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## September 15, 2011

# Career Connection Series: What Are My Employment Rights?

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*By Guest Blogger David Card, National Disability Rights Network*

A common concern for people with disabilities who are employed or seeking employment is discrimination. Workers worry that their employer will fire them, reduce their hours or eliminate their position because they have a disability. Applicants wonder if their resume will be ignored, if they will get past the interview or if an offer will be denied because they have a disability. This blog post will respond to some of these concerns and identify some important employment rights.

A variety of federal laws exist to protect individuals with disabilities from discrimination in employment. Many states also have laws to protect against discrimination in employment based on disability; some of these state laws provide even greater protection than the federal laws discussed below.

In 1990, the United States Congress passed the [Americans with Disabilities Act \(http://www.ada.gov/q%26aeng02.htm\)](http://www.ada.gov/q%26aeng02.htm) (ADA). This groundbreaking civil rights statute was intended to ensure equal opportunity for people with disabilities in employment, public accommodations and services, telecommunications and transportation. The ADA may not apply to all

employment situations, but Title I of the ADA prohibits many employers from discriminating on the basis of disability.

The ADA covers the following employment situations:

- Private employers who have at least 15 employees. This includes locations of a business that have less than 15 employees but whose total number of employees, in all locations, is more than 15. The ADA also applies to labor unions and employment agencies.
- State and local governments. Examples of employment in state and local government include government offices and agencies, public schools, police and fire departments, libraries and museums, parks and recreation facilities.
- The ADA does not apply to the federal government (with the exception of the U.S. Senate). Another law, the Rehabilitation Act of 1973, offers protections for federal workers.

However, the employee or job applicant must meet the definition of disability as described in the law, for the ADA to apply. Disability under the ADA means a “physical or mental impairment that substantially limits one or more major life activities.”

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Finally, for the ADA to apply, the individual has to be qualified – have the skills, education, experiences and licenses – for the job, as well as be able to perform the essential functions of the job with or without reasonable accommodations.

If you are an individual who is experiencing discrimination by an employer based on your disability, there are several things you can do.

Contact your state Protection and Advocacy (P&A) agency. P&As exist in every state and territory and may provide free advocacy services, information and referral, and in some instances, legal representation to people with disabilities. Call your P&A if:

- You want to know what help is available to get or keep a job.
- You want to know what will happen to your benefits if you go to work.
- You have transportation problems getting to and from work.
- You believe you were not hired or given a different job because of your disability.
- You were not given the help you needed to do your job.
- You think people at your job are not treating you fairly because of your disability. Go to [www.ndrn.org](http://www.ndrn.org) (<http://www.ndrn.org>) to find contact information for your P&A.



Another option is the Equal Employment Opportunity Commission (EEOC). The EEOC is the federal administrative agency responsible for investigating claims of discrimination against employers. A person who claims discrimination for violation of Title I of the ADA or certain other federal anti-discrimination statutes must first file a charge of discrimination with the EEOC and follow the agency's process before filing a claim in federal court. Go to [www.eeoc.gov](http://www.eeoc.gov) (<http://www.eeoc.gov>) to get more information about filing an employment discrimination claim.

Most importantly, become your own advocate. The [Job Accommodation Network](http://askjan.org/) (<http://askjan.org/>) (JAN) provides proactive information and resources to help people with disabilities request reasonable accommodations in the workplace. JAN also provides information on the types of accommodations available by disability, and offers general information to help people with disabilities educate themselves to prevent discrimination before an employment interview or accepting a job offer.

This blog post is meant to provide general information about the protection from employment discrimination found in the Americans with Disabilities Act (ADA). If you believe you have experienced employment discrimination based on your disability, contact your state P&A or find other professional legal advice.

In summary, if your situation satisfies the following conditions specified in the ADA, you may have been the victim of employment discrimination based on disability:

1. Work for a covered employer or a private employer with 15 or more employees or a public employer regardless of number of employees. Most federal applicants and employees are covered by a different civil rights law, the Rehabilitation Act of 1973.
2. Have a disability;
  - A physical or mental impairment that substantially limits one or more major life activities;
  - A history of a disability;
  - Are regarded as having a disability.
3. Be otherwise qualified for the desired position; and
  - Have the skills, education, experiences and licenses necessary for the job; and
  - Be able to perform the essential functions of the job with or without reasonable accommodations.
4. Have been discriminated against on the basis of disability.

Posted by Diana Z. on Sep 15, 2011 4:47:36 PM

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