

ADA Insights  
*Keeping the Spirit of the ADA Alive*

# THE ADA AND YOU: WHAT TO DO WHEN AN EMPLOYER DISCRIMINATES AGAINST YOU BECAUSE OF YOUR DISABILITY

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This Fact Sheet is for people who have a disability and believe they have been treated unfairly by an employer because of their disability. It answers important questions about how you can get protection from discrimination in work-related situations. It covers the federal law called the Americans with Disabilities Act (ADA) and the experiences of people with disabilities who have used that law.

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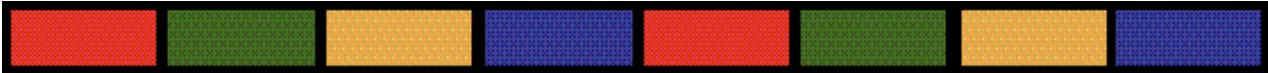
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## How can the law help you if you think you have been discriminated against by an employer because of your disability?

The Americans with Disabilities Act, or ADA, forbids employers to discriminate against people with a disability. It also offers a way to get protection from discrimination. Under this law, people who feel they have been treated unfairly by an employer have the right to file a complaint of employment discrimination and then go on to file a lawsuit.

## Which people with disabilities are protected under the law?

The ADA protects people with physical and mental disabilities. This includes many types of disabilities, including being blind, deaf, or unable to walk. The law also protects people with disabilities that are hidden, like mental retardation (or cognitive disabilities), a psychiatric disability, or HIV/Aids.

However, the law says that you are disabled only if you are “substantially limited,” (or very limited), in one or more major life activities. Examples of major life activities are: walking, hearing, seeing, speaking, learning,

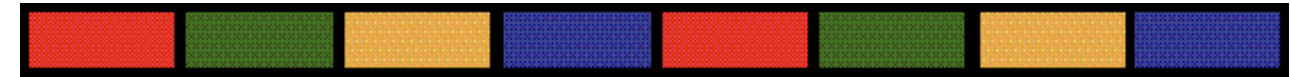
breathing, or caring for yourself. Work itself is not considered to be a major life activity. Also, if you take medication or use equipment that results in your disability not limiting a major life activity, then you may not be protected under this law. For example, if you use a prosthetic hand or arm and, as a result, no longer have problems in the major life activity of performing manual tasks, you may not be considered disabled under the ADA.

The law also considers you to be disabled in two other types of situations. You are considered to be disabled if you have a record of having a disability. You are also considered to be disabled if you are “regarded as” (or are seen as) having a disability.

It is very important that you can prove that you are, or were seen as being, truly limited in at least one major life activity.

## Does the law protect all people with disabilities from employment discrimination?

No. You must be qualified to do the job. Under the ADA, the term “qualified” means you must be able, with or without some help, to perform the “essential functions” (or major parts) of the job.



## **Does the law apply to all employers?**

No. But it applies to many of them: private employers with 15 or more employees, state and local governments, employment agencies, labor unions, and joint labor-management committees.

## **Does the law protect you if you are applying for a job, or only if you are working?**

The ADA protects people when they apply for a job, as well as when they are already employed. It covers decisions that employers make about how the job is done, the pay, promotions, benefits, and training.

## **What does the law expect your employer to do if you have a disability?**

If you can do the important parts of the job but need some assistance, the employer must make changes to the way the job is done. This is called a “reasonable accommodation”. But these changes must be practical and not too expensive or difficult. However, the changes cannot be to the important parts of the job. You must be able to do these without assistance. For example, an employer can make some

changes to the job tasks, allow work to be done at a different pace or with different work hours, or provide special equipment – as long as the changes do not cost too much.


## **What is the first thing you should do if you believe you have been discriminated against?**

You should first talk to the employer and describe the discrimination you experienced. Many employers have a procedure for people who have complaints, called a grievance procedure. The best thing to do is to use this procedure.

Start by writing down all the facts of the situation right after it happens. Many times, the problem is due to a misunderstanding and the employer can make a change with no further action on your part. Also, if you do take any further actions, it will be important that you first talked with the employer and tried to work things out.

## **What should you expect from this first step?**

The employer’s grievance procedure will tell you who you should talk to, how a decision is



made, and how long it should take. If you follow this procedure and do a good job of describing the facts of the discrimination, you should be able to work out a solution with the employer.

