the NEOC by telephone, online, by mail or in person. Offices and phone lines are open Monday – Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays.

By Phone: (402) 471 – 4895

Online: <http://www.neoc.ne.gov/contact/contact.html>

By Mail or in Person:

Lincoln

301 Centennial Mall South, 5th Floor
PO Box 94934
Lincoln, NE 68509-4934

Omaha

State Office Building
1313 Farnam-on-the-Mall, Suite 318
Omaha, NE 68102-1836

Scottsbluff

Panhandle State Office Complex
505A Broadway, Suite 600
Scottsbluff, NE 68361-3515

FILING A FEDERAL COMPLAINT

You may also file directly to the U.S. Equal Opportunity Commission (EEOC). However, if you file with the NEOC, the NEOC will automatically file a complaint on your behalf with the EEOC.

EEOC Denver District Office
303 E. 17th Avenue, Suite 410
Denver, Colorado 80203
Phone 800-669-4000 / TTY 800-669-6820
Fax 303-866-1085

The Denver District Office is open Monday through Friday from 8:00 am until 4:30 pm (Central Time). An automated phone system is available 24-hours a day.

You can visit the U.S. Equal Opportunity Commission (EEOC) website for more information at <http://www.eeoc.gov/>.

Retaliation

An employer may not retaliate against a worker with a disability exercising his/her rights under the ADA. Retaliation includes threats, intimidation, harassment, or firing. You are protected if you file a complaint for discrimination OR if you assist another person in filing a discrimination complaint.

NEOC COMPLAINT PROCESS³

Below explains the process for completing a complaint to the NEOC. Note: this process can take from 3 months (if ADR is successful) to 6 months (if ADR is unsuccessful).

Initial Complaint	File initial complaint by phone, online, by mail, or in person.
Formal Intake Interview	If the NEOC determines it has jurisdiction over the discrimination allegation, you will be contacted by an investigator to do a formal intake interview (this may be done the day of the intake if initial contact is in person).
NEOC Serves Employer	Once the charge is filed (signed and notarized by the Complainant), the NEOC delivers ("serves") the employer with the charge.
Employer Response	Employer has 30 days from receiving the complaint to respond to the complaint and provide documents. They may request a 30-day extension, but it will not be granted by the NEOC without good cause.
Alternative Dispute Resolution (ADR)	Complainants will be given the opportunity to participate in ADR. ADR is a process that allows the employee and employer to resolve the issues without a formal investigation or determination on the merits. There are two options for ADR:

³ <http://www.neoc.ne.gov/complaint/complaint.html>

	<p><u>Mediation:</u> A face-to-face meeting with the parties to give them an opportunity to discuss issues, find solutions, and agree on changes resulting in a binding contract. A mediator is not an advocate of any party, but only works to assist the parties in coming to a solution. Mediation is completely confidential. If mediation is unsuccessful, the case is assigned to an NEOC investigator, and the mediator is no longer involved.</p> <p><u>Pre-Determine Settlement (PDS):</u> A PDS does not require a face-to-face meeting between the parties involved. Instead, a Commission staff member acts as a neutral party and provides information to the parties. He/she assists the parties in understanding what actions would provide relief under the ADA. It is also completely confidential. If unsuccessful, the case will move on to investigation. If successful, a formal binding, non-admission, confidential agreement is written and binding on the parties.</p>
Investigation	If ADR cannot resolve the issues, an NEOC investigator will be assigned to the case to collect documents from both parties and interview witnesses.
Determination	The case is forwarded by the investigator to the Executive Director to make a final decision. Both parties receive a final determination letter from the NEOC. Possible determinations include:

	<ul style="list-style-type: none"> • <u>No Reasonable Cause</u>: NEOC has determined that a violation of the ADA has NOT occurred. The investigation by the NEOC ends. • <u>Reasonable Cause</u>: The NEOC will continue to try and resolve the matter between the complainant and the employer. If it cannot be resolved, it will direct the case to the Attorney General. The Nebraska Attorney General's Office will decide if it will represent the complainant in the discrimination case. If it decides not to, the NEOC will issue a "Notice of Right to Sue."
<p>Conciliation / Public Hearing</p>	<ul style="list-style-type: none"> • If the NEOC finds reasonable cause, it will attempt to resolve the issue again using a <u>conciliation</u> process. This can be done in both the PDS and mediation styles. • If conciliation is not successful, then the NEOC may send the case to a <u>public hearing</u>, or the complainant may request one. A public hearing is not automatically granted upon request. If request is denied, the complainant may file his/her claim in state court. A public hearing is an administrative process similar to a trial. It allows both parties to present evidence. A hearing officer will then review the evidence and make a final decision.
<p>Notice of Right to Sue / Substantial Weight Review</p>	<ul style="list-style-type: none"> • <u>Notice of Right to Sue</u> gives the complainant the right to file his/her own lawsuit. A lawsuit must be filed within 90 days of receiving the Right to Sue Determination Letter. Do not hesitate to contact a lawyer if you receive a notice of right to sue!

	<ul style="list-style-type: none">• Substantial Weight Review is the procedure you may take if you disagree with the NEOC's determination that there is No Reasonable Cause for your case. The EEOC will then examine the case and render a decision. This review must be within 15 days of receiving the NEOC's decision. Include your EEOC case number in the review request.• Write to State and Local Coordinator, Robert A. Young Federal Building, St. Louis District Office, 1222 Spruce Ave., Rm. 8.100, St. Louis, Missouri, 63103 to request a substantial weight review. You also have the option of taking your case into state or federal court.
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