

AN OVERVIEW OF DISABILITY DISCRIMINATION IN THE WORKPLACE

This document provides an overview of federal, state and local protections against employment discrimination on the basis of the disability of an employee or applicant.

I. Title I of The Americans with Disabilities Act (“ADA”)

The ADA prohibits employers with 15 or more employees (including private employers, state and local governments, employment agencies, and labor unions) from discriminating against any qualified employee or job applicant on the basis of disability.ⁱ Employers may not discriminate on the basis of disability in: job application procedures; the hiring, advancement, and discharge of employees; compensation; training; and other terms, conditions, and privileges of employment.ⁱⁱ

A. Only qualified employees or applicants with a disability are covered.

- A qualified employee or applicant is any person who, with or without a reasonable accommodation, can perform the essential functions of the job that he or she holds or desires.ⁱⁱⁱ
- An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activity (i.e., seeing, hearing, walking, standing, speaking, concentrating, communicating, or major bodily functions), has a record of such an impairment, or is regarded as having such an impairment.^{iv}

More information about the ADA's scope is at <http://eeoc.gov/facts/ada18.html>.

B. Employers must provide reasonable accommodations unless doing so would impose an undue hardship.

Title I requires employers with 15 or more employees to provide reasonable accommodations to any qualified employee or applicant with a disability to permit that individual to perform the essential functions of the job that he or she holds or desires.^v

Reasonable accommodations may include: providing flexible scheduling and work arrangements; using part-time or modified work schedules; making existing facilities and equipment readily accessible; providing equipment, devices, or interpreters; and adjusting training materials.^{vi}

An employee must affirmatively ask for a reasonable accommodation. The request need not be in writing.

Once a request is made, the employee and employer should engage in an interactive process or conversation to determine an appropriate accommodation.

NOTE: An employer does not have to provide a reasonable accommodation if doing so would impose an “**undue hardship**.”

An undue hardship is any action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature of its operation.

42 U.S.C. § 12111(10).

Ideas for reasonable accommodations are at <http://askjan.org/soar/disabilities.html>.

C. How to file a complaint under Title I of the ADA

A disability discrimination complaint must be filed with the Equal Employment Opportunity Commission (“EEOC”), either in person or by mail within 180 days of the last discriminatory act. After a complaint has been filed, the EEOC conducts an investigation. If a violation is found, the EEOC will attempt to reach a voluntary settlement with the employer. If a settlement cannot be reached or the EEOC has not found a violation, the EEOC will decide whether to file a lawsuit or provide the individual who filed the complaint with a “right to sue” letter. An employee may not bring a private lawsuit against an employer without first receiving a “right to sue” letter from the EEOC.

More information about filing a complaint is at <http://eeoc.gov/employees/charge.cfm>.

II. State and Local Laws Prohibiting Disability Discrimination in the Workplace

- A. The Arizona Civil Rights Act closely resembles the ADA. It also prohibits employers with 15 or more employees from discriminating against any qualified individual on the basis of disability.^{vii} Further, the state law requires employers to provide reasonable accommodations, when necessary, to allow a qualified individual with a disability to perform the essential functions of the employment position that he or she holds or desires, unless doing so would impose an undue hardship.^{viii}
- A complaint of job discrimination on the basis of disability, under the Arizona Civil Rights Act, must first be filed with the Arizona Attorney General’s Office, either in person, by mail, or by phone within 180 days of the last discriminatory act. The Arizona Attorney General’s Office has a work-sharing agreement with the EEOC, which means that the two agencies work together cooperatively to process claims.
- B. There are also local discrimination laws in Arizona. These laws sometimes utilize a broader scope of coverage against disability discrimination in the workplace. For example, the City of Tucson’s discrimination code prohibits employers with even one employee from using any discriminatory practice.^{ix}

For additional information regarding a particular locality’s discrimination law, contact the city manager’s office. In addition, some local tribes have laws that offer additional protections against disability discrimination.^x

ⁱ 42 U.S.C.A. § 12112(a) (2009).

ⁱⁱ *Id.*

ⁱⁱⁱ 42 U.S.C.A. § 12111(8) (2009).

^{iv} 42 U.S.C.A. § 12102(1) (2009).

^v 42 U.S.C.A. § 12112(b)(5)(A) (2009).

^{vi} 42 U.S.C.A. § 12111(9) (2009).

^{vii} ARIZ. REV. STAT. ANN. § 41-1463(B)-(F) (2011).

^{viii} ARIZ. REV. STAT. ANN. § 41-1463(F)(4) (2011).

^{ix} See, e.g., TUCSON, ARIZONA [B.B.R. 12.82] CODE, ch. 17, art. III, § 17-11(c).

^x See, e.g., NAVAJO NATION CODE tit. 15, § 604(B)(7) (2005).