

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Appendix G: Americans With Disabilities Act: Information for People Facing Cancer

The American Cancer Society does not offer legal advice. This information is given only to provide general background in this area of the law.

What is the Americans With Disabilities Act?

The Americans With Disabilities Act of 1990 (ADA)) is a law that helps protect the civil rights of people with disabilities. It can help people with disabilities have equal opportunities in:

- Employment
- Public accommodations
- Transportation
- State and local government services
- Telecommunications

How can the ADA help people with cancer?

People with cancer can have long-term disabilities that make it hard to work or get around. The ADA is intended to make it possible for people who can do the essential parts of their job to go back to work or keep working during and after cancer treatment. Even when a person with cancer doesn't have a disability, they may be thought of as being disabled. This alone can set the stage for discrimination at work, and the ADA addresses this as well.

The ADA can help people who might have trouble getting into buildings and using public accommodations (such as commercial and other buildings, stores, libraries, offices, transportation etc., that are intended to be used by the public) due to a disability. The ADA can also help people with hearing and speech problems use phone and electronic communications.

To find out if the ADA might help you, you'll want to know if it applies to your condition, your employer, and public accommodations, as discussed here.

What is a disability under ADA?

The Americans With Disabilities Act may apply to you if:

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

- You have a physical or mental problem that substantially limits one or more of your “major life activities.”
- There is a record of having had such a problem in the past.
- Other people think you have such a problem, even if you do not actually have it.

Some of the “major life activities” covered by ADA include but are not limited to:

- Caring for yourself
- Doing manual tasks
- Seeing
- Hearing
- Eating,
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

On January 1, 2009, the ADA Amendments Act of 2008 went into effect. It changed the way the definition of disability has been interpreted under the ADA. The Amendments Act covers disabilities in the body and mind, like the functions of the immune system, normal cell growth, digestive, bowel, bladder, central nervous system, brain, respiratory, circulatory, endocrine, and reproductive systems. These changes can help many people with cancer to clearly meet the definition of disability.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

The next section deals only with employment or job discrimination, a potential problem for people who have or have had cancer. The part of the ADA that applies to jobs is called Title I. After the discussion of jobs, there's information about the ADA in settings and situations other than the workplace. The sections of the ADA that apply to these different settings and situations are Titles II through IV. (See the section called "How the ADA can help in settings other than work" for more on this.)

Does the ADA apply to my employer?

The law applies to employers with 15 or more employees. Job discrimination against people with disabilities by these employers is not legal if practiced by:

- Private employers
- State and local governments
- Employment agencies
- Labor organizations
- Labor management committees

Employees of the US government are not covered under the ADA. But they have the same protections under a different law, which is enforced by the Office of Federal Operations of the Equal Opportunities Commission (EEOC). To file a complaint, a federal employee must first contact an equal employment opportunity counselor at the agency in which they believe the discrimination took place. Visit eoc.gov/federal/fed_employees/index.cfm to ready more about these protections.

Who is covered under the ADA?

In order to be protected by the ADA at work, the ADA must apply to your employer as noted above. You must also be qualified and able to perform the "essential functions" of the job. See the section called "What are the essential functions of a job under ADA?"

Although the ADA defines the term *disability*, it does not include a list of conditions that are always considered disabilities. Instead, each case must be looked at on its own merits.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

According to the United States Equal Employment Opportunities Commission (EEOC), cancer is not always considered a disability. The ADA can help protect you when cancer prevents or makes it very hard for you to do everyday tasks, such as household chores, bathing, and brushing your teeth. But this kind of disability must be permanent or long term.

The ADA also protects you if you had cancer in the past, but are doing well now. An employer may not discriminate against you because you used to be sick. The ADA also prevents an employer from discriminating against you if they think you are sick, even if you aren't.

Which employment practices does the ADA cover?

If you have a disability and are qualified for a job, the ADA does not allow the employers noted above (see the section "Does the ADA apply to my employer?") to discriminate in employment practices, such as:

- Recruiting and advertising for job openings
- Job application and hiring
- Training
- Job assignments
- Tenure
- Promotions
- Pay
- Benefits
- Leave
- Firing
- Lay off
- All other employment-related activities, terms, conditions, and privileges

An employer cannot take action against you because you ask for your rights under the ADA. The act also protects you if you are discriminated against because of your family, business, social, or other type of relationship or association with a person who has a disability. For instance, this means an employer cannot discriminate against you because your spouse or child has cancer.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Still, the ADA does not completely protect your job just because you have a disability and are qualified for the job. The employer can still fire or lay off (terminate) an employee with a disability for legitimate business reasons. For instance, a disabled worker would not be protected during downsizing.

