



## **The Americans with Disabilities Act (ADA) and Disability-Related Harassment**

### **A Self-Advocacy Guide**

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

This guide is available in alternative formats upon request.

# The Americans With Disabilities Act (ADA) and Disability-Related Harassment

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## **A. Disability-Related Harassment**

### **1. Scope of this Guide**

This guide is meant to explain and describe: (1) Harassment based on disability; (2) when an employer is liable for harassment, and (3) some ways of dealing with harassment. The ADA protections described are available only to people who are qualified individuals with a disability under the ADA or who are harassed because of an association with a person with a disability (for example, a parent, son, daughter, friend, or co-worker of a person with a disability). If you are uncertain whether you are protected under the ADA, the Center has a guide that explains the meaning of the words, *disability* and *qualified*. The title of that guide is, *An Overview of the Employment Protections of the ADA*.

This guide is not intended to inform you about all employment-related claims, only those having to do with disability-related harassment under the ADA. This guide does not cover:

- retaliation;
- state law protections, such as worker’s compensation claims;
- tort claims related to harassment; or
- criminal claims related to harassment.

Rasool works at a restaurant. He has a psychiatric illness. Several of his co-workers were very prejudiced and afraid of him because of his disability. To try and harass Rasool, they spray-painted his car with the word “crazy” and slashed his tires. Rasool’s co-workers may not only be harassing him in violation of the ADA, but also may have committed a crime. This guide does not cover criminal law and penalties. Report criminal conduct at the workplace to your employer. Your employer should report crimes to the police. If it does not, you should report crimes directly.

Josefina has cerebral palsy. Her supervisor calls her offensive names related to her disability frequently and in front of all other employees. Josefina is humiliated and distressed by this treatment. She suffers physical symptoms, such as ulcers, that may be related to the treatment. Her employer may be in violation of the ADA. Josefina may have other state claims for emotional distress, including worker’s compensation. This guide does not provide information about these kinds of claims. For more information, contact a private attorney handling worker’s compensation. Visit the Arizona State bar directory at [www.azbar.org](http://www.azbar.org) for a list of attorneys specializing in worker’s compensation.

### **2. The Difference Between Disability-Related Harassment and Common,**

## Everyday Harassment.

The ADA was created to provide workers with disabilities a “level playing field” in the workplace. It requires employers to provide accessible facilities, to make special accommodations to the needs of protected workers, and to have employment practices that do not discriminate. The ADA also prohibits harassment based on disability, just as other federal laws prohibit harassment based on race, gender, national origin and religion.

It is important to understand the difference between harassment and disability-related harassment. The law does not protect workers with disabilities, or any workers, from rude or uncivil people. The harassment must be severe and related to a person’s disability for the ADA to offer protection.

Jane has a hearing impairment. She sometimes has problems understanding what people say to her. Dan is her supervisor. Dan is not a very pleasant person. He is constantly calling Jane and other workers lazy and slow. He often screams and yells when things do not go smoothly on the production line. Jane feels like Dan does not like her and the other workers.

Dan may be harassing Jane in the common everyday meaning of harassment. Unfortunately, even though Dan’s behavior is not how we would like to see supervisors behave, it is not disability-related harassment. Let’s look at a situation that is very similar to the one in the first example.

Jane has a hearing impairment. She sometimes has problems understanding what people say to her. Dan is her supervisor. Dan is not a very pleasant person. He is constantly calling Jane and other workers lazy and slow. He also makes comments to Jane like “what’s the matter, didn’t you hear me?” and “can’t you understand anything? I thought you were deaf, not stupid.”

Here, Dan’s harassment is related to Jane’s disability. It doesn’t matter if Dan is mean and rude to everyone else as well. When Dan’s harassment is severe and focuses on Jane’s disability, it is disability-related harassment. Making hostile comments is not the only form of disability-related harassment. Offensive jokes about persons with disabilities and offensive gestures and behavior can also be disability-related harassment.

