

## State and Federal Employment Discrimination Laws

Many different Texas and federal laws prohibit discrimination in employment based on race, color, religion, sex, national origin, age, and disability, and some cities also bar discrimination based on sexual orientation. Employers can be held liable for discrimination by supervisors, co-employees, agents of the employer, volunteers and, in some circumstances, non-employees such as clients or customers. Here is a list of most laws covering discrimination in the workplace:

Law	Who is Covered?	Brief Summary
<b>Title VII of the Civil Rights Act</b>	Private employers with 15 or more employees during any 20-week period of current or preceding year; government employees	Prohibits discrimination in employment based on race, color, sex, religion, or national origin; prohibits sexual harassment
<b>Age Discrimination in Employment Act (ADEA)</b>	Employers with 20 or more employees	Prohibits discrimination in employment against those age 40 and over
<b>Americans with Disabilities Act (ADA)</b>	Private employers with 15 or more employees; state and local government employees	Prohibits discrimination against qualified individuals with disabilities; requires reasonable accommodation for qualified persons with disabilities. <b>Exception: if accommodation would result in undue hardship on employer</b>
<b>Rehabilitation Act</b>	Federal government employees and federal government contractors with over \$2,500 in government contracts	Prohibits discrimination based on physical or mental disability; requires reasonable accommodation for qualified persons with disabilities. <b>Exception: if accommodation would result in undue hardship on employer</b>

<b>Law</b>	<b>Who is Covered?</b>	<b>Brief Summary</b>
<b>Texas Commission on Human Rights Act (state law that mirrors Title VII, ADA and ADEA)</b>	15 or more employees	Prohibits discrimination based on race, color, sex, religion, national origin, age or disability
<b>Family and Medical Leave Act (FMLA)</b>	Employers with 50 or more employees (full or part-time) within 75 miles of workplace during any 20-week period of current or preceding year; governmental entities	Requires employers to provide up to 12 weeks unpaid leave (during a 12-month period) for childbirth, adoption, foster-care placement or serious health condition of spouse, child or parent
<b>Pregnancy Discrimination Act (Amendment to Title VII)</b>	Employers with 15 or more employees during any 20-week period of current or preceding year; government employees	Requires employers to treat pregnancy, child birth and related conditions the same as other temporary disabilities
<b>Equal Pay Act</b>	Employers engaged in interstate commerce (interpreted to cover almost all employers); all state and local governments; nonprofit organizations and religious entities	Requires equal pay for men and women who perform substantially equal work in the same business establishment
<b>Local city ordinances in Austin, Fort Worth, Dallas and Houston (other Texas cities may have similar ordinances)</b>	[Employers should check local city ordinances for specific provisions.]	Prohibits discrimination in employment based on sexual orientation
<b>Vietnam Era Veteran's Readjustment Assistance Act</b>	Employers with federal government contracts in excess of \$10,000	Requires contractors to take affirmative action to employ and promote qualified disabled and Vietnam era veterans; written affirmative action plans are required for employers with 50 or more employees and federal government contracts of \$50,000 or more

<b>Law</b>	<b>Who is Covered?</b>	<b>Brief Summary</b>
<b>Uniformed Services Employment and Reemployment Rights Act</b>	All employers	Requires employers to re-employ members of uniformed services upon completion of active duty military service

## **Americans with Disabilities Act (ADA)**

If you are an employer with 15 or more employees, you are required to comply with the Americans with Disabilities Act, or ADA. The ADA prohibits discrimination on the basis of disability in employment practices, and requires employers to adjust the work schedule or environment (called a “reasonable accommodation”) for qualified individuals with disabilities so that they can perform the “essential functions” of a job. An employer can refuse to grant an employee’s request for reasonable accommodation only if the accommodation would cause “undue hardship” on the employer. The ADA is a very complex area of law. As a result, it is highly recommended that employers seek the advice of an attorney before denying an employee’s request for reasonable accommodation.

In order to understand when the ADA applies, an employer needs to understand four basic concepts: (1) when an employee is “disabled”; (2) who is a “qualified individual with a disability”; (3) what is a “reasonable accommodation”; and (4) what is an “undue hardship.”

### **Disability**

#### **Who is “Disabled” Under the ADA?**

An individual with a disability under the ADA is a person who has:

- (1) a physical or mental impairment that substantially limits one or more major life activities,
- (2) has a record of such an impairment, or
- (3) is perceived as having such an impairment.