What does the ADA consider reasonable accommodation?

Reasonable accommodation is how an employer makes adjustments to a job that allow an employee with a disability to perform the essential functions of that job. But reasonable accommodation can start even before hiring. For example, it may be a change in procedure that allows a qualified disabled person to apply for a job.

For those already working, reasonable accommodation can be a change that allows disabled people to have the same benefits and privileges of employment the same as those enjoyed by employees without disabilities. Examples of reasonable accommodations may include:

- Providing equipment or devices, or adapting them so the person with a disability can use them
- Restructuring a job
- Changing work schedules
- Reassigning the employee to a vacant position
- Adjusting or modifying tests, training materials, or policies
- Providing electronic readers and/or interpreters
- Making the workplace easy to get into and use by people with disabilities

An employer must accommodate a qualified applicant or employee with a disability unless the employer can show that making the accommodation would not be reasonable. That means that the accommodation would be very difficult or expensive (an “undue hardship” or unreasonable). These factors include the type and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

The facts of your case will help determine whether an accommodation will make it possible for you to do the job and, if so, what kind of accommodation is needed.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Employers do not have to know about every kind of disability to know whether or how to make a reasonable accommodation. They are required to accommodate only those disabilities they know about and that do not cause too much hardship for the employer. The requirement is usually triggered by a request from a person with a disability, who often can suggest a workable accommodation.

Accommodations must be made on a case-by-case basis because the type and extent of a disability and the requirements of the job will vary in each case. If you do not ask for an accommodation, the employer is not required to provide one. If you ask for an accommodation, but cannot suggest one that will work for you, you and the employer should work together to identify one. There are also many public and private resources that can provide help without cost.

What are employers allowed to ask job applicants with disabilities under ADA?

When you apply for a job, employers can't ask you if you are disabled. They also can't ask about the type or how severe a disability you have. Employers may not ask you if you have or have ever had cancer. But they can ask you about your ability to perform certain job tasks. An employer can ask you to describe or show them how, with or without reasonable accommodation, you will perform the duties of the job.

If all new employees in similar jobs are required to have a medical exam, you may be offered a job conditionally, pending the results of a medical exam. The medical exams must be related to the job and in line with the employer's business needs. But an employer cannot reject you because of information the medical exam reveals about your disability unless the reasons for rejection are related to the job and necessary to conduct the employer's business. The results of all medical exams must be kept confidential. Medical files must be kept separate from work or personnel files.

Should I tell my employer I have a disability?

If you think you will need accommodation in order to be able to apply for a job or to perform essential job functions, you should tell the employer that you have a disability. Employers are only required to provide reasonable accommodation if they know about the disability. Generally, the employee is the person who must tell the employer that an accommodation is needed. But you are not required to

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

offer information about having cancer or another disability when you apply for a job.

Does my employer have to provide any accommodation I request?

No. There is some flexibility built into the reasonable accommodation requirement under the ADA. For example:

- Employers can choose among effective accommodation options and do not always have to provide the accommodation that the employee requests.
- Employers do not have to provide accommodations that pose an undue hardship for them.
- Employers do not have to provide personal-use items that are needed for daily activities both on and off the job.
- Employers do not have to make an accommodation for a person who is not otherwise qualified for the job.
- Employers do not have to remove essential functions, create new jobs, or lower production standards to accommodate a disabled employee.

Under ADA, does the employer have to hire a qualified applicant with a disability over other qualified applicants?

No. The ADA does not require an employer to hire a person with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability just because they are disabled. It's also unlawful to refuse to hire the qualified person because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

Do I have to pay for it if I need reasonable accommodation under ADA?

Generally, no. The ADA requires the employer to provide the accommodation unless doing so would cause an undue hardship on the employer's business. If the cost of providing the needed accommodation would be too much, you must be given the choice of:

- Providing the accommodation yourself, or
- Paying for the portion of the accommodation that causes the undue hardship

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar jobs. Typically, employers don't pay a lot to accommodate employees with disabilities. When asked, employers noted that most accommodations cost nothing; the rest typically cost only about \$500.

If the health insurance offered by my employer does not cover all medical expenses related to my disability, does the company have to get extra coverage for me under ADA?

No. The ADA only requires an employer to provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees. The same is true for employees with cancer or for employees who have family members with cancer or a history of cancer.

Under ADA, does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation, accessible to people with disabilities?