### **If that doesn't work, what should you do next?**

If the employer does not correct the problem and you still believe that discrimination is taking place, then you should consider filing a complaint of employment discrimination. To do this, take your problem to the government agency that has the job of protecting people with disabilities who have been discriminated against.

### **How do you file a complaint of employment discrimination?**

Filing a complaint of employment discrimination begins with good preparation. The following gives you information and advice on the best way to file a complaint.

### **Why should you file a complaint?**

If you can't work things out with the employer, filing a complaint gives you a chance of getting a better result. While it takes work on your part to file a complaint, it is a tool you can use to protect yourself and fight discrimination.

If you want to file a complaint, you can go to an agency like the Equal Employment Opportunity Commission (EEOC) or a state or local Fair Employment Practice Agency (FEPA), or call the agency, and get an interview with an investigator who will help you write the complaint.

### **Where can you file a complaint?**

You can file a complaint of employment discrimination at either the EEOC or a FEPA. The EEOC is a federal agency. FEPAs are state or local agencies. The EEOC is responsible for enforcing federal employment discrimination laws, including the employment discrimination prohibitions of the ADA. It just deals with discrimination in the workplace. FEPAs deal with a variety of types of discrimination.

### **Where is the EEOC?**

The EEOC has 51 offices in 33 states, the District of Columbia and Puerto Rico. Information about the EEOC can be found on its website:

[www.eeoc.gov](http://www.eeoc.gov)



## Where are FEPA's?

FEPA's are located in most states. The EEOC has contracted with 125 of them (located in 47 states, the District of Columbia, Puerto Rico, and the Virgin Islands) to help handle complaints. Information about the FEPA's can be found on our website:

[www.adainsights.org/links.html](http://www.adainsights.org/links.html)

## Is it better to file with the EEOC or a FEPA?

In general, you are most likely to get a benefit from a FEPA. If you do get a benefit from an EEOC office, though, it is likely to result in more money than if you had gone to a FEPA. However, in most cases, you don't have a choice, because you have to file with the closest office. Only a few places have both an EEOC office and a FEPA.

## When should you file your complaint?

It is best to file within 180 days after the discrimination happens.

## What should you prepare before you file a complaint?

It is very important to prepare

the following information before you file a complaint in order to present the strongest case you can at the time that you file. Before you file, prepare detailed information about:

1. Yourself (your name, address, and telephone number).
2. How you qualify for the job (your education, work experience, training, references, job performance reviews, and other documents that show that you can do the basic parts of the job. It is also a good idea to show your ability to work with other people, make good decisions, and be a good worker).
3. Your disability (what your disability is, how it limits major life activities, what records you have of being disabled, and how the employer thought of you as being disabled).
4. The employer (name of employer, address, telephone number, type of business, and, if you know, the number of employees).

*(continued on page 6)*



5. The discrimination you experienced:
  - a. The type of discrimination you experienced, including discrimination because of your disability, as well as other factors you think may be related to the discrimination such as your race, national origin, sex, religion, or age.
  - b. The date, place, and people involved in the discrimination.
  - c. The names and contact information of people who saw or knew about the discrimination.
  
6. It is a good idea to have written documents from other people for things that are difficult to explain or prove, like a disability that is hidden, and how it limits your major life activities.

This may seem like a great deal of information, but your complaint will be much stronger if you have all this information. It is also very important that it is well organized. You may want to get someone to help you gather this information and review it before you file your complaint.

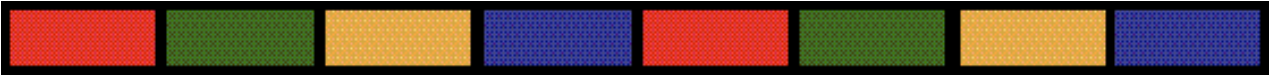
### **When you do file, what can help you receive a better result?**

It is important that you present the best case possible at the time you file your complaint. You can improve your chances of a good result if you file your complaint in person at the EEOC office or FEPA and if you are well prepared for the interview. Also, an important part of filing a complaint is telling your story in a way that is clear and forceful.

If you have trouble telling people about yourself, then ask a family member, friend, or lawyer to help you. Remember, this first step in filing your complaint is the most important.

### **What factors might hurt you?**

The biggest mistake you can make is filing your complaint too late. The other big mistake is not gathering all the facts when the discrimination takes place and not putting together a strong case when you first file your complaint. Government offices are busy places and so you will not have much time to explain what has happened. Also, the most convincing complaints are given a high priority and are more likely to get a benefit.