#### **Case-by-Case Analysis**

Determining whether a person has a disability is often not an easy task. When a condition involves symptoms that vary from person to person (e.g., musculo-skeletal disorders such as carpal tunnel syndrome), the determination must be made by looking at the individual facts.

### **What Are “Major Life Activities”?**

“Major life activities” are activities that an average person in the general population can perform with little or no difficulty, such as caring for oneself, walking, breathing, seeing, hearing, speaking, learning, sexual reproduction, working, and performing manual tasks. Other activities taken into account include sitting, standing, and lifting. The central question is whether the employee is unable to perform the variety of tasks of central importance to most people’s daily lives such as household chores, bathing, and brushing one’s teeth.

### **What is “Substantially Limits”?**

“Substantially limits” means an impairment that prevents or severely restricts a person from doing activities of central importance to most people’s daily lives. Substantially limited with respect to “work” means that an individual must be unable to perform a class of jobs or a broad range of jobs because of her disability.

### **What is a “Record of . . . Impairment?”**

A “record” includes educational, medical or employment records. Having a record of impairment means having a history of, or having been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

### **What Does it Mean to be “Perceived” as Having a Disability?**

“Perceived” as having a disability means an employer mistakenly believes an individual has an impairment that substantially limits a major life activity. The employer may imagine a non-existent impairment or may believe an existing impairment is substantially limiting when it is not. Employers may violate the ADA by refusing to hire someone the employer perceives as disabled based on a myth, fear, or stereotype related to the person’s condition.

### **Exception for Correctable Impairments**

The ADA does not apply to correctable impairments such as near-sighted vision, which can be corrected with glasses. However, substantial impairments that exist despite treatment (such as hearing loss not effectively corrected by hearing aids or arthritis resulting from hip replacement surgery) qualify as disabilities under the ADA. Additionally, disabilities such as those associated with epilepsy, which are “controlled” but not removed by medication, can qualify as a disability under the ADA.

### **Current Alcohol and Drug Use: Not a Disability**

Even though alcoholism and drug addiction may be considered a disability, employees and applicants who use illegal drugs or alcohol on the job are not protected by the ADA when an employer acts on the basis of such use. Employers may hold individuals who are illegally using drugs and abusing alcohol to the same standards of performance as other employees.

## Qualified Individual with a Disability

### **Who is a “Qualified Individual” with a Disability?**

The ADA prohibits discrimination against a “qualified individual with a disability,” which means an employee or applicant who (1) has the skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position, with or without reasonable accommodation.

### **How Do Job Descriptions Protect Employers From Liability?**

Under the ADA, the employer’s judgment will be given consideration in determining what functions of a job are “essential” or necessary and central to its performance. The ADA further provides that written job descriptions used for advertising or interviewing applicants will be considered as evidence of the “essential functions” of a job. Accurate job descriptions are a critical means for employers to limit their liability exposure in regard to disability and other discrimination claims. The following section provides guidelines on job descriptions.

## Reasonable Accommodation

### **What is a Reasonable Accommodation?**

An employer must provide a reasonable accommodation to a qualified individual with a disability. Reasonable accommodation means making a change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are basically three kinds of accommodations an employer can provide: (1) changes to a job application process; (2) changes to the work environment, or to the way a job is usually performed; (3) changes that enable an employee with a disability to enjoy equal benefits and privileges of employment (such as access to training).

Accommodations can include: (1) removing physical obstacles (such as modifying inaccessible facilities or adding devices); or (2) changing policies, procedures, or rules (such as rules concerning when work is performed, when breaks are taken, and how job tasks are performed).

### **When Must an Employer Consider Reasonable Accommodations?**

An employer has a mandatory duty under the ADA to engage the affected employee in an interactive process aimed at identifying and implementing reasonable accommodation when: (1) the employee requests an accommodation; or (2) the employer recognizes the need for an accommodation. An employer also may ask the employee if reasonable accommodation is needed when an employer believes an accommodation is needed or when an employee with a disability is having performance or conduct problems.

To request a reasonable accommodation, an employee needs only to tell the employer that she needs a change at work related to a medical condition or disability. The request does not have to be in writing. In responding to a request for reasonable accommodation, the employer has the following rights and responsibilities:

- if the disability is not obvious, the employer may ask for reasonable documentation of the disability and the employee's limitations;
- the employer may ask questions to help make an informed decision about how to make an appropriate reasonable accommodation (the EEOC website offers a resource directory for help in identifying reasonable accommodations, at [www.eeoc.gov/facts/fs-ada.html](http://www.eeoc.gov/facts/fs-ada.html));
- the employer may choose any reasonable accommodation that is effective in removing the workplace barrier at issue;
- the employer must continue to evaluate reasonable accommodations if the employee asks for a different accommodation;
- the employer must act "promptly" in response to a request for a reasonable accommodation; and
- the employer must maintain the confidentiality of the employee's medical condition or disability.

