



## Standing Up For Your Rights at Work

This packet contains:

- Information about your employment rights as a person with a disability.
- How to request a reasonable accommodation at work, and a sample letter to help you put your request in writing.
- Information about making a complaint of discrimination to the Equal Employment Opportunity Commission (EEOC).
- Resources and referrals to assist you in finding and maintaining employment.

### **YOUR RIGHTS AT WORK**

The Americans with Disabilities Act (ADA) applies to employers with at least 15 full-time employees. The law forbids these employers from treating people with disabilities unfairly because they have a disability.

You are a **person with a disability** under the law if you have a physical or mental impairment that substantially limits one or more major life activities. You are protected from discrimination based on your disability in employment if you are **qualified** to do the job, meaning that you have the skills, experience, and education to do the job, with or without a reasonable accommodation. If you are unsure if your condition rises to the level of a disability, please feel free to consult with Disability Rights NC.

Discrimination at work can take many forms. It can be a termination, a reduction in pay or hours, denial of a promotion, harassment, or refusal to hire you because of the employer's attitude about people with disabilities. Another common example of discrimination is an employer's refusal to provide reasonable accommodations.

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The law protects you when you stand up for your rights. It is illegal for your employer to fire you or take other steps against you when you assert your rights.

### **“At Will” Employment**

All employment is “at will” in North Carolina. This means that an employer may terminate you at any time for any reason, as long as the reason is not discriminatory. You and your employer can agree that your employment will not be “at will” by entering into an employment contract.

Example: You work in a clothing store. Before starting, you received an employee handbook and filled out a lot of forms. You do not have an employment contract. You are good at your job and this month you are the “employee of the month.” Today, you were told that this is your last shift. Because you are an “at will” employee, the employer has the right to let you go at any time. If you think you were let go for a discriminatory reason, you can choose to stand up for your rights. The purpose of this fact sheet is to help you understand what is and is not disability discrimination.

### **Looking for a Job**

#### **Medical Inquires**

Employers are allowed to ask about disability and request medical information in very limited situations. To learn more, consult the Equal Employment Opportunity Commission website: <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

#### **Job Advertisements**

Job advertisements often include a description of the minimum skills and qualifications you must have to do the job. Sometimes, the job description includes requirements that are not related to the work actually performed in that job. These extra requirements can be discriminatory if they prevent people with disabilities from being considered for the job.

Example: you see an advertisement for a shelf stocker position at a grocery store that requires the ability to lift 20 pounds. This requirement is permissible if shelf stockers regularly lift 20 pounds when they work. The advertisement also includes a requirement that you have a high school diploma. Shelf stockers at this store do not need a diploma to do the job. This requirement may be discriminatory if you did not finish high school because of a disability.

#### **Job Applications**

The job application asks if you are a person with a disability. Employers like to collect this information to show that they have a diverse workforce, which can help them get

government contracts and other funding. However, an employer cannot require you to answer this question or to disclose the exact nature of your disability. It would also be illegal for an employer to use this information to screen out applicants with a disability from being considered for the job.

## **Job Interviews**

You are protected from discrimination during the job application process. During interviews, the employer is allowed to ask if you can perform the job with or without reasonable accommodations. You cannot be asked about your disability, medications you take, or if you have ever been in the hospital. You cannot be required to undergo a medical exam unless you have been offered the job, and then only if all employees in that job must pass a medical exam. The employer can hire the most qualified applicant for the job, and does not have to give preference to an applicant with a disability.

Example: you are interviewing to be a police officer. You cannot be asked whether you have a disability. The interviewer may ask if you can meet the requirements to be a police officer, like being able to run a mile and drive a car. If you are offered the job, you can be required to undergo a medical exam if it is required of all officers.

## **Temp Agencies**

You are protected against discrimination by a temp agency. You may have been discriminated against if a temp agency refuses to look at your application, tells you that there are no openings right now for people with your disability, or that they do not think that you can do the job.

## **Reasonable Accommodations**

A reasonable accommodation is a change to “how things are normally done” at work to allow a person with a disability to perform the job. A job applicant or employee with a disability may request a reasonable accommodation at any time. The employer cannot charge for the cost of making a reasonable accommodation or fire you for asking for one.