## Should you hire an attorney to represent you?

You do not need an attorney to file a complaint. In some cases, it may increase the likelihood of getting a positive result, and may increase the amount of money you receive. However, you will probably have to pay the attorney, which will reduce your share. Having an attorney has helped many people with disabilities receive more money. At the EEOC, from July 26, 1992 through September 30, 2000, the typical amount of money people received when they had an attorney was \$19,750, while if they did not have an attorney, the typical amount was \$4,482.

## How do you file a complaint?

You can file your complaint in person, by telephone, or by mail. When you file in person, the staff person in the office (called the investigator) can help you give all the information you need to file a complete complaint. If you file in person, check with the office to see if you can make an appointment ahead of time. If not, arrive at the office early in the morning. Filing by phone is the second best way to file. It can be difficult to get through to

an office, so keep trying. Filing by mail is the last choice, as you cannot get help from the investigator and so you may leave out information that could make a stronger complaint.

When you file the complaint, you will meet (or talk on the phone) with an investigator. The investigator will ask you about yourself (your name, address, and telephone number) and the employer (name of employer, address, telephone number, type of business, and the number of employees).

Then, the investigator will ask you the type (or basis) of discrimination you experienced such as discrimination, based on your disability, race, sex, religion, age, or national origin. Next, you will be asked to give details of the discrimination, the date of the discrimination, information about the nature of your disability, and names of other people who may have seen the discrimination take place. The investigator will prepare a document with all the complaint information. You will be asked to sign it.

This interview can last for several hours.



## Should you file the complaint in person?

While you can file by phone or mail, we recommend filing a complaint in person, as:

- (1) You can receive help in filing a complete complaint, and
- (2) You can tell the investigator the important facts and he or she will write it up properly. Also, the offices are very busy and may be slow to return your call or answer your letter, so getting answers to your questions may take a long time and a lot of attempts on your part. This could mean missing the filing deadline.

## Can the EEOC or a FEPA refuse to accept a complaint?

No. But they may discourage you by seeming to be too busy or not interested in your case. You have the right to file a complaint, but it is best to have all your facts and be able to prove your complaint. As EEOC and FEPA offices are very busy, many complaints are not looked into further. This means that the decision on your complaint will be

made with only the information you give in the complaint at the time you file.

## What should you bring when you file the complaint?

It is a good idea to have documents from doctors, employers, or others to make a strong complaint. Also, if you made notes at the time that the discrimination took place, it is important to bring these with you.

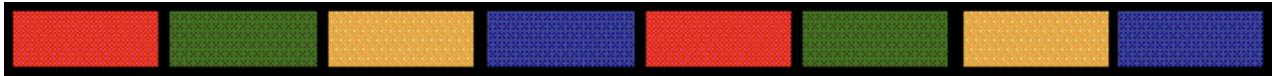
## What happens after you file the complaint?

At the EEOC, after you file a complaint, the office will review it and give it a priority. There are three categories that your complaint can be put in:

**Category A** – this is the highest priority and means that the office thinks that there is a strong case or even that there may be severe harm to the person filing. Most Category A complaints will be thoroughly investigated by the office.

**Category B** – this is the next highest priority and means that your complaint may or may not be as thoroughly investigated.

**Category C** – this is the lowest category and means that your



complaint will most likely be quickly dismissed or closed.

For the cases that will have some investigation done, a letter will be sent to you and the employer. The letter tells the employer that a complaint of employment discrimination has been filed. It will not include all the information in your written complaint. It will give the employer a deadline for responding to the complaint. It will also warn the employer not to retaliate against you because you filed the complaint.

After the office has reviewed the information from your complaint as well as any response from your employer and the results of the investigation, a decision will be made on your complaint.

The decision will either be:

- (1) there is reason to think that the complaint is true (called “reasonable cause”), or
- (2) it is found to be probably not true (called “no reasonable cause”).

You will get a letter with this decision. If your complaint results in a decision of reasonable cause, then the EEOC will try to

work with you and the employer to find a good result.