#### **What if Other Employees Complain About "Special Treatment?"**

An employer may respond to a question from an employee about why a coworker is receiving "special treatment" by explaining it has a policy of assisting employees who experience certain difficulties in the workplace. The employer should also point out that many workplace issues are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. As part of employee orientation programs and diversity or anti-discrimination programs, employers should provide employees with information about the ADA.

## **Examples of Types Of Reasonable Accommodations**

- Restructuring a job:
  - shifting to another employee minor job tasks that the accommodated employee is unable to perform due to disability;
  - changing when or how a job task is performed;
  - substituting a minor job task in place of one the employee cannot perform because of disability.
- Providing unpaid leave.
- Providing a temporary transfer to another position.
- Allowing the employee to work a part-time or modified schedule (e.g., adding breaks, adjusting arrival times, altering when certain job tasks can be performed).
- Allowing the employee to work at home.
- Modifying a workplace policy only as to the employee with a disability (e.g., the employer may modify leave or attendance policies and procedures for an employee with a disability and continue to apply the policy and procedures to other employees).
- Reassignment to an equivalent position: the employer may reassign an employee with a disability to a vacant position if the employee can no longer perform his job because of disability and if the employee is “qualified” for the new position.

## **What is UNotU Considered a Reasonable Accommodation**

- Changing the employee’s supervisor (although changing supervisory methods such as the method of communicating assignments is a reasonable accommodation).
- Eliminating a primary job responsibility.
- Lowering production standards applied to all employees (although the employer may provide reasonable accommodation to allow an employee with a disability to meet production standards).
- Having an employee delegate an essential function to a co-worker or subordinate.
- Providing personal use items (e.g., prosthetic limb, wheelchair, eyeglasses, hearing aids or similar devices).
- Lowering standards of conduct and behavior (e.g., policies and procedures related to violence in the workplace, theft or destruction of property).
- Allowing excessive tardiness or attendance (e.g., 18 months of medical leave over a three-year period is not a reasonable accommodation).
- Bumping other employees from an existing position to create a position for the disabled employee.

## Undue Hardship

### What is Undue Hardship?

An employer is not required to provide any reasonable accommodation that causes undue hardship. An undue hardship is an action requiring significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unreasonably extensive or disruptive, or those that would fundamentally alter the nature or operation of a business. Every request for reasonable accommodation must be evaluated separately to determine if it would impose an undue hardship, taking into account the:

- nature and cost of the accommodation needed;
- overall financial resources of the facility or business;
- number of persons employed by the facility or business;
- effect on expenses and resources of the business;
- type of operations of the business; and
- impact of the accommodation on the business.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. The employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if he will pay the difference.

Employers cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be unduly disruptive to other employees' ability to work. For example, an accommodation that would result in preventing other employees from doing their jobs constitutes an undue hardship. On the other hand, switching to a less expensive health insurance company which refuses to carry a disabled employee is a violation of the ADA. Barring impending financial ruin, an employer cannot consider the costs of insuring qualified persons with disabilities when making hiring decisions.

### Business Necessity

An employer may also impose qualifications or use selection criteria that would tend to eliminate persons with disabilities if such criteria are justified by business necessity. An employer may use safety-based qualification standards if an individual poses a "direct threat" (meaning significant risk) to the health or safety of other individuals in the workplace. Direct threat will be determined by the likelihood of potential harm, duration of the risk, and imminence of the harm.

**Resources**

Reasonable accommodations and undue hardship are addressed in the EEOC's Enforcement Guide, which is available at [www.eeoc.gov](http://www.eeoc.gov). Also available from the EEOC is A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, which includes a 200-page Resource Directory, including agencies that may be able to pay the costs for certain reasonable accommodations, and disability organizations that can provide assistance in identifying and locating reasonable accommodations. Finally, the EEOC has a poster that employers may use to fulfill the ADA's posting requirement. The poster and Technical Assistance Manual may be obtained by calling 1-800-959-3652 (Voice); 1-800-326-2577 (TT).