Examples of Reasonable Accommodations:

- A person with cancer takes time off for radiation or chemotherapy treatment.
- A person with deafness is provided with a sign language interpreter for a job interview.
- A person whose medication makes them groggy in the morning starts work at 10 a.m.

- A person with blindness has information posted on a bulletin board read aloud to them.
- A person with migraine headaches is permitted to turn off overhead lights.

**You must ASK for reasonable accommodations.** To request an accommodation, follow the policy in your employee handbook.

If there is no policy in your handbook, put your request for an accommodation in writing. In your request, be sure to include:

- That you are a person with a disability.
- That you need a reasonable accommodation to perform a particular job function. Emphasize that the accommodation will increase your productivity and effectiveness.

Give the accommodation request to human resources. If there is no human resources at your work, give the request to your supervisor. At this point, your employer may request proof that you need an accommodation.

**Keep detailed notes and a copy of all correspondence related to your request for an accommodation.** Ask your employer to put all responses in writing. If they do not agree, include their refusal in your notes.

Your employer does not have to make accommodations that result in a significant difficulty or expense. However, your employer must be willing to discuss alternative accommodations that would not be so difficult or expensive.

**The Job Accommodation Network (JAN)** is a free, fantastic resource that helps employees and employers identify and implement reasonable accommodations. JAN is available online at [www.askjan.org](http://www.askjan.org) and by phone at (800) 526-7234.

### **Leave from Work**

The Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA) both provide employees with a right to request time off from work because of a disability.

## ADA

Requires employers to give workers unpaid time off if it would be a reasonable accommodation for a disability.

- Applies when employer has 15 or more employees.
- Employee eligible on first day of employment.
- Job is protected during leave.

## FMLA

Requires employers to give workers unpaid time off to take care of their own or their family member's significant health problem.

- Applies to government/public employers, and private employers with 50 or more employees.
- Employee eligible if has worked at least one year and for 1,250 hours that year.
- Job is protected during leave.

What happens if an employee is protected by both laws and needs to take time off?

### **1. The employee uses FMLA leave first.**

The FMLA provides a maximum of 12 weeks of unpaid, job-protected leave per year. You are not required to take all 12 weeks at once. You may take periods of leave as needed or use it to reduce total hours worked each week. When you return from FMLA leave, your old job or an equivalent one must be waiting for you.

Many employers will require you to use up your vacation and sick days while you are on FMLA leave. For example, you have two weeks of vacation saved up when you request three weeks of FMLA leave. You will have used up all of your vacation time when you get back from leave.

### **2. If the employee needs more time off, the employee may request additional leave as a reasonable accommodation under the ADA.**

There is no guaranteed amount of time you can take off under the ADA. Like all reasonable accommodations, you are entitled to leave only if it is reasonable and is not an undue hardship on the employer. The employer does not have to give you time off if there is another, equally effective accommodation available. For example, it may be equally effective to allow you to work from home, reduce your workload, or transfer you to another position. When you return from reasonable accommodation leave under the ADA, your job must be waiting for you.

## Sample Letter: Requesting A Reasonable Accommodation

Date

Mr. / Ms. \_\_\_\_\_ (Name of human resources or manager here)

Company Name

Address

Dear Mr. / Ms. \_\_\_\_\_:

I have worked at \_\_\_\_\_ (company name) as a \_\_\_\_\_ (position or position in "\_\_\_\_\_ department" if appropriate) since \_\_\_\_\_ (approximate date of hire). I am experiencing the following difficulties in performing my job because of my disability: \_\_\_\_\_.

I am writing to request that you \_\_\_\_\_ (state requested accommodation) because it will \_\_\_\_\_ (how it will help you do your job) as a reasonable accommodation. I have a disability as defined by the Americans with Disabilities Act, and I need this accommodation to successfully perform my job. If you have alternative suggestions regarding reasonable accommodations, please share them with me so we can work together to find a workable and effective accommodation.

For more information about my rights and your responsibilities under the Americans with Disabilities Act, you can contact the Job Accommodation Network at 1-800-526-7234, the Southeast ADA Center at 1-800-949-4232, or the Equal Employment Opportunity Commission at 1-800-669-4000. The Job Accommodation Network also provides examples of possible reasonable accommodations for different disabilities.

If you have any questions about my request you can contact me in writing or by phone. However, I would appreciate a written response to this request within two weeks of the date of this letter. Thank you very much.

