

In Search of a Solution to Disability-Based Employment Discrimination

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Under Title I of the Americans with Disabilities Act (ADA), people who think they have been discriminated against at work because of their disability may file what is known as an "administrative charge". The charge may be filed at an Equal Employment Opportunity Commission (EEOC) office or a state or local Fair Employment Practice Agency (FEPA). The person can also sue in court, but only after filing an administrative charge and receiving what is known as a "right-to-sue" letter from the EEOC or FEPA.

If you are thinking about filing a charge of discrimination under the ADA, you face some important questions. Will it help if I file a charge? If I do file a charge, what factors would help me obtain a beneficial outcome? What factors would hurt me? Should I hire an attorney to represent me?

This findings brief is intended to help people with disabilities answer such questions. The findings come from research conducted by the ADA Title I Enforcement Project, which has been studying the enforcement of the ADA's employment discrimination provisions since 1995¹.

If you feel you have been discriminated against in employment because of your disability, you should first talk with the employer, supervisor, or other individual in question. This is often your best chance to

work out the problem. If you cannot work things out, you may file an ADA administrative charge either with the U.S. Equal Employment Opportunity Commission (EEOC) or a state or local Fair Employment Practice Agency (FEPA). The EEOC has 51 field offices in 33 states, the District of Columbia, and Puerto Rico. In addition, the EEOC has contracted with 125 FEPAs (located in 47 states, the District of Columbia, Puerto Rico, and the Virgin Islands) to help it receive and investigate charges.

You may or may not have a choice about where to file your charge. You need to file your charge at the EEOC office or FEPA nearest to the employer you have named in your charge. However, many employers are located near both an EEOC office and a FEPA. If the employer named in your charge is such an employer, you may file either at the EEOC office or the FEPA. To obtain the addresses and phone numbers of all EEOC offices, see the EEOC's website at <http://www.eeoc.gov/teledir.html>. To obtain the address and phone numbers of all of the FEPAs, visit our website at <http://www.ADAenforcementproject.unc.edu>.

There are strict time frames in which charges must be filed. In some states and localities, individuals have 300 days from the

date they encountered discrimination to file a charge. In others, they only have 180 days. The laws governing when charges must be filed are complicated. Because of this, once you have decided to file an ADA charge, don't delay. If you don't file the charge within the allowable time frame, you may not be eligible for a remedy.

Charges can be filed in person, by telephone, or by mail. Try to file in person so that an investigator can help you provide the needed information and because of how the investigation process works (more on that below). If that is not possible, filing by phone is the second-best choice. It is essential to present as strong a case as possible at the time you file your charge. If you file your charge in person, an investigator will conduct a "charge receipt" interview. During the interview, he or she will try hard to help you present the best possible case. Filing by phone is the second best choice because an investigator will still conduct a charge-receipt interview during which he or she will help you provide the necessary information. Filing a charge by mail is the least satisfactory choice. It puts considerable emphasis on you to be a clear and persuasive writer and to know how to make the best possible case.

Presenting a strong case involves providing certain kinds of information at the time you file your charge. This includes information indicating that you have a disability that is covered by the ADA, that your employer is covered by the ADA, that you are qualified to do the job in question, and that you were discriminated against because of your disability. It also includes presenting details of the discrimination you encountered, what you did about it, and the identity of witnesses with knowledge of the discrimination you encountered. Clearly, any evidence of discrimination is vital. If you have positive,

written job evaluations, either give them to the charge receipt investigator before or during the charge receipt interview, or make clear to the investigator that you can get them.

If you have an "invisible" disability, include written information from a physician or other health professional about your disability, the difficulties it may cause in the workplace, and the accommodations you require in order to work effectively. Also, be sure to include information about when and to whom you disclosed your disability.

EEOC or FEPA staff will respond as much to how convincing you are during the charge receipt interview as to the information you present. Try to be as convincing as possible during the charge receipt interview. If you are someone who has trouble expressing yourself, consider having a family member or friend help you present the information. Also, if you give the charge receipt investigator documentation about your disability, your qualifications, and the discrimination you encountered, it will help your case. Because both the EEOC and FEPA's have too few investigators for the many charges they must process, keep the documentation brief and to the point.

