

Human Rights Commission



DISABILITY – REASONABLE ACCOMMODATION

ADDRESS: 342 WALLER AVE, SUITE 1A, LEXINGTON, KY 40504

PHONE: (859) 252-4931

EMAIL: RSEXTON@LEXHUMANRIGHTS.ORG

What is the Human Rights Commission?

Independent agency of the Lexington-Fayette Urban County Government.

Investigates complaints of discrimination:

- **Employment**
- **Housing**
- **Public Accommodations**

Based on race, sex, age, national origin, disability, color, religion, familial status and sexual orientation/gender identity.

Laws Covering Individuals with Disabilities in Employment

Federal Laws

The Rehabilitation Act of 1973 – Federal Contractors

The Americans with Disabilities Act (ADA) (1990)

ADA Amendments Act (2008) – [Broadened the definition of disability / made it easier for coverage.]

State Law

Kentucky Civil Rights Act (KRS 344)

Local Law

Local Ordinance 199-94

Americans with Disabilities Act of 1990

Covered Basis: Qualified individuals with a disability.

Prohibited Acts: See Title VII

Statutory Coverage: See Title VII

Enforced By: See Title VII

Filings: See Title VII

Americans with Disabilities Act

The ADA prohibits discrimination against individuals with disabilities through the following five (5) titles of the act:

- * Title I – Employment – Covers all employers with at least 15 employees.
- * Title II – State & Local Government – Covers all programs, services and public activities.
- * Title III – Public Accommodations – Covers restaurants, stores and places of public business.
- * Title IV – Telecommunications – Every state must have a message relay service.
- * Title V – Miscellaneous provisions.

ADA Title 1

No employer shall discriminate against any qualified individual with a disability in regard to any aspect of employment:

- Aspects of employment include:
 - Recruitment, Application Process, Hiring
 - Leaves, Layoffs
 - Training, job assignments, Promotions
 - Benefits, Employer-sponsored events
 - Discharges

Who is a “Qualified Individual?”

- Who satisfies the requisite education, skill, experience, and other related requirements of the job held or desired; and
- Who, with or without reasonable accommodation, can perform the essential functions of the job.

What are Essential Functions of a Position?

- Fundamental Responsibilities determined by the employer.
- Not marginal tasks.

Considerations:

- Employer's judgments.
- The written description prepared before advertising or interviewing.
- The performance of the function is the reason the job exists.
- The consequences of the function not being performed.
- The amount of time spent performing the function.
- A limited number of employees among whom the performance of the function can be distributed.
- The function is highly specialized such that the incumbent is hired for that expertise.
- The terms of a union contract.

What is a Disability?

An individual with a “disability” is someone who:

- * Has a physical or mental impairment that substantially limits one or more major life activities.
- * Has a record of such impairment.
- * Is regarded as having such impairment.
- * ADA also covers “associational disabilities”, those individuals who are associated with someone who has a disability.

What is a Physical or Mental Impairment?

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems; or
- Any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

What are Major Life Activities?

Basic actions that the average person in the general population can perform with little or no difficulty

Examples include:

- Breathing
- Ingesting
- Sensing
- Thinking
- Reading
- Speaking
- Interacting with others
- Reaching
- Standing
- Bending
- Working
- Sleeping
- Caring for oneself
- Learning
- Concentrating
- Communicating
- Writing
- Sitting
- Manipulating
- Walking
- Lifting

What Else are Major Life Activities?

Major Bodily Functions, Including:

- Respiratory
- Circulatory
- Brain
- Immune
- Endocrine
- Musculoskeletal
- Genitourinary
- Bowel
- Reproductive
- Cardiovascular
- Neurological
- Special sense organs
- Lymphatic
- Hemic
- Normal cell growth
- Digestive
- Bladder

What is “Substantially Limited” in a Major Life Activity?

- Unable to perform a major life activity; or
- Significantly restricted in the condition, manner, or duration of performing the activity compared to most people in the general population.