Sincerely,

Your name

Your full address

Your phone number

## **Standing Up For Your Rights**

You cannot go straight to court with a claim of employment discrimination. You must first complain to the Equal Employment Opportunity Commission (EEOC). A friend, family member, or anyone else you trust is allowed to help you through the EEOC process. You do not need a lawyer to go to the EEOC, but you can hire one if you want.

You must file a Charge of Discrimination (their name for complaints) at the EEOC within **180 days** of the discrimination you experienced. If you wait more than 180 days, you lose the right to file at the EEOC **and** you lose the right to sue your employer in court for violating the ADA.

If you have a complaint about your right to leave under the Family and Medical Leave Act (FMLA), those complaints go to the US Department of Labor. To learn more, contact the US Department of Labor at 1-866-487-9243, or online at <http://www.dol.gov/whd/>.

## **Preparing Your Charge of Discrimination**

When you complain to the EEOC, you will be asked for the following information:

- Your name, address, and telephone number.
- The name, address, telephone number of the company, employment agency, or union that you are complaining against, and how many employees work there.
- A clear story of how you were discriminated against.
- The date(s) you were discriminated against.

To get prepared to file your charge, it may help to write down your story from start to finish. When you are describing what happened, remember to identify each person in your story. For example, "Mr. Clinton, the assistant store manager, told me that I could not sit on a stool during my shift, and that I should quit if I could not do my job." It may also help to put your story into a timeline to make sure you are telling it in the right order. Keep a copy of your story and timeline!

Here's an example of a timeline:

January 1, 2014	Hired by Mr. Smith.
January 15, 2014	Requested a reasonable accommodation in writing. I asked Mr. Smith if I could take short breaks to check my blood sugar levels. (Copy of letter in my files.)
January 20, 2014	Mr. Smith denied my accommodation request. Said that I get a lunch break and that's it. (He refused to put it in writing, but I have notes from our conversation in my file.)
January 25, 2014	I brought Mr. Smith a note from my doctor explaining that I needed to check my blood sugar after meals. I asked him to reconsider my accommodation request. (Copy in my file.)
February 1, 2014	Mr. Smith fired me. He refused to explain the basis of my termination, but made a comment about needing employees who could work without extra breaks. (I requested a written notice, but he refused.)

### **How to File**

There are four EEOC offices serving North Carolina, and they are located in Charlotte, Greensboro, Raleigh, and Norfolk, Virginia. You can find out which EEOC office serves your county by going to [www.eeoc.gov/field/index.cfm](http://www.eeoc.gov/field/index.cfm), and entering your zip code. All offices are open 8:30 a.m. - 5:00 p.m. Monday through Thursday, and 8:30 a.m. to noon on Fridays. Call your area office to find out whether you can make an appointment to file your charge, or if it is first-come, first-served only. If you need assistance or an accommodation to file your charge, contact the EEOC office for your area and ask for help.

If you communicate in ASL, the EEOC offers an ASL direct video line at 844-234-5122. Someone will be available to answer your questions between 7 a.m. and 6 p.m. ET, Monday through Friday.

You can also begin the process of filing a charge online by completing the EEOC's online intake questionnaire: <https://egov.eeoc.gov/eas/>. Once you complete the questionnaire, you may mail it to the EEOC or take it to your local office in person. If you send your questionnaire by mail, buy delivery confirmation or another tracking service to be sure that the EEOC got your mail. **Remember to send your mail in time for the EEOC to get it within the 180 day timeline.**

The EEOC will send you a receipt once your charge is filed. You should receive the receipt in the mail about two weeks after you file. Contact the EEOC right away if you do not receive a receipt of your charge, it might mean that you have not finished filing your charge yet.

Keep a clean, unmarked copy of all documents and paperwork related to your complaint in one place – a file folder or even a large Ziploc bag work well for this.

### **What to Expect During the EEOC Process**

The EEOC process begins once you are notified that the EEOC has accepted and filed your Charge of Discrimination. At that point, it will be investigated, mediated, and/or conciliated. Each of these stages of the process is described below.

Once the EEOC process begins, some employers voluntarily agree to settle the Charge of Discrimination against them and end the EEOC process. Many others do not. If the EEOC is unable to settle your Charge or believes that you were not discriminated against, the EEOC process ends. The EEOC will send you a "Right to Sue" letter explaining that the EEOC process has ended and notifying you of your right to take your case to court.

