ADA & People with MS

EMPLOYMENT ISSUES

National Multiple Sclerosis Society

MS does not discriminate and neither do we: The National Multiple Sclerosis Society embraces and celebrates diversity and inclusion as the core of our organization. We value differences among individuals across multiple dimensions including, but not limited to race, ethnicity, age, gender, sexual orientation, physical ability, religion, spiritual beliefs, and socioeconomic status. We believe that the more we include diverse perspectives and experiences in our work, the better able we are to achieve the organization's ongoing mission of mobilizing people and resources to drive research for a cure and to address the challenges of everyone affected by MS. We create and implement strategies that attract, develop, and retain the expertise, energy, and commitment of a diverse group of talented individuals. By doing so, we boldly and more effectively drive key initiatives to create a world free of MS.

ADA & People with MS

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Special thanks to volunteers Mark Stolman, Esq., Jim Rea, Linda Batiste, Steve Nissen and Kris Graham for their careful reviews.

This publication is supported by contributions to the National MS Society from its members and friends.

Reviewed by members of the Client Education Committee of the National Multiple Sclerosis Society's Clinical Advisory Board.

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The Americans with Disabilities Act: Protection for people with multiple sclerosis

The Americans with Disabilities Act (ADA) — which became law in July 1990 — is the first comprehensive legislation passed by any country in the world to prohibit discrimination on the basis of disability. The ADA guarantees full participation in American society for all people with disabilities just as the Civil Rights Act of 1964 guaranteed the rights of all people regardless of race, sex, national origin or religion. And there are other federal, state and local laws that also protect people who are disabled.

The ADA covers almost everyone with MS. It doesn't only apply to people who use wheelchairs. It covers every person with an impairment that substantially limits one or more major life activities. Even people with multiple sclerosis who have never had any disabling symptoms can be protected if they are regarded as having a substantially limiting impairment.

Your ADA guarantee of full participation in American society includes:

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Protection from Discrimination in Employment

Major employment protections are guaranteed by the ADA.

- The ADA prohibits private employers with 15 or more employees, state and local government employers regardless of the number of employees, and the legislative branch of the federal government from discrimination in employment against a qualified individual on the basis of disability.
- Employment agencies, labor organizations and joint labor-management committees cannot discriminate against people who have a disability.
- The prohibition against discrimination includes applicants, new employees and employees who become impaired while employed.

The prohibitions make many forms of discrimination illegal beyond the basic issues of being hired or fired. For example:

- *An applicant or employee with a disability can't be set apart or classified in a way that adversely affects employment opportunities.* You cannot, for example, be hired with the understanding that you will not be given a promotion because of a disability.
- *An employer can't make a contract that has the effect of discriminating against a person with a disability before or after being hired.* For example, a company cannot use a health insurance provider that refuses to cover a person with MS while covering other disabilities. Nor can the company use an employment agency that won't place people who use or might use mobility devices.
- *Tests that are used must accurately reflect the skills and aptitude of the applicant for the job.* For example, an employer can't require a test of physical endurance for an office job requiring no strength.
- *A job can't be refused to a qualified person because of a relationship or association with a person with disabilities.* For example, your husband or wife can't be refused a job because you have MS.

Do I have to tell a potential employer I have MS?

You may need to provide information about your medical condition if you are requesting accommodation for the interview process and your disability is not obvious. At this point, you can decide whether you would like to include your diagnosis or not. However, the potential employer can ask for additional information if they need more evidence to determine whether you meet the ADA's definition of person with a disability. This request may include information about your diagnosis.

In general, anytime accommodation is requested (during the interview process, after a job offer has been made, or after employment has started), employers may ask for information about your medical condition to make sure that you fall under ADA protection. In some cases, this may include questions about your diagnosis.

Do I have to take a medical examination to get a job?

Employers that fall under ADA guidelines are allowed to ask potential employees to demonstrate how they would perform an essential job function during the interview stage (e.g. show or describe how they would lift 50 pounds). But they are generally prohibited from conducting medical examinations or asking disability-related questions.

If the employer makes a job offer, they may then require the employee to answer medical questions and/or take a medical exam as long as they are asking for the same information from all persons offered the same position. They may also make the job offer contingent upon the results of the medical information/exam. However; if they withdraw the job offer due to the disability-related information that was obtained, they must show the decision was job-related, due to current, specific impairment, and that reasonable accommodation was not possible.

