

# Disability Discrimination and Requesting an Accommodation at Work



*Information for workers in Texas*

***These rights apply to all workers, regardless of immigration status.***

Disability discrimination is illegal under federal and Texas law. Among other things, these laws prohibit employers from discriminating against an employee (or job applicant) because the employee has a physical or mental disability, because the employer believes the employee has a disability, or because the employee has a record of having a disability.

## **Which employers are covered by these laws?**

Private employers with 15 or more employees, state and local government employers, unions, and employment agencies, plus some smaller private employers who receive federal money.

## **Which employees are protected?**

Most rights under these laws require proof that you are a “**qualified individual**” with a “**disability**.” In general, a **disability** is a physical or mental impairment that substantially limits a major life activity (such as caring for yourself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, working). Major life activities also include the operation of major bodily functions (like the immune system). You are substantially limited in doing an activity if you can’t do the activity or you’re very limited in being able to do it. A disability can be temporary if it substantially limits a major life activity (but minor conditions that are temporary, like the cold or the flu, are usually not disabilities). The definition of disability is supposed to be interpreted broadly in your favor. Under these laws, **qualified** generally means that you are able to do the essential functions (the most important duties) of the job that you have or the job that you are applying for, with or without a “reasonable accommodation” (see below).

## **Do these laws require my employer to make changes to the work environment or work practices because of a disability?**

Yes, in many cases, employers must provide something called a “**reasonable accommodation**,” unless doing so would cause the employer great difficulty or expense. A **reasonable accommodation** is any change in the work environment or work practices to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

## What does a reasonable accommodation look like?

It really depends, because accommodations are they are tailored to the job and the disability. Some common examples include physical changes to the work environment, providing or modifying equipment, providing leave for a definite period or rest breaks related to a disability, sign language interpreters, readers for people who are blind, making training or materials accessible, and any other change to work practices or the work environment that allows someone with a disability to apply for or do a job, or enjoy the same benefits or privileges of employment as other employees.

## How do I request an accommodation?

Here are a few tips for requesting an accommodation related to your disability:

- ✓ You usually **have to ask for an accommodation**, though there are sometimes exceptions.
- ✓ You **don't have to request an accommodation in writing**, but it's a good idea to do so, so you can prove later that you made the request.
- ✓ You don't have to use any special words, but you may want to mention "**reasonable accommodation.**"
- ✓ Though it's not required, if your employer has a form for requesting accommodations, you may want to use it so there is no confusion. See the links below for sample accommodation requests.
- ✓ Make your request to your **supervisor** or to your employer's **human resources department.**
- ✓ When you request an accommodation, it's a good idea to give examples of what you want, or why you need an adjustment or change because of your disability. You can also show a doctor's note explaining your restrictions or requesting time off because of a disability.
- ✓ If you need leave related to your disability, **don't ask for indefinite leave.** Give your employer an **end date**, as best you can determine it. That date can change if your doctor changes your prognosis, but you should never ask for indefinite leave because that type of accommodation is not protected under the ADA.
- ✓ You may have to provide your employer with documentation of your restrictions or records from your doctor if your employer asks.
- ✓ It is important to keep a cooperative tone and remain flexible when you are requesting an accommodation. Both the employer and the employee are required under the ADA to work together to find an accommodation that will work for the employee, the employer, and the work. The employer is not required to give you the exact accommodation you request – it is only required to give you a reasonable accommodation that will enable you to do the most important tasks of your job.
- ✓ You are not required to pay for a reasonable accommodation, and your employer cannot lower your pay because you need a reasonable accommodation.

You can find sample accommodation requests at the following links:

<https://www.disabilityrightstx.org/handout/employment-discrimination/>  
<http://askjan.org/media/accommrequestltr.html>

## What happens after I request an accommodation?

After you have requested an accommodation, the employer is required to act quickly to work with you to try and accommodate you. You are also required to participate in this discussion, which is called the "flexible interactive process."

### **What if my employer denies me an accommodation?**

If you are denied an accommodation or lose your job because you requested one, you may have a claim against your employer under federal and state law for failure to provide a reasonable accommodation for your disability, and/or for unlawful retaliation. See below for information on what to do if you may have a claim.

### **What if my employer retaliates against me for trying to exercise my rights under these laws, or tries to discourage me from exercising my rights?**

You could have a claim for unlawful interference or retaliation under federal law. It's illegal for an employer covered by federal anti-discrimination laws to retaliate against an employee for trying to exercise their rights. Federal law also prohibits employers from coercing employees into giving up accommodations, or otherwise trying to coerce, intimidate, threaten, or interfere with employees who are trying to enforce their rights under the law (or help other employees exercise their rights). Under Texas law, an employer may not retaliate against an employee for complaining about disability discrimination. See below for information on what you can do if you may have a claim.

### **What if my employer discriminates against me because I have a relative with a disability, or because I spend time with people with disabilities?**

The ADA also prohibits discriminating against an employee *because the employee is associated with a person with a known disability*. This can include discrimination because your child is disabled or because you work with or spend time with people with disabilities. For more information on this issue, click [here](#).

### **I'm being harassed because of my disability. Is that illegal?**

It can be. The law prohibits disability-related harassment (for example, offensive comments or language related to your disability) if it happens often, is severe, or causes a change in your employment status (like a transfer to a worse job).

### **If I've been discriminated against, denied an accommodation, retaliated against, or harassed, what can I do to protect my rights?**

It is often a good idea to try to work out a resolution with your employer, but if your employer doesn't act quickly to fix the problem, the next step is to file a **written complaint** with the Equal Employment Opportunity Commission (EEOC) or Texas Workforce Commission Civil Rights Division (TWCCRD). The deadlines to file a complaint are short (generally, 180 days for state law claims and 300 days for federal claims). For more information, click [here](#).

#### Notes:

- The deadlines are shorter and the process is different if you work for the federal government. See [this EEOC information page for federal employees](#).
- If you worked for an employer with fewer than 15 employees that received federal funding, the process is different. Contact an attorney for advice.

## How does COVID-19 affect these rights?

For a detailed fact sheet about workplace disability rights and COVID-19, see [the Disability Rights Texas website](#). For some things your employer can and can't do because of COVID-19, see [this TRLA fact sheet](#).

## Where can I get more information?

- The **Disability Rights Texas** website lists a number of useful resources: <https://www.disabilityrightstx.org/en/handout/employment-discrimination/>
- The **Job Accommodation Network (JAN)** provides useful and detailed resources for employees and employers on accommodation issues. You can find detailed information on the JAN website, searching by disability, by limitation, by job duties, by topic, or by accommodation: <https://askjan.org/a-to-z.cfm>
- The **Equal Employment Opportunity Commission (EEOC)** provides useful information on accommodation and other topics related to disability discrimination. [www.eeoc.gov](http://www.eeoc.gov); 1-800-669-4000 (Voice); 1-800-669-6820 (TTY). See: <http://www.eeoc.gov/policy/docs/accommodation.html#requesting>  
<http://www.eeoc.gov/policy/docs/accommodation.html#undue>

*Note: this fact sheet was developed in part using materials from Disability Rights Texas, a non-profit law firm in Texas representing individuals with disabilities ([www.disabilityrightstx.org](http://www.disabilityrightstx.org)). For more information, including info on when employers can and can't ask for medical exams, see these fact sheets available on the Disability Rights Texas website:*

[Employment Discrimination \(Disability Rights Texas\)](#)

[Employment Discrimination - Psychiatric Disabilities \(Disability Rights Texas\)](#)

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*Note: this information is not legal advice. For free, confidential advice and information, contact Texas RioGrande Legal Aid at 888-988-9996.*