- **Investigation**

The EEOC conducts neutral investigations, which means that the EEOC is not on your side or the employer's side during the investigation. The investigator may interview you and the employer to get more facts about your claims of discrimination. The investigator may also ask you and the employer to provide documents relating to your claims. If you want the investigator to know something about your situation, you must tell them. An investigation may last several months.

- **Mediation**

Mediation is a chance to come up with a settlement you and your employer can accept. The EEOC is still neutral, and will work with both sides to explore solutions that would help you and your employer in reaching an agreement. Once a settlement agreement is signed, the EEOC process is finished. You also cannot take your

employer to court.

No one wins or loses the case at mediation. If you and the employer cannot agree on a settlement, the EEOC will continue to investigate your charge of discrimination.

- **Conciliation**

Like in mediation, the goal of conciliation is to settle your charge. The difference is that conciliation only happens after the EEOC finds that you were discriminated against. This puts more pressure on the employer to settle and avoid a court case.

- **Right to Sue Letter**

If a settlement is not reached, the EEOC will give you a “Right to Sue” letter giving you the right to take your case to court. In extremely rare circumstances, the Right to Sue letter may notify you that the EEOC has decided to file a court case on your behalf.

The “Right to Sue” letter will explain the outcome of the investigation into your claims. Sometimes, the outcome is that the EEOC could not determine whether you were discriminated against.

When you receive a Right to Sue letter, **you only have 90 days to file in court from the date of the letter**. If you do not meet this time limit, you lose all of your rights to sue your employer under the ADA!

If you have received a Right to Sue letter and plan to pursue a court case, **immediately** call the EEOC office or your EEOC investigator and ask for a copy of your EEOC file. You may be charged a fee to receive a copy of your file.

### **Preparing for Mediation or Conciliation**

Mediation and conciliation are opportunities to settle your case on your terms. You are strongly encouraged to make reasonable compromises if they will allow you to settle your case.

To prepare for the mediation or conciliation, write down what has happened to you since you were discriminated against or let go. Then write down what your employer can do to fix these things. For example, many people have a hard time finding a new job. During mediation or conciliation, you might ask your employer to pay you for any time spent out of work. You may ask to be re-hired. It is helpful to bring financial documents – like pay stubs, tax returns, and medical bills – to show how much money you claim to have lost.

## **Free Employment Resources and Referrals**

If currently employed and need reasonable accommodations for disability at work:

- Consult with the Job Accommodation Network for assistance identifying reasonable accommodations: [www.askjan.org](http://www.askjan.org)
- Vocational Rehabilitation may provide assistance paying for accommodations if it is not reasonable for employer to pay: [www.ncdhhs.gov/dvrs](http://www.ncdhhs.gov/dvrs)
- NC Assistive Technology Project can assist in identifying technology (and funding sources if it is not reasonable for the employer to pay) to help individuals do their job: [www.ncatp.org](http://www.ncatp.org)

If you need help finding and maintaining work:

- Vocational Rehabilitation: [www.ncdhhs.gov/dvrs](http://www.ncdhhs.gov/dvrs).
- Ticket to Work: [www.chooseworkttw.net](http://www.chooseworkttw.net)
- LME/MCOs provide publicly funded supported employment services and other mental health, behavioral health, and substance abuse services: [www.ncdhhs.gov/mhddsas/lmeonblue.htm](http://www.ncdhhs.gov/mhddsas/lmeonblue.htm).

If you are currently unemployed:

- File complaint at EEOC regarding any employment discrimination that happened *within the last 180 days*. [www.eeoc.gov](http://www.eeoc.gov)
- Contact Division of Employment Security for unemployment benefits: [www.ncesc1.com/individual/default.asp](http://www.ncesc1.com/individual/default.asp)
- If you have questions about the impact of work on your benefits:
- Health Coverage for Workers with Disabilities (Medicaid Buy-In program): contact your local DSS office.

Social Security benefits counseling and work incentives. Locate a benefits counselor by searching: [www.choosework.net/resource/jsp/searchByState.jsp](http://www.choosework.net/resource/jsp/searchByState.jsp)

- Ask about the Student Income Disregard – it allows students to earn money without affecting their eligibility for benefits!

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Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

**Disability Rights North Carolina**

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