Do I have to take a medical examination to keep a job?

Yes, if the medical exam is job-related. If the exam shows that you have a disability that impacts your ability to perform your essential job functions, your employer must consider reasonable accommodation for the disability so that you are able to perform essential job functions.

Do I have to tell a current employer that I have MS?

You may need to provide information from a medical professional about your disability if you are requesting accommodation and your disability is not obvious. If the information is not sufficient for your employer to see that you are protected under the ADA, though, the employer may ask for more information — including your diagnosis.

THE BOTTOM LINE

You must provide information about your impairment if your disability is not obvious in order to show your employer that you are protected under the ADA if you need accommodation. You can consider whether you would like to include information about your diagnosis as part of that information. There are instances when the employer may legally request information about your diagnosis, though. Ultimately, the employer is required to consider your current ability, not potential future deterioration, and the employer is required to consider reasonable accommodation if accommodation will assist you in completing your essential job functions.

Three key concepts

The ADA requires an employer to make changes in the workplace or in a job's conditions to help make it possible for a person with a disability to perform "essential job functions." But the law isn't intended to put the company out of business. The changes, which are called accommodations, must be reasonable. An employer cannot refuse to make "reasonable accommodations" unless they impose an "undue hardship" on the employer or pose a "direct threat" to health or safety at work.

1. "Reasonable accommodation"

"Reasonable accommodation" makes it possible for people with disabilities to meet job requirements. Reasonable accommodations might include:

- Modifying work hours or changing the place where work is performed.
- Providing reserved parking for an employee with a mobility impairment.
- Allowing an employee to use earned or unpaid leave for necessary treatment.
- Changing job descriptions by removing marginal job functions.
- Buying or modifying equipment or devices.
- Allowing an employee to provide equipment or devices that the employer is not required to furnish.
- Adjusting or modifying examinations, training materials and policies.
- Providing qualified readers or interpreters.
- Altering physical facilities to make them accessible and usable.

The employer must ensure that employees with disabilities have access to company benefits of employment such as rest rooms, health programs, meeting rooms, lunchrooms, lounges and social events. The employer can be excused from providing physical access if that creates an undue hardship but must then provide access to the program or service in some other fashion.

2. "Undue hardship"

Although the general guidelines for reasonable accommodations must be followed by everyone, the key words are "undue hardship." The employee's needs and the employer's ability to accommodate those needs without undue hardship are taken into account in deciding what is reasonable. What is "reasonable" for one employer might not be for another. What a large corporation might be required to do can be an undue hardship for a smaller business.

An accommodation need not be made if it is impractical, if it costs more than an equally effective alternative, if it requires renovation that will disrupt business, or if it causes unreasonable problems for other employees or customers. Undue hardship is decided on a case-by-case basis — by the employer. The determination can be challenged in court or

before the Equal Employment Opportunity Commission (EEOC), the federal administrative enforcement agency for the employment title of the ADA.

3. "Essential job functions"

Like undue hardship, "essential job functions" are defined by the employer on a job-by-job basis, but again, the determination can be challenged. The law says that essential job functions are tasks that are fundamental, not marginal — for reasons that include but aren't limited to the following:

- *The position exists to perform the function.* For example, as the office receptionist, you must answer the telephone.
- *The function is highly specialized.* For example, as a laboratory researcher, you use your PhD in biology and your manual dexterity.
- *The company has a limited number of employees among whom the function can be distributed.* For example, as inventory clerk, you make deliveries a half day each week and no other staff person is available for this duty.

Taking action ... whose job is it?

You, the employee or job applicant, must start the procedure. The ADA gives you the responsibility for requesting an accommodation, and unfortunately, the law doesn't make the procedure clear. After the request has been made, the ADA says the employer and the employee or job applicant share responsibility for planning accommodations.

