

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice

## A Guide to Title I of the Americans with Disabilities Act

### What is the Americans with Disabilities Act (ADA)?

The ADA is a law that makes it illegal to discriminate against individuals because of their disabilities. The ADA applies to employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

### What is Title I of the ADA?

Title I of the ADA protects individuals with disabilities from discrimination on the basis of a disability in employment. Title I requires employers to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. This means that individuals with disabilities who want to work and who are qualified to work must have an equal opportunity to work.

### Who must comply with Title I of the ADA?

Title I applies to all non-governmental employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

### What rights do I have under Title I of the ADA?

In general, Title I of the ADA protects you from discrimination in all employment practices such as applying for a job, hiring, firing, training, pay, promotion, benefits, and leave.

Title I of the ADA also gives you the right:

- To request a reasonable accommodation for the hiring process and on the job,
- To be free from harassment based on your disability, and
- Not to be disciplined or fired based on your disability.

## How do I know if I am protected by Title I of the ADA?

To be protected under Title I of the ADA, you must be a **qualified individual with a disability**. A **qualified individual with a disability** is a person who, with or without reasonable accommodations, can perform the essential functions of the job. This means that:

- You have a physical or mental disability that substantially limits a major life activity, a record of having an impairment, or regarded as having such an impairment.
- Major life activities may include, but are not limited to: caring for oneself, hearing, speaking, seeing, concentrating, thinking, walking, standing, lifting, bending, learning, reading, breathing, communicating, working or performing manual tasks.
- Major life activities also include 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, circulator, endocrine, and reproductive functions.
- You meet the required skill, experience, education and other job-related requirements of the position, and
- You can perform the essential functions of the position, with or without a reasonable accommodation.

## What are the essential functions of a job?

The essential functions of a job are the duties that you must be able to perform with or without the assistance of a reasonable accommodation. Reasons why a job function may be considered essential include, but are not limited to:

- The reason the position exists is to perform that specific function,
- The function may be highly specialized so that you are hired for your expertise or ability to perform the particular function, or
- Only a few people are able to do that job.

Specific essential functions of a job depend on the type of job that you do. However, some examples of essential functions may include, but are not limited to:

- Regular attendance at work,
- Driving,
- Squatting, or
- Lifting

## What are my rights when I apply for a job?

When you apply and/or interview for a job, Title I of the ADA restricts the employer from asking certain questions. For example, the employer may **Not** ask you:

- About your disability,
- About your health,
- About your medications, or
- If you have been in the hospital.

## **Can a potential employer ask me about my disability?**

The employer can ask you questions about your health and require medical examinations:

- **After** the employer offers you a job,
- **Before** you start the job,
- **And Only** if it is required for all new employees.

Remember, the employer **cannot** use any of this information to exclude you from the job if you can do the essential functions of the job, with or without a reasonable accommodation.

## **What are my rights after I am hired and start working?**

Title I of the ADA gives you the following rights:

- To request reasonable accommodation for the hiring process and on the job,
- To be free from harassment based on your disability, and
- Not to be disciplined or fired because of your disability.

## **What is a reasonable accommodation?**

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to work. Examples of reasonable accommodations may include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by people with disabilities,
- Modifying work schedules or reassignment to a vacant position,
- Acquiring or modifying equipment or devices,
- Adjusting or modifying examinations, training materials, or policies,
- Providing qualified readers or interpreters.

## **Can a reasonable accommodation be denied?**

Maybe. If the employer knows about your disability, then they are required to make a reasonable accommodation for you as long as it does not impose an “undue hardship.” This means that if the accommodation is too expensive or difficult on the operation of the employer's business, they may not be required to make the accommodation. Reasonable accommodations are determined on a case-by-case basis and must be related to your disability.

## **How do I request a reasonable accommodation?**

Employers are required to have a designated employee who coordinates efforts to comply with ADA Title I provisions. Contact this designated person, such as your supervisor or Human Resources Department, to learn more about the accommodations already in place or to request the accommodation you will need.