### **3. The Difference Between Disability-Related Harassment and Retaliation.**

Another kind of treatment that is commonly confused with disability-related harassment is retaliation. Retaliation is adverse action taken against an employee because the employee (1) opposed action by an employer that violated the ADA, or (2) participated in filing a formal

complaint with the Equal Employment Opportunity Commission or the Arizona Civil Rights Division of the Attorney General's Office. An employer can use "harassment" to retaliate. For example, an employer can harass an employee because the employee requested an ADA accommodation. An employer could also retaliate by harassing an employee who filed an ADA charge of discrimination when denied a promotion. Both retaliation and disability-related harassment violate the ADA. It is useful to know the difference between retaliation and harassment when you are making a complaint to the EEOC.

Bob has paraplegia. He uses a wheelchair. Sue is Bob's supervisor. Part of Bob's job includes occasionally going to the room where the old files are stored to get these old files. Some of the files are on high shelves that Bob has trouble reaching without help. Bob asked Sue if someone else could do the job of getting the old files. Sue said no. Before this, Bob had never had any problems with Sue. Bob decided to make a request for an accommodation to the department head, who is Sue's boss. Sue was furious. She yelled at Bob for 15 minutes and told him that if he ever went above her head again that she would "make him sorry". She asked him to withdraw his request for an accommodation. Bob refused.

During the next week, Sue began to ask Bob to do things that had never been part of his job before. She started asking him to deliver papers all over the building. Bob had no problem doing this because the building was wheelchair accessible, but it took him quite a bit longer than it would have anyone not in a wheelchair because the accessible elevator was on the other side of the building. Sue complained to Bob that he was taking too long to do these deliveries. Bob tried to explain why it took him longer to deliver the papers, but Sue wasn't interested. Bob tried to do the deliveries faster, but Sue wrote him up when he took longer than 15 minutes. After being written up 3 times in the next week, Sue fired him. When Bob complained to the EEOC, he told them he was harassed in retaliation for requesting an ADA accommodation.

#### **4. Other Types of Discrimination**

Sometimes, other types of discrimination feel like harassment. When an employer treats a person differently because of his/her disability in any of the conditions or terms of employment, it may feel like harassment. For example, if a person with a disability has been working for the company for many years and has never been permitted to go to a training to improve his skills, yet employees with less company seniority are often sent to training, this may be discrimination in the terms of employment. For more information about your right as a person with a disability to equal treatment, see the Center's guide, "*An Overview of the Employment Protections of the ADA.*" In addition, when an employer refuses to make changes to the work or workplace so an individual can do his/her job or enjoy the benefits of employment, it may be an unlawful failure to accommodate. For more information about your

rights regarding accommodations, see the Center’s guide, *“The ADA and Reasonable Accommodations.”*

## **B. Proving Disability-Related Harassment**

### **1. Introduction**

The ADA does not include a specific prohibition against harassment. Most courts looking at this issue have decided that the ADA prohibits disability-related harassment because of disability because employers must prevent discrimination in the terms and conditions of employment. This means employers must prevent a hostile workplace.

### **2. Elements of a Claim**

To prove unlawful harassment under the ADA, you must be able to prove the following:

- you work or formerly worked for a covered employer;
- you are a person with a disability; with a record of a disability; or are regarded as disabled;
- you are or were qualified to perform your job;
- you faced a hostile work environment; and
- you were harassed by a co-worker or a third party and your employer knew or should have known about the harassment.

George’s co-workers suspect he is HIV-positive because he is gay. They spray painted his locker with the words “God’s punishment” and hung plastic gloves around the office for people to use to avoid physical contact with George. George does not have HIV but he is still protected under the ADA from disability-related harassment, as he is “regarded” as a person with a disability.

### **3. Harassment**

**The harassment is so severe that it changes the conditions of your employment and creates an abusive working environment or results in a tangible employment action.**

The conditions of your employment must change when someone harasses you because of your disability. The conditions of your employment may change because the workplace is hostile or because of an “employment action.” Either change may support a claim of harassment under the ADA.

**Hostile Work Environment.** A disability-based harassment claim under the ADA means that your workplace is so full of discriminatory intimidation, ridicule and insult toward you that it has become an abusive place to work. These claims are called “hostile work environment” claims. The ADA does not prohibit simple teasing, offhand comments and isolated incidents. To decide if the harassment is “severe” or “pervasive” enough to create a hostile work environment, courts look at:

- whether the discriminatory conduct has happened only once or many times;
- how bad the treatment is;
- whether it is physically threatening or humiliating; and
- whether it unreasonably interferes with your ability to work.