Yes, unless making these changes would pose an undue hardship on the employer. Employers must accommodate the disabled person for all services, programs, and non-work facilities they provide, if the changes are reasonable. If making an existing facility accessible would be an undue hardship, the employer can provide a comparable facility that will let a person with a disability enjoy the same benefits and privileges of employment as those enjoyed by other employees, unless doing so also would be an undue hardship.

What agency enforces ADA job protections?

The Equal Employment Opportunities Commission (EEOC), along with state and local civil rights enforcement agencies, enforces the part of the ADA that covers employment protection.

What should I do if I think I'm being discriminated against in a work situation because of my disability?

You have a limited time to act, although the time limit varies by employer and the state in which you work (see EEOC page "Time Limits for Filing a Charge" at eeoc.gov/employees/timeliness.cfm for more information). If you think you have

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

been discriminated against at work because of a disability, you can file a complaint with an EEOC- field office located in certain cities throughout the United States (visit eeoc.gov/laws/types/disability.cfm to see the Disability Discrimination page. If you work for a state or local government, the process is the same as for a private employer. A discrimination charge generally must be filed with the EEOC within 180 days of the action that you think is discriminatory. You can contact the the EEOC at 1-800-669-4000.

If you work for the US government, you have only 45 days to contact your agency's EEOC officer, and the process is somewhat different from that for private employers. See the section "Questions and answers about employment discrimination (<https://eeoc.custhelp.com/app/answers/list>)."

If your state or local laws cover discrimination on the basis of disability, the charge must be filed with the proper state or local fair employment practice agency within 300 days of the discriminatory action. EEOC field offices can refer you to the agencies that enforce those laws (see the "To learn more" section). But to protect your rights, it's best to contact the EEOC right away if you suspect discrimination at 1-800-669-4000.

If the EEOC decides that you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay, or reasonable accommodation, including reassignment. You also may be entitled to have your legal fees paid. Keep in mind that these decisions may take quite a long time depending on the nature of the claim and how it's resolved.

If the EEOC does not find proof that discrimination has occurred, or when attempts to resolve the problem have failed and the EEOC decides not to sue on your behalf, you can request a "right to sue" letter from the EEOC 180 days after filing your complaint. After you get this notice of right to sue, you have 90 days to file the suit. If you sue, you might want to hire a private attorney to represent you.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

How the ADA can help in settings other than work?

This section deals only with discrimination in settings other than work.

What are “public accommodations” as defined by ADA?

Places of public accommodation are those generally open to everyone, such as restaurants, hotels, theaters, doctors’ offices, drug stores, retail stores, museums, libraries, parks, private schools, and day care centers.

The ADA requires the property administrators of these kinds of public places to remove barriers when it’s “readily achievable” to do so. This means that it must be fairly easy to do without much trouble or expense. Examples of removing barriers would include making a simple ramp over a few steps or other modest adjustments to parts of a public place’s physical structure that may impose barriers for people with disabilities.

Private clubs and religious organizations are not considered places of public accommodation. They don’t have to meet the ADA requirements.

What are the different sections of the ADA?

The US Department of Justice enforces the ADA requirements in three areas:

- Title I: Employment practices by units of state and local government (remember that the EEOC enforces most work-related practices)
- Title II: Programs, services, and activities of state and local government, including public transportation
- Title III: Public accommodations and commercial facilities (private businesses and nonprofit service providers). This can include privately owned or privately run transportation, movie theaters, restaurants, stores, doctors’ offices, fitness centers, zoos, convention centers, private schools, day care centers, homeless shelters, funeral homes, and more.
- Title IV of the ADA covers people with hearing and speech problems, and is enforced by the Federal Communications Commission (the FCC). Visit fcc.gov/encyclopedia/title-iv-ada or see the “To learn more” section for more on the rules.

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Where can I find information about discrimination in areas other than employment?

The US Department of Justice has a toll-free ADA Information Line (1-800-514-0301). ADA specialists are available Monday through Friday from 9:30 a.m. until 5:30 p.m. (Eastern Time) except on Thursdays, when the hours are 12:30 p.m. until 5:30 p.m. A Spanish language service is also available. This toll-free number permits businesses, state and local government officials, or others to call and ask questions about general or specific ADA requirements, including questions about the ADA Standards for Accessible Design.

To learn more

National organizations and websites*

Along with the American Cancer Society, other sources of information and support are listed here. Some have more specific information about ADA requirements affecting employment.

Job and work-related disability problems

Job Accommodation Network

Toll-free number: 1-800-526-7234

TTY: 1-877-781-9403

Website: askjan.org

This is a free consulting service of the US Department of Labor that gives information on the ADA, your rights, how to talk to an employer, and how to ask for accommodations. [Visit askjan.org/pubsandres/list.htm](http://askjan.org/pubsandres/list.htm) for a list of available publications.

