

DISABILITY JUSTICE

Employment Rights

People with disabilities are protected by the Americans with Disabilities Act (ADA) and the Colorado Anti-Discrimination Act (CADA). The ADA and CADA protect against disability discrimination in many areas of life, including employment.

Frequently Asked Questions

What is a disability under ADA and CADA?

- There are three ways that someone meets the definition of disability.
 - The first way, which is also the most common is if **a person has a physical or mental impairment that limits one or more major life activity**. Some examples of a major life activity are:
 - Walking
 - Talking
 - Seeing
 - Hearing
 - Breathing
 - Thinking
 - Concentrating

For example, a substantial limitation in walking would be if someone

needs a wheelchair in order to get around.

- The second way is if **a person has a record of a physical or mental disability**. For example, if someone had cancer in the past but is now cancer-free, an employer can't refuse to hire them because of their past cancer.
- The third way is if **a person is regarded as having a disability**. For example, a person has a lot of scars, but the scars don't hurt or make it harder for them to move around. An employer might think that the person with scars has a disability and refuse to hire them, or not ask them to do as much work. An employer can't refuse to hire someone, treat them differently, or fire someone because they think the person has a disability. Later we will talk about reasonable accommodations. An employer does not have to give reasonable accommodations because someone is regarded as a person with a disability.

What employers are covered by the ADA?

Most employers are covered by the ADA. These are the few who are not:

- Employers with fewer than 15 workers (but CADA covers smaller employers)
- The U.S. government (they follow disability laws in the Rehabilitation Act of 1973)
- Private clubs
- Indian tribal nations
- In some instances, religious organizations

What parts of employment do the ADA and CADA cover?

The **ADA covers all parts of employment**, including applying, interviewing, hiring, training, promoting, salary, firing, benefits, and privileges.

What employees or workers are covered by the ADA and CADA?

An employee or worker is covered if they work for a covered employer and are “qualified” for the job.

What does it mean to be “Qualified” for a job under the ADA and CADA?

A qualified employee **must be able to do the work needed for the specific job with or without a reasonable accommodation**. See the following question for a definition of reasonable accommodation. An employer can refuse to hire or retain an individual if they do not have the skills, experience, or education needed to do the job. An employer is also allowed to hire the person who is the best candidate for the job, whether that person has a disability or not.

What is a reasonable accommodation?

A reasonable accommodation is **any change in the workplace or rules that allows an individual with a disability to have equal employment opportunities**.

Reasonable accommodations fall within three areas:

- Changes to the application or interview process.
- Changes that help the individual do the job (or the “essential functions” of the job).
- Changes that help an individual access the benefits and privileges of employment.

How do I get a reasonable accommodation?

Employers must give an individual a reasonable accommodation if they need it. Start by asking for an accommodation from the employer. It is best to do this in writing and to ask the employer to respond in writing. Employees may ask their supervisor or their employer’s human resources office for help with this. It is best to ask as soon as an individual thinks they may need an accommodation. If an

employee does not ask for the accommodation until after their boss fires them or moves them to a different job, the employee may not be able to get the accommodation. Download our [sample letter requesting a reasonable accommodation](#).

Does an employer have to give the exact accommodation an employee requests?

No. Employers only have to give an accommodation that works for the employee.

They must give the employee an accommodation that lets them do the job.

Employers do not have to give the employee exactly what they ask for. Employers have to talk with employees when trying to decide what accommodation to give. Employers do not have to give an employee an accommodation that is too difficult or too expensive. Employers can say no to accommodations if the person with a disability would be a threat to the safety of themselves or others.

Can the employer ask for medical records?

If an employee asks for an accommodation under the ADA, the employer can ask for reasonable documentation about the disability and the need for an accommodation. The ADA says that the employer cannot tell anyone else about employee's disability. It must be kept secret. Only the individual with the disability is allowed to tell other people about the disability and need for an accommodation.

Can an employer ask about a disability before hiring an employee?

- No. Employers cannot ask about a disability before hiring an employee. They can only ask questions about the ability to do essential job functions. They also cannot ask any questions about the employee's medical history or ask for a medical exam.
- **Examples of pre-employment questions that are prohibited:**
- Do you have a disability?
- What prescription drugs are you taking?
- Have you ever been treated for mental health problems?
- **Examples of pre-employment questions that are allowed:**

- Can you do this job with or without a reasonable accommodation?
- Can you meet the attendance requirements of the job?
- Do you have the required license to do this job?

Can an employer ask about medical history after they offer a job?

Before an individual starts work, an employer can ask medical questions related to the individual's disability. But they cannot refuse to hire the individual because of their disability based on the answers unless the reason is job-related and necessary for the job. Everyone who applies for the same type of job must be asked the same questions even if they do not have a disability.

After an employee starts working, the employer can only ask the employee to take medical tests if it is important to do so because of the job.

What can I do if I am discriminated against at work because of a disability?

If an employee has asked for a reasonable accommodation in writing and it has been denied, they can contact Disability Justice to see if we can help. Contact us at 303-722-0300 or fill out our online intake form [here](#)

You can also file a complaint with either the Equal Employment Opportunity Commission (EEOC) or the Colorado Civil Rights Division (CCRD). You have to file a complaint within 300 days of the date of discrimination. Filing a complaint takes a while so you want to start the process as soon as you can. You have to go through the complaint process with either the EEOC or CCRD before you can file a lawsuit. The complaint process does not require a lawyer.

Filing a Formal Complaint | U.S. Equal Employment Opportunity Commission Colorado Civil Rights Division

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