



# Disability Law Center's Self-Advocacy Materials

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## Employment

This document is designed for people with disabilities.

The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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### Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

<https://dlc-ma.org>



## Employment Law and Reasonable Accommodation

### You Will Learn About:

- Employment Laws
- Reasonable Accommodations
- Other Resources

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

# Employment Laws

## What Laws Apply to Employment Discrimination Based on Disability?

- Americans with Disabilities Act (ADA) Title I – employers with 15 or more employees
- Mass. General Laws chapter 151B – employers with 6 or more employees
- Rehabilitation Act of 1973 – federal employees, and employees of federal contractors

## Who is Protected?

An **individual with a disability**, which is defined as a person who has either one of following three:

1. **Physical or mental impairment** that causes a **substantial limitation** of one or more **major life activities**. (See below for examples)
  - Eligible for Reasonable Accommodation? **Yes**
2. **Record of** such an impairment (i.e. cancer survivor, learning disability diagnosis, ...)
  - Eligible for Reasonable Accommodation? **Yes**
3. **Perceived** by employer (**incorrectly**) as having such an impairment.
  - Eligible for Reasonable Accommodation? **No**, but protected against other forms of discrimination.

**Note: Examples of Major life activities** include seeing, hearing, walking, breathing, talking, caring for oneself, thinking, and interacting with others. It also includes the operation of major bodily functions like the immune system, normal cell growth and brain functions.

## Does A Job Applicant Or Employee Have To Disclose That They Have A Disability?

**NO.** Disclosure is only required if an applicant or employee needs a reasonable accommodation. During an interview:

- Employers **cannot** ask you if you have a disability.
- Employers **can** ask if you can perform the essential functions of the job with or without a reasonable accommodation.

**Note:** Not disclosing a disability, if a reasonable accommodation is needed to perform the job, may be risky as protections under state and federal laws only apply to **known disabilities**.

## What Type Of Conduct Is Prohibited?

Federal and Massachusetts' laws prohibit **discrimination in all phases of employment practices** including:

- job application procedures
- hiring
- firing (termination)
- advancement
- compensation
- trainings
- other terms or conditions, and
- privileges of employment

**Note:** An employer's refusal to provide **reasonable accommodation to an employee** may be illegal depending on the specific facts of each case.

## Reasonable Accommodation

### What is a Reasonable Accommodation?

Employers are required to provide reasonable accommodations for individuals with disabilities. A **reasonable accommodation** is a change or adjustment to a job or a work environment that enables a person with a disability to **participate in the job application process** or to **perform the essential functions of the job**.

Three general categories of reasonable accommodation include changes to the:

1. **Job application process**, to enable applicants to be considered for a position.
2. Workplace, to enable employees to enjoy equal **benefits and privileges** of employment.
3. **Work environment or the way a job is typically performed**, to enable an individual to perform the essential functions of the position.

The employee requesting reasonable accommodation must be **qualified**, which means the employee has the skills, experience and/or educational level to meet the job's requirements and can perform the essential job functions of the job with or without a reasonable accommodation. The employee must perform the essential job functions:

- Correctly and within employer's expectations;
- Safely;
- Without reductions in performance; and
- As required by the law or the employer's rules and policies.

There Is No Complete List of Reasonable Accommodations but some examples are as follows:

#### **Examples of reasonable accommodation during the application or job offer process:**

- Written materials in accessible format
- ASL interpreter
- Accessible location for an interview
- Modifications to equipment or devices
- Adjustments to application policies/procedures/tests

#### **Examples of reasonable accommodation on the job:**

- Restructuring a job's essential functions
- Retraining or allowing a job coach
- Making workspaces accessible
- Modifying the employee's work schedule
- Providing qualified readers or interpreters
- Acquiring or modifying and workplace equipment or devices
- Modifying training programs
- Allowing a short leave of absence (additional unpaid leave),
- Telecommuting, or
- Reassigning an employee to a vacant position if they are qualified for the position (this is generally considered an accommodation of last resort).

**Note: Employers are never required to eliminate or reassign an essential function of a job as a reasonable accommodation.**

- Reasonable accommodation issues are decided on a case-by-case basis. The most important factors to consider are whether there is a nexus between the employee's disability and the accommodation requested, the employer's cost or administrative burden to implement the requested accommodation, and whether the requested accommodation presents a potential safety risk.

**NOTE:** Employees must be able to explain the connection between their requested accommodation and their disability, and generally should provide medical support for the accommodation.