Other considerations:

- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Examples of Episodic Impairments or Impairments in Remission

- Schizophrenia
- Depression
- Diabetes
- Epilepsy
- Multiple Sclerosis
- HIV/AIDS
- Cancer

Additional Factors in Determining Whether an Individual is Substantially Limited

The determination if whether an impairment substantially limits a major life activity excludes the ameliorative effects of mitigating measures, except for corrective lenses.

Mitigating Measures Include:

- Medications and Medical Supplies or Equipment.
- Low Vision Aids.
- Hearing Aids and implantable hearing devices.
- Prosthetics.
- Mobility Devices.
- Alternate devices, adaptive equipment, or assistive technology.
- Auxiliary Aids and Services.
- Learned Behavioral or Adaptive Neurological Modifications.

Disability Related Questions & Medical Examinations

Pre-Offer

- Inquiries into a person's disability prohibited at the pre-employment stages, which includes:
 - Application form
 - Interview
 - Physical Exam/ Health History
 - Third Party Sources, e.g. previous employer, background checks

Exceptions

- Bona Fide Occupational Qualification ("BFOQ")
- Affirmative Action Tracking & Selection (must be maintained separate from application)
- Complying with other state and federal laws

Disability Related Questions & Medical Examinations

Hiring Process and Interviews

- May inform an individual of the requirements of the hiring process (e.g., interviews, written timed exams, or job demonstrations) and may ask if the individual will need an accommodation.
- May ask if the individual can perform all of the essential functions with or without reasonable accommodation.
- May ask the individual to demonstrate or explain how they would perform the essential functions as long as all applicants are asked.
 - Exception: If a person has a known disability, may ask how the individual will perform an essential function.

Disability-Related Questions and Medical Examinations

Prohibited Questions:

- Questions about an individual's impairment
- Questions about an individual's use of medication
- Questions about workers' compensation history
- Questions about mental health treatment

Discrimination Under the ADA

Discrimination includes:

- Disparate Treatment
- Disparate Impact
- Harassment/Hostile Work Environment
- Retaliation
- Failure to provide reasonable accommodations

Reasonable Accommodations

An employer must provide a reasonable accommodation to individuals with disabilities in the workplace unless it would pose an undue hardship.

A reasonable accommodation is any change or modification in the workplace or in the way work is done that provides equal opportunities for employees with disabilities.

Examples of Reasonable Accommodations

- Provision of alternative parking arrangements.
- Alteration of available facilities to be physically accessible and usable.
- Adjustment of the job application process.
- Provision of an alternative format of work material.
- Acquisition of alternate devices, adaptive equipment, or assistive technology.
- Provision of qualified reader, writer, sign language interpreter, or other assistant.
- Adjustment to testing or training.
- Modification to policy, procedure, rule, or practice.
- Restructuring of the job.
- Permission for part-time or modified work schedule.
- Provision of an alternative work area.
- Permission for an extended medical leave.
- Reassignment to a vacant job.

Important Things to know about Reasonable Accommodations

- Can be asked for at any time during the application process or the period of employment.
- Begins with notice to the employer; no “magic words.”
- Requires employer to engage in the interactive process.
- Refer employee to the reasonable accommodation policy and procedure.

Interactive Process

When an employee has disclosed, what can you ask?

- Functional limitations in the job
- Possible accommodations

Do not:

- Make an inquiry about the diagnosis, prognosis, symptoms or manifestation of the medical condition
- Make allusions to the situation
- Make judgment about the consequent changed capabilities

When May a Reasonable Accommodation be Denied?

An employer does not have to provide a reasonable accommodation where they show an undue hardship.

- Is unduly costly or administratively burdensome.
- Interferes with others' rights or safety.
- Fundamentally changes the way we conduct business.

Implementing an Accommodation

- Follow company's policy
- Usually written request submitted (Notice does not have to be written).
- Medical documentation is needed only for disabilities that are not obvious.
 - Medical documentation is confidential and maintained in a separate file.

Intersection with Other Laws

- FMLA
- Worker's Compensation

DISCRIMINATORY
EMPLOYMENT
COMPLAINT PROCESS