Occasional hurtful remarks by co-workers will not usually be severe enough for a successful ADA claim, unless the occasional treatment develops into a pattern of abusive treatment. Even if some co-workers refuse to talk or associate with a disabled individual, it may not be enough to support an ADA claim for harassment because courts recognize that employers cannot force employees to get along with each and every other employee.

Juanita is deaf. Her co-workers ignore her and don't try to learn any signs so she can talk to them on breaks or at lunch. It is a simple fact that in a workplace, some workers will not get along with each other. A court will usually not find “cold shouldering” enough for an ADA claim. However, in another example, Juanita's co-workers tease her by moving their fingers at her as though they were using sign language. The co-workers pretend they are talking to her by making mouth movements just to confuse her. She is called “deaf and dumb” by people at work. Neither her co-workers or supervisor will write notes to her about important things she needs to know at work. Juanita may have a claim for disability harassment and failure to accommodate by writing notes.

Generally, one instance of harassment will not amount to discriminatory changes in the “terms and conditions of employment.” However, even a one-time event may be severe enough to create a hostile work environment. The standard a court uses to decide if conduct is unlawful is whether a reasonable person would find the action offensive.

Because of a disability, Alberto needs to use two crutches with wrist straps in order to walk. He works evening shifts as a telephone solicitor. Alberto usually sets his crutches beside his desk while he is working. One night, two co-workers decided to pull a prank on Alberto. They took his crutches and hid them. They told the other workers what they were up to, including the assistant manager, who was in charge of the night shift. Then they pulled the fire alarm. Alberto heard the fire alarm and looked for his crutches so that he could exit the building. His crutches were gone and he did not know the alarm was a prank. The other employees acted like they were leaving the building and exited the floor. They left him alone for 30 minutes. When he tried to crawl to the exit, they came back and laughed at him. Even though this only happened once, Alberto most likely has a claim for disability-related harassment because this conduct was so severe any reasonable person would find it offensive.

**Tangible Employment Action.** The conditions of your employment will also change when the harassment results in an “employment action.” Harassment that results in a tangible employment action will be enough to show severe harassment. A “tangible employment action” means an *important* change in your employment status, not just a minor change. It usually causes you direct economic harm, and most of the time can only be caused by a supervisor or a person acting with the authority of the company. Examples of tangible employment actions may include:

- ✓ firing;
- ✓ failure to promote;
- ✓ demotion;
- ✓ a reassignment that you did not want;
- ✓ a significant change in your benefits;
- ✓ a decrease in your pay;
- ✓ a negative change in your work assignment;
- ✓ a dramatic increase in your workload;
- ✓ reassignment to a position that reduces earning capacity;
- ✓ reduction in hours;
- ✓ refusal to grant reasonable leave requests.

Javier has a severe type of diabetes. He needs to take insulin at certain times and sometimes needs to eat small snacks. He asked his supervisor for an accommodation of a 15 minute break every two hours. Shortly after the supervisor found out about Javier’s disability, she reassigned him to a different department. If Javier’s salary and benefits are the same, and the supervisor only reassigned him because the other department already has 15 minute breaks every two hours, that probably would not be an ADA violation. However, if the supervisor told Javier that she was reassigning him because she was personally bothered by needles and did not want him taking shots in her department, that would be a tangible employment action and Javier would have a claim of disability-related harassment under the ADA.

The mere threat of an employment action is not enough to support an ADA claim.

**The harassment must be unwelcome.**

Jaime is deaf. He works at a department store in the shipping and receiving department. Jaime and his supervisor Erin have a professional relationship. On a frequent basis, Erin makes uninvited and offensive remarks about deaf people. Jaime has been subject to unwelcome harassment.

Aheem is blind. He works at a restaurant as a cashier. Aheem and his co-worker Brian, who is overweight, are constantly making fun of each other's conditions in a good natured way. One day while they are teasing each other, Brian makes a joke about blind people. Because of the nature of their relationship, Aheem has probably not been subject to unwelcome harassment.