## Conditional Job Offer

- Employers may not ask about the existence of a disability, or ask disability-related questions, during an interview or job application process.
- However, employers may ask disability-related questions and require medical exams after extending a conditional job offer.
  1. Employers may require a medical exam or ask questions only if the same process is applied to all others.
  2. Exams should be designed to measure the ability to perform essential functions of the job.
  3. Accommodations must be made so that an individual with a disability may participate in exams equally.
  4. Employers cannot withdraw a job offer solely because a medical exam revealed the existence of a disability.

## How Do I Get A Reasonable Accommodation If I Need One?

**First, make a request in writing and keep a copy.** If you do not make a request, your employer does not need to provide you with an accommodation. Make the request to human resources ("HR") if your employer has an HR department. Otherwise, make the request to your supervisor.

**NOTE:** There is no requirement to make your accommodation request in writing but it is in your best interest to create a written record specifically asking for a reasonable accommodation due to your disability.

**Second,** be prepared to answer your employer's questions. Your employer can ask you for "**medical support**" or limited medical verification, which is medical proof that you have a disability-related need for the requested accommodation. You may want to get this first and submit it with your request for the accommodation to save time. A **recent letter from your doctor or health care provider, which describes the link between your disability and accommodation requested, will generally suffice.**

Your employer is **not** entitled to request information regarding:

- General medical information; or
- Medical conditions or impairments unrelated to the reasonable accommodation requested.

**NOTE:** It is best to **not allow employers to discuss your disability** directly with your doctor, but rather to provide sufficient medical support for your request and offer to follow up with your doctor yourself if your employer has additional questions.

**Third**, be prepared to discuss your request with your employer. This is called an **interactive process**. The interactive process should be a dialogue between the employer and employee to find an effective and reasonable accommodation. During the interactive process, document all verbal communications you have with an email so that you have written record of the interactive process. This will also ensure that you and your employer are on the same page.

## Does An Employer Have To Provide The Exact Accommodation That Employees Requested?

**No.** Employers are only required to provide an **effective accommodation**, which means one that enables the employee to perform the essential functions of the job. It does not have to be the exact accommodation that the employee requested nor the employee's "preferred accommodation."

- Work with your employer during the interactive process to find an accommodation that works for both you and the employer.
- Don't quickly reject a suggestion from your employer for a different type of accommodation than you asked for. Give serious thought to whether or not it will be effective. If you can, try it out first. If it's not working, go back to your employer and reopen the interactive process.
- Employers **do not** have to lower production standards or ignore poor work quality as a reasonable accommodation. They also do not need to remove essential functions of a person's job.

**NOTE:** After your accommodation request, it is important to document your cooperation with your employer during the interactive process. Courts have ruled in favor of the employers in failure to provide reasonable accommodation cases where the employee was responsible for the breakdown in the interactive process.

Employers do not have to provide an accommodation that amounts to an **undue hardship** or that would pose a significant **health or safety risk** to the employee or others. These issues are determined on a case-by-case basis.

**Undue hardship means** a significant difficulty or expense, and focuses on the resources available to the employer in relation to the cost, difficulty, or impact on the organization of providing a specific accommodation.

The **four main factors** in determining **undue hardship** are:

1. Nature and cost of the accommodation needed
2. Overall financial resources of the facility, number of employees, effect on expenses/resources, impact on operations.
3. Overall financial resources, size, number of employees, and type and location of facilities of employer, if the facility involved in the reasonable accommodation is part of a larger entity.
4. The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative/fiscal relationship of the facility.

**NOTE:** Courts have ruled that factors not relevant in determining undue hardship include an employer's stated budget for accommodations, and the cost of an accommodation relative to the employee's salary.

## Other Resources

### How Do I File A Discrimination Complaint?

The employer's failure to provide reasonable accommodations is a form of discrimination, under the ADA and M.G.L chapter 151B section 4. You must file a complaint of employment discrimination within 300 days.

Massachusetts Commission Against Discrimination: (617) 994-6000

<http://www.mass.gov/mcad/>

(MA state agency)

Equal Employment Opportunity Commission: (800) 669-4000

Federal employee EEO process:

<https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>

(Federal agency)

**NOTE:** If you file a complaint with the MCAD then it automatically triggers another complaint with the EEOC.

### Where Can I Find More Information On These Laws?

- Equal Employment Opportunity Commission - <https://www.eeoc.gov/laws/types/disability.cfm>
- Massachusetts Commission Against Discrimination - <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>
- Job Accommodation Network - <https://askjan.org/>