- *All solutions need discussion.* You must state the need for an accommodation clearly to the proper employer representative. Some employers require everything in writing; others are less formal.
- *Some solutions are clear.* For example, a ramp is needed for wheelchair access.
- *Some solutions are simpler than expected.* For example, a desk can be made wheelchair-accessible by putting blocks of wood under the legs. Custom furniture may not be necessary.
- *Some solutions need compromise.* For example, you might want a voice-output computer program to accommodate a vision problem; your employer might be willing only to supply a larger screen. The compromise might be software that enlarges the text display.
- *All requests and solutions need to be approached carefully.* Plan and rehearse your requests. Know exactly what you want — and what will be effective. One successful approach is to focus on increased productivity rather than your rights under the ADA.

Protection from Discrimination in Public Accommodations

The ADA is written to make sure that people with disabilities are able to use the full range of services and facilities available to the public at large. Over a period of time, implementation of the ADA should make almost every community service and facility equally available to all.

- ADA prohibits discrimination in public programs and services provided by state or local governments, including government-funded transportation.
- ADA prohibits discrimination in public accommodations that are operated by private entities.

Services and facilities in which discrimination is prohibited include, but are not limited to, the following places to which the public is invited:

- Hotels, inns, motels and other places of lodging except those inside a building that is used by the proprietor as a residence and has five or fewer rooms for rent.
- Movies, theaters, concert halls, stadiums and other places of exhibition or entertainment.
- Auditoriums, convention centers, lecture halls and other places of public gathering.
- Museums, libraries, galleries and other places of public display or collection.
- Parks, zoos, amusement parks and other places of recreation or entertainment.
- Gymnasiums, health spas, bowling alleys, golf courses and other places of exercise or recreation.
- Nursery, elementary, secondary, undergraduate or postgraduate private schools and other places of education.
- Restaurants, bars and other establishments serving food or drink.
- Stores selling any type of product, shopping centers or malls and other sales or rental establishments.
- Doctors' offices, hospitals, healthcare providers, laundromats, dry cleaners, banks, beauty parlors and barbershops, repair shops, gas stations, funeral parlors, and offices of accountants, lawyers, insurance agents and other service establishments.
- Terminals, depots or other stations used for public transportation.
- Social service establishments including day-care or senior citizen centers, homeless shelters, battered women's shelters, food banks, adoption agencies and others.

The ADA makes it clear that ...

1. People with disabilities have the right to use fully the facilities and services provided to the general public. The ADA prohibits providing separate or unequal treatment.

   You cannot be asked to leave a park because the park's insurance does not cover people with disabilities. You cannot be asked to sit in a special area of a restaurant because you might make other customers uncomfortable.

2. Public accommodations are required to make "reasonable modifications" in their policies, practices and procedures to make goods and services available to people with disabilities.

   A store that usually allows only one person into a dressing room must make an exception to that policy for a person who needs assistance from a companion. No changes need to be made if the business can show that doing so would make a fundamental change in the nature of goods and services it provides.

3. Public accommodations must remove architectural barriers when removal is "readily achievable."

   The standard of "readily achievable" is flexible and meant to be determined on a case-by-case basis. Barriers that might be removed or modified include curbs, steps, narrow doorways, aisles, or rest room stalls. Telephones, drinking fountains and cash machines are to be made accessible.

   An architectural change is considered readily achievable if it can be carried out without much difficulty or expense. If it is not readily achievable, an alternative must be offered. For example, if a store can't provide an accessible dressing room, a liberal return policy can be adopted.

   The IRS allows a tax deduction of up to $15,000 for certain expenses associated with the removal of qualified architectural and transportation barriers even if those expenses constitute capital improvements.

4. Facilities which are newly built must be readily accessible to and usable by people with disabilities.

   Any new building must be accessible. Technical standards for new construction and alterations have been issued by the Architectural and Transportation Barriers Compliance Board (also known as the U.S. Access Board). For a free copy of the standards, call 800-872-2253 (V) (TTY 800-993-2822). A copy is also available at **access-board.gov/ada.**

What the ADA does not do...

1. The ADA does not cover private residential facilities.

Discrimination against people with disabilities in the renting and selling of private housing is covered by the Fair Housing Amendments Act of 1988.

2. The ADA exempts private clubs and religious organizations, including places of worship, from these requirements.

Although some places of worship lead the way in removing barriers, one disability study showed that, in general, they are less accessible than nonreligious facilities.