There are many kinds of benefits that you can receive from filing an ADA charge. These benefits might be cash payments, hiring, promotion, reinstatement, reasonable accommodations, a positive job reference, or being referred to another job. Only about 12 percent of individuals who file ADA charges receive such benefits. Things to consider when filing a charge: (1) think carefully about where you file your charge, (2) if possible, hire an attorney; (3) try to get your charge prioritized as "A " if you file your charge at the EEOC (4) consider having your charge mediated if you file your charge at the EEOC. These four things are discussed below

1. *Where you file.*

Although most individuals do not have a choice about where they file their charge, many do. If you have a choice, consider the following. On average, individuals who rely on a FEPA to investigate their charge have a greater likelihood of obtaining some kind of beneficial outcome than individuals who rely on the EEOC. However, individuals who do receive a beneficial outcome are more likely to receive monetary benefits and higher monetary benefits from the EEOC than from a FEPA.

ADA Charges Closed Between July 26, 1992 and September 30, 2000

	EEOC	FEPA
Benefit Rate	12.4%	23.0%
Median Monetary Benefit	\$6,000	\$2,500

2. *Hiring an attorney.*

If you hire an attorney, you probably will not increase your chances of receiving a beneficial outcome from your charge. However, of the 782 investigative files on ADA charges investigated by the EEOC that we examined during our research, having an attorney usually resulted in higher monetary benefits for ADA complainants.

Charge Resolutions by Attorney Usage All Closed File Examination Cases

	Attorney Present	Attorney Not Present
Benefit Rate	17.2%	17.1%
Median Monetary Benefit	\$19,750	\$4,482

We have no comparable data for ADA complainants whose cases were investigated by a FEPA.

3. *How charges are prioritized at EEOC offices.*

Under the EEOC's charge handling procedures, each charge filed with the EEOC is given a priority ranking for investigative attention. The bases for the ranking is the information complainants provide during the charge receipt interview and the extent to which they present a convincing case. There are three priority rankings. **A** is the highest priority, **B** the middle, and **C** the lowest. What priority a charge is given determines the extent to which it will be investigated which, in turn, is related to if the charge results in a beneficial outcome for the person who files it. For example, of the **A** charges closed as of September 30, 2000, 23% resulted in beneficial outcomes for the people who filed them, compared to 13% of the **B** charges closed during this same time period, and a mere 2% of the **C** charges. Thus, especially if you file your charge at an office of the EEOC, it is particularly important to present a strong and convincing case at the time of charge filing.

4. *Considering having your case mediated.*

Mediation is a relatively informal alternative to the regular charge process. If the EEOC asks you to participate in mediation, and the employer named in your charge also agrees to participate, the EEOC will provide a mediator to help both of you resolve your problems. Mediators are neutral third parties. They have no decision-making authority. Rather, their job is to help individuals involved in a dispute discuss areas of disagreement, sort out misunderstandings, identify common issues or concerns, discover areas of agreement, and turn those areas of agreement into solutions.

There are many advantages to mediation. In just about all cases, it is a less time consuming way of resolving a dispute than

the EEOC charge process. In many cases, it is also less frustrating. It also is much more likely to benefit ADA complainants than the regular EEOC charge process. On the other hand, settlements resulting from mediation generally result in less money than settlements resulting from the regular charge process. Thus, you need to consider the tradeoff if you are invited to participate in mediation.

All ADA Cases Filed With the EEOC as of January 1, 1999 and Closed By the Agency as of September 30, 2000

	With Mediation	Without Mediation
Benefit Rate	62.2%	8.2%
Median Monetary Benefit	\$4,883	\$7,000

¹Much of this Findings Brief has relied on "Filing an ADA Employment Discrimination Charge "Making It Work for You," written by Kathryn Moss for the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services. For copies of that document, contact the National Mental Health Services Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, Tel: 800-789-2647 or TTY: 301-443-9006; or visit the website: www.mental-health.org, E-mail: ken@mentalhealth.org.

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