US Equal Employment Opportunity Commission (EEOC)

Toll-free number: 1-800-669-4000

TTY: 1-800-669-6820

Website: eeoc.gov

Tells you how to find EEOC offices in your area and how to file charges of workplace discrimination; has information on federal equal employment opportunity regulations, practices, and policies; offers publications such as *Questions and Answers About Cancer in the Workplace and the Americans*

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

with Disabilities Act (ADA), which has special information for people with cancer. Visit eeoc.gov/laws/types/cancer.cfm for more information.

Americans with Disabilities Act Technical Assistance – US Department of Justice

Toll-free number: 1-800-514-0301

TTY: 1-800-514-0383

Website: ada.gov

Specialists answer questions about the ADA and the programs, services, and activities of employers, as well as state and local governments. The website has a list of free booklets and publications you can order or read online, many of which are available in other languages.

Social Security Administration (SSA)

Toll-free number: 1-800-772-1213

TTY: 1-800-325-0778

Website: socialsecurity.gov

Has general information, qualification criteria, and information about how to apply for program benefits (such as Social Security Disability Income and Supplemental Security Income) if you cannot work. Makes referrals to local SSA and Medicare/Medicaid offices.

Other problems caused by disability

Easter Seals Project ACTION

Toll-free number: 1-800-659-6428

TTY: 202-347-7385

Website: projectaction.org

For more specific information about accessibility and transportation services for people with disabilities

Federal Communications Commission

Toll-free number: 1-888-225-5322

TTY: 1-888-835-5322

Website: fcc.gov/cgb/dro/trs.html

For TRS (Telecommunications Relay Services, which allow people with hearing or speech disabilities to place and receive phone calls) questions

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

and fact sheets; also offers technical assistance on ADA telephone service requirements

American Speech-Language-Hearing Association (ASHA)

Toll-free number: 1-800-638-8255

TTY: 301-296-5650

Website: asha.org

Provides information and support so that all people with speech, language, and hearing disorders have access to quality services to help them communicate

Federal Transit Administration

Toll-free number: 1-888-446-4511 (FTA ADA Assistance Line, voice/relay)

TTY: 1-800-877-8339

Website: fta.dot.gov/civilrights/civil_rights_2360.html

For problems with public transportation only; to get information or file a complaint

United States Access Board

Toll-free number: 1-800-872-2253

TTY: 1-800-993-2822

Website: access-board.gov

Has specific information on accessibility requirements for people with disabilities. The board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology

**Inclusion on this list does not imply endorsement by the American Cancer Society.*

The American Cancer Society is available 24 hours a day, seven days a week to provide – among other things – the latest cancer information, emotional support, or free lodging when patients need treatment away from home. Visit us at cancer.org or call us at 1-800-227-2345.

References

Circle Of Life: Cancer Education and Wellness

for American Indian and Alaska Native Communities

Equal Employment Opportunity Commission. Disability Discrimination. Accessed at www.eeoc.gov/laws/types/disability.cfm on October 28, 2014.

Job Accommodation Network. Accessed at www.askjan.org on October 28, 2014. Job Accommodation Network Fact Sheet Series (2014 update). *Workplace Accommodations: Low Cost, High Impact*. Accessed at <http://askjan.org/media/LowCostHighImpact.doc> on October 28, 2014.

Job Accommodation Network. *Accommodation and Compliance Series: The ADA Amendments Act of 2008*. Accessed at <http://askjan.org/bulletins/adaaa1.htm> on October 26, 2012.

US Department of Justice. ADA home page. *Americans with Disabilities Act Information and Technical Assistance*. Accessed at www.ada.gov on October 28, 2014.

US Department of Justice. *A Guide to Disability Rights Laws*, July 2009. Accessed at www.ada.gov/cguide.htm on October 28, 2014.

US Department of Labor, Office of Disability Employment Policy. *Employment rights: Who has them and who enforces them*. Accessed at www.dol.gov/odep/pubs/fact/rights.htm on October 28, 2014.

The above information is from the American Cancer Society website, at <http://www.cancer.org/treatment/findingandpayingfortreatment/understandingfinancialandlegalmatters/americans-with-disabilities-act> . Accessed on May 1, 2015.

US Equal Employment Opportunity Commission. *Filing A Charge of Discrimination*. Accessed at www.eeoc.gov/employees/charge.cfm on October 28, 2014.

US Equal Employment Opportunity Commission. *Time Limits for Filing a Charge*. Accessed at www.eeoc.gov/employees/timeliness.cfm on October 27, 2014.