Protection from Discrimination in Transportation

The ADA specifically includes transportation protections, but implementation of this aspect of the law will be slow because of the cost of replacing or refitting existing vehicles. Discrimination is prohibited in urban transit, paratransit, publicly funded rail systems, and transit facilities. *(Note: A paratransit system is a door-to-door transportation service.)*

- Bus, rail, boat, ship or ferry transportation cannot discriminate against people with disabilities. Air travel is not included since it is already covered by the Air Carrier Access Act.
- The protection against discrimination extends to private companies whose primary business is transporting people, such as privately owned bus companies.
- Any transportation provided to the general public must be available to people who are disabled. This means that hotels, private colleges, funeral homes, social or day-care centers, and other entities that provide limited transportation must accommodate all people.
- Any new transportation system must be accessible. But existing rail and light-rail system stations need not be made wheelchair accessible unless the facility has been designated a "key" station.

Public Transportation

1. Public transportation systems running on fixed routes (such as city buses) must rent or buy new vehicles that are accessible to people with disabilities.

New vehicles must be able to transport all common wheelchairs, including scooters and electric wheelchairs, in designated areas. People who use wheelchairs cannot be required to transfer to a regular seat and need not use a seat belt unless all passengers are required to. Vehicles in use before the ADA became law need not be adapted for wheelchair use.

2. People with disabilities who don't use wheelchairs may use the lift or ramp.

Accessibility features aren't limited to people who use wheelchairs; they are available to anyone with significant mobility problems, including MS-related weakness and balance problems, for example.

3. If accessibility features aren't in good repair, other transportation must be provided.

If a broken lift, door or security device makes use impossible, substitute transportation, such as a taxicab, must be made available.

4. Transit systems that operate fixed-route systems must provide paratransit to individuals with disabilities who cannot use the fixed-route system.

5. Paratransit service is available to:

- People whose disability makes them unable to use the fixed-route system.
- People who need to travel on routes served only by inaccessible vehicles.
- People whose disabilities make them unable to travel to and from the fixed-route transit stop.

6. Commuter bus routes are not required to provide paratransit nor are companies for whom it would create an "undue financial burden."

As the number of accessible vehicles increases, companies may phase out or limit paratransit systems by claiming undue financial burden. Stay alert to changes in local policy.

7. Commuter, rapid, and light-rail systems must have at least one accessible car per train.

And paratransit must be provided for those who are unable to use the system after it has been made accessible.

8. Amtrak trains must provide one wheelchair space per passenger car, and no more than two wheelchair spots can be in any one car.

(Railroad cars built before 1990 had to be brought up to this standard by July 2000.) Amtrak has accessible sleeping berths available by advance notice.

Private transportation systems

All of the policies that apply to publicly funded transit systems also apply to privately funded systems that are primarily in the business of providing transportation.

This means that:

- All new vehicles for fixed-route systems (such as airport shuttles that run on a schedule) must be accessible.

- Accessible vehicles for demand-responsive systems (such as airport services that you call to arrange) must be available, although all vehicles in the system need not be accessible.
- Taxis cannot discriminate against a person with a disability hailing or calling its service, but taxi vehicles don't need to be structurally altered.
- Intercity buses (buses that go from city to city) that are not required to be equipped with a lift must accept wheelchairs without advance notice.
- 48 hours' notice should be provided to a bus company that boarding assistance is needed, but even when there is no notice there must be a "reasonable effort" to assist.
- Equipment such as wheelchairs or crutches must be given preference in loading over luggage at the same stop.
- Drivers must stop at accessible rest stops when requested.

Private transportation as part of another service

- The ADA includes special regulations for private facilities that provide transportation as a service to customers such as hotels, rental car companies, and day-care centers.
- Newly acquired vehicles carrying more than eight persons must be accessible if used on fixed routes.
- If service is in response to a call and the vehicles are not accessible, reasonable accommodations must be made; these might include portable ramps or sharing an accessible vehicle with another provider. The waiting time for a person with a disability should be reasonably comparable to that of other customers.

Protection from Discrimination in Telecommunications

All common carriers engaged in interstate communications by wire or radio must provide telecommunications relay services for hearing-impaired and/or speech-impaired customers.