**The harassment must be based on your disability, your association with a person with a disability or your request for an accommodation.**

The person who is harassing you must be doing it because of your disability or your need for an accommodation. It is not enough that they harass you because they do not like you or because they harass everyone.

Maria is a person who has cerebral palsy. She works for a local fast food restaurant. The assistant manager is named Fred. Fred yells at Maria and the other employees frequently. Sometimes he curses. He says things like: "Hurry the \_\_\_ up!" and "What the \_\_\_ is taking you so long?" Even though most people would agree that Fred should not talk to the employees that way, unfortunately Maria will probably not have an ADA claim if the evidence shows that Fred uses abusive language with many employees, not just Maria, and that he acts no more harshly toward Maria than he does to anyone else. This is probably not harassment that violates the ADA.

However, if Fred only yells and curses at Maria and not at other employees, calls Maria offensive names like "Spaz" and "Retard", and treats her differently than other employees, this may be harassment that violates the ADA.

## C. The Rules About Employer Liability For Disability-Related Harassment

### 1. Introduction.

Employers are generally responsible to provide a work place that is free of serious offenses and abuse that are based on a person’s disability. For example, employers should not permit a work place where a worker who is mentally retarded is called “retard,” is not allowed to eat with co-workers, or is subjected to co-workers’ offensive mimicking. Owners of a company, supervisors, managers, co-workers and third parties, such as customers, can speak or take action that creates a hostile work place. An employer is responsible for the workplace no matter who causes the hostile environment, but the courts understand that employers may not know about the harassment unless it is reported. Courts have created different rules about harassment, depending on who does the harassing. Below is a chart with examples.

<i>If the harasser is a(n):</i>	<i>then the employer is liable for the harassment when</i>	<i>Unless the employer can show that</i>
Owner, manager, stockholder, CEO, or president	the harassment occurs.	
Supervisor	the harassment occurs and results in a negative employment action.	
Supervisor	the harassment occurs and causes a hostile working environment	it took reasonable steps to prevent and to quickly stop harassing behavior <u>and</u> the employee unreasonably failed to take advantage of the employer’s efforts to prevent or stop the harassing conduct or to avoid harm.
Co-worker	the employer knew or should have known about the discrimination.	it took immediate and appropriate corrective action.
Non-employees (e.g., customer, student, sales personnel)	the employer knew or should have known about the discrimination	it took immediate and appropriate corrective action.

## **2. Owner Harassment**

Companies are made up of people. Some people, such as owners, CEOs, directors, and stockholders “are” the company. When people who are the company harass, the company is automatically liable for the harassment.

Albert & Sons owns a restaurant that employs 40 part- and full-time employees. J.E. Albert, one of the owners, is also the restaurant manager. Lydia has worked as the Director of Catering for the restaurant for 8 years. However, she develops breast cancer and must have a mastectomy and chemotherapy. When she returns to work on a half-time basis, J.E. Albert makes numerous offensive remarks including “She’s not a real woman anymore” and speculates out loud whether “can she satisfy her husband.” He leaves photos of well-endowed women on her desk and bulletin board. He does this frequently and over many months. It is not necessary that Lydia reported the harassment because the harasser is a co-owner.

## **3. Supervisor Harassment**

Because a supervisor is given direct authority over an employee, the employer is responsible under the ADA for harassment by that supervisor. An individual is an employee's supervisor if he or she:

- a) has the power to make or recommend employment decisions affecting the employee, and
- b) directs the employee’s daily work activities.

Whether a harasser is a supervisor is determined by his or her job function, not his/her job title.

Jim, an individual living with HIV, works in a "team" environment. His "team leader" has made several derogatory comments about Jim's illness and has even gone so far as to say that it is not worth making the effort to promote Jim. The team leader makes recommendations regarding promotions. In this situation, the team leader is a supervisor.

An employer is always liable for harassment by a supervisor if that harassment results in some sort of employment action (e.g., firing, change in work assignment, reduction in pay or hours, etc.) This is because an employer is responsible for the acts of its supervisors; and employers should be encouraged to prevent harassment. However, even if