### Why is it good to have a high priority given to your complaint?

Complaints that are given high priority will probably receive a relatively thorough investigation. And, if your complaint is investigated, you are more likely to get a benefit. In particular, if your complaint gets a Category A rating, there is a good chance that it will be thoroughly investigated. If your complaint gets a Category B rating, there is still some chance that it will be investigated, but not so thoroughly. For example, between the time complaints started to be categorized at the EEOC (summer 1995 through September 30, 2000), 23 out of 100 people who had Category A complaints got a benefit, while only 13 out of 100 people who had Category B complaints got a benefit, and only 2 out of 100 people who had Category C complaints got a benefit. This is why it is so important that you do a good job of preparing your complaint before you file.



## What happens during the investigation?

While investigations vary greatly from office to office, here are some of things that can happen during the investigation: people who saw the discrimination can be asked to give information about what they saw, the employer may have to produce records, or you and the employer may be asked to give additional information either in writing or in person.

## What results are possible?

ADA complaints can and, more often than not, do result in an outcome that favors the employer, not the person bringing the complaint. If this happens to you, then you will get a letter giving you the right to file a lawsuit in court. This is called a “right-to-sue” notice. You can also request this notice at any time after you file your complaint.

You might also receive a beneficial result, although relatively few people do. For example, you might get money from the employer (such as pay from when the discrimination took place), payment for your attorney fees, or money for pain and suffering caused by the discrimination. Other benefits do not take the

form of money, but nevertheless can be at least as or more important. You can be hired into the position you applied for, get your job back if you have been fired, get a promotion, or have the employer change the way your job is done that allows you to do it properly.

## What are your chances of getting a benefit?


As of September 30, 2000, about 16 out of every 100 people received some kind of benefit from the employer as a result of filing a complaint.

## How do you get a benefit?

You can get a benefit when you and the employer agree on what the benefit will be. The EEOC or FEPA works with you and the employer to get these results. This can happen in an informal “handshake” agreement or in a formal written document.

## Do people receive different benefits at the EEOC and FEPAs?

There are a large number of EEOC and FEPA offices. There are large differences in the results people get from each office. When results from the different types of offices are



combined, 23 out of 100 people who file a complaint at a FEPA get some kind of benefit. For complaints filed at the EEOC, about 12 out of 100 people get a benefit. While more people get some kind of benefit when they file at a FEPA, the typical amount of money they get is much less at a FEPA than at the EEOC. The typical monetary benefit at the EEOC is \$6,000 and only \$2,500 at a FEPA.

So, if you have a choice as to where you file, you need to decide what is most important to you. Remember, there is no promise of what benefit you might receive.

### **What is mediation?**

Mediation gives you and the employer another way to agree on how to end the complaint. It can be a faster way to end the complaint and it can be less frustrating. The EEOC offers this program to some people who file complaints and the employer named in the complaint. A third person (the mediator) works with you and the employer to try to find a solution. The mediator helps you talk with the employer about the problem, find common areas of concern and a agreement,

and develop a solution that you and the employer can both support.

### **What should you do if you are offered mediation?**

If you and the employer are offered mediation, you both must agree to participate. The reasons to use mediation are: it is a faster way to end the complaint and you are much more likely to get some kind of benefit. For example, 62 out of every 100 people who participated in the EEOC's mediation program received a benefit, while only 8 out of every 100 people who did not participate in the program received a benefit. The reason you might not want to use mediation is you may get less money than if you use the regular EEOC process.

Between January 1, 1999 and September 30, 2000, the typical person who used the EEOC's mediation program received a benefit of \$4,883, while the typical person who did not use the program received a benefit of \$7,000.

### **How long could the process take?**

It can take many months or even longer.



## **What should you do if you are not satisfied with the result of filing a complaint?**

You have the right to file a lawsuit after you have filed your complaint at the EEOC or F E PA. You may do this if you are not satisfied, if you think the process is taking too long, or for any other reason. In order to file a lawsuit, you must ask for a letter from the EEOC or FEPA called a “right-to-sue” letter. When you get this letter, the agency will stop working on your complaint. You can also wait until the agency has made a decision on your complaint and ask for a “right-to-sue” letter at that point.

## **When can you file a lawsuit?**

You can file a lawsuit within 90 days after receiving a notice of a "right to sue".

## **How can you find out more about filing a lawsuit?**

The ADA Research Group at the Cecil G. Sheps Center for Health Services Research at the University of North Carolina at Chapel Hill is currently conducting a study of lawsuits that people with disabilities bring against employers.

More information is available on our web site:

[www.adainsights.org](http://www.adainsights.org)

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