If you need a reasonable accommodation, then you will need to tell the employer about your disability and why your disability requires this assistance. Make sure to do this *in writing*. In your letter, ask your employer to respond in writing. If they do not, but agree to provide you with accommodations, send them a “Thank You” letter. A “Thank You” letter is useful to show that they received your letter, acknowledged your disability, and have agreed to provide job accommodations.

## **What can I do if I think I have been discriminated against because of my disability?**

If you have been discriminated against, **Do Not Wait!** In Nebraska, you must file your discrimination complaint within **300 days** of the date on which you were discriminated against by an employer. You can file a discrimination complaint by filing with the Nebraska Equal Opportunity Commission (NEOC). In addition, an individual, organization, or agency may file a charge on your behalf in order to protect your identity. You may wish to contact Nebraska Advocacy Services, Inc. for help in filing a NEOC complaint.

To file a discrimination complaint with the Nebraska Equal Opportunity Commission (NEOC), contact them at any of the following offices:

### **Lincoln**

Nebraska Equal Opportunity Commission  
State Office Building  
301 Centennial Mall South, 5<sup>th</sup> Floor  
PO Box 94934  
Lincoln, Nebraska 68509-4934  
Phone 402-471-2024 / 1-800-642-6112  
Fax 402-471-4059

### **Omaha**

Downtown Education Center/State Office Building  
1313 Farnam Street, 3<sup>rd</sup> Floor  
Omaha, NE 68102-1836  
Phone 402-595-2028 / 1-800-382-7820

### **Scottsbluff**

Panhandle State Office Complex  
4500 Avenue I  
P.O. Box 1500  
Scottsbluff, Nebraska 69363-1500  
Phone 308-632-1340  
Fax 308-632-1341

The phone lines are open Monday through Friday from 8:00 am until 5:00 pm (Central Time) except on state holidays.

You can also file directly with the U.S. Equal Opportunity Commission (EEOC). However, if you file with the NEOC, the NEOC will automatically file a complaint on your behalf with the U.S. EEOC. You can contact the U.S. EEOC Denver District Office at:

EEOC Denver District Office  
303 E. 17th Avenue, Suite 410  
Denver, Colorado 80203  
Phone 800-669-4000 / TTY 800-669-6820  
Fax 303-866-1085

The Denver District Office is open Monday through Friday from 8:00 am until 4:30 pm (Central Time). An automated phone system is available 24-hours a day.

Visit the U.S. Equal Opportunity Commission (EEOC) website for more information at <http://www.eeoc.gov/>.

### **What happens after I file a complaint with NEOC?**

- The NEOC notifies the employer that a discrimination complaint has been filed.
- The NEOC may suggest mediation. Mediation is voluntary, free, and completely confidential
- If NEOC determines that a violation has occurred, the NEOC will try to settle the matter informally.
- If the matter cannot be settled, the EEOC will send you a “right to sue” letter. A “right to sue” letter allows you to file your own lawsuit as long as it is within 90 days of when you receive the letter.
- If NEOC determines that a violation has **not** occurred, you will receive a “no reasonable cause” letter.
- You may then file your own lawsuit or request a “substantial weight review” to the U.S. EEOC.

### **Can I appeal if the NEOC determines that a violation did not occur?**

No, but you can write to the U.S. EEOC and request a “substantial weight review.”

- This review must be requested within 15 days of receiving the NEOC's decision. The U.S. EEOC will then examine the case and render their decision. You must include your NEOC number in your communication with the U.S. EEOC.
- To request a “substantial weight review,” write to:

U.S. EEOC  
Mary Jo O'Neill  
303 East 17th Avenue, Suite 510

**Can the employer retaliate against me if I file a discrimination complaint?**

No. People who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. Retaliation includes threats, intimidation, harassment, or firing. In other words, if you are being discriminated against and you file a complaint, or if you know someone who is being discriminated against and you help them during their complaint process, you are protected.