- *A person who has a speech or hearing impairment must be provided with special services by the telecommunications company.* If, for example, your speech is impaired because of MS, your telephone company must make it possible for you to communicate using a non-voice terminal with someone who does not have such a device. Your call goes to a special operator or "interpreter" who speaks to the party you are calling.
- *All communications handled by interpreters are confidential and must be relayed without censorship beyond that required for all telephone services.*
- *The telecommunications relay services must operate every day, for the full 24 hours.*
- *The cost of service is funded by the telephone systems. The cost of the call to users of relay services cannot be more than that of a regular phone call.*

Protection from Discrimination in Government Agencies and Facilities

The ADA covers the U.S. Senate and the U.S. House of Representatives, but enforcement is an issue since the EEOC is an agency of the executive branch and cannot give orders to the legislative branch.

- The executive branch of the federal government is covered by the Rehabilitation Act of 1973, which is comparable in many respects to the ADA.
- The Congressional Accountability Act (CAA) provides an enforcement process for violations of the employment provisions of the ADA by a Legislative Branch employer.
- State and local government services are covered under the Rehabilitation Act if, and only if, they receive federal funds.
- State and local governments must make their programs "usable" by people with disabilities.
- If state or local government employees suffer job discrimination and they sue their employers, they cannot recover money damages to compensate them for the discrimination. If the employees sue, they can only get court orders giving them back their jobs. This could make it hard for them to find lawyers to take their cases.
- State and local employees who suffer job discrimination can only recover money from their employers if the United States government sues the state or local government on their behalf.

If You Need Help

The first step is to call the National MS Society at 1-800-344-4867. They have information on the ADA, local and state laws that may apply to your situation, and enforcement. If you're calling about workplace accommodations, request our booklet, "The Win-Win Approach to Reasonable Accommodations." It is wise to act quickly if you think action is needed. In employment-related matters, you may have only 180 days from the time a discriminatory incident occurs to make a formal complaint.

- The ADA established Disability and Business Technical Assistance Centers to provide information and referral, technical assistance, public awareness, and training on all aspects of the ADA. To contact your nearest center, call 800-949-4232 (V/TTY), or visit their Web site at **adata.org.**
- The Job Accommodation Network is an international information and consulting resource. Both people with disabilities and employers can contact them for practical help in making accommodations. Call 800-526-7234 (V), 877-781-9403 (TTY), or visit their Web site at **AskJAN.org.**

- If you believe that your employer or potential employer is not living up to the obligations of the ADA, call your Equal Employment Opportunity Commission at 800-669-4000 (V) or 800-669-6820 (TTY). Visit their Web site at **eeoc.gov.**
- The Disability Rights Education and Defense Fund, based in Berkeley, California, is a national law and policy center dedicated to protecting and advancing the civil rights of people with disabilities through legislation, litigation, advocacy, technical assistance and other services. Visit their Web site at **dredf.org.**
- For more information on the Air Carrier Access Act, visit the U.S. Department of Transportation Web site at **airconsumer.dot.gov/publications/disabled.htm.**
- The U.S. Department of Justice has an excellent ADA Web site at **ada.gov.** The ADA Information Line can be reached at 800-514-0301 (voice), 1-800-514-0383 (TTY).
- For fair housing information and resources, visit **fairhousinglaw.org** and **fairhousingfirst.org.**
- The U.S. Access Board has an excellent Web site at **access-board.gov.**
- The Southwest ADA Center provides the Disability Law Handbook which is downloadable at **dlrp.org/html/publications/dlh/index.html.**

The National Multiple Sclerosis Society is proud to be a source of information about multiple sclerosis. Our comments are based on professional advice, published experience and expert opinion, but do not represent individual therapeutic recommendations or prescriptions. For specific information and advice, consult your physician.

Early and ongoing treatment with an FDA-approved therapy can make a difference for people with multiple sclerosis. Learn about your options by talking to your healthcare professional and contacting the National MS Society at nationalMSsociety.org or 1-800-344-4867 (1-800-FIGHT-MS).

The Society publishes many other pamphlets and articles about various aspects of MS. Visit nationalMSsociety.org/brochures to download them, or call your chapter at 1-800-344-4867 to have copies mailed to you.

Some of our popular pamphlets include:

- Information for Employers
- Should I Work? Information for Employees
- The Win-Win Approach to Reasonable Accommodations
- A Place in the Workforce

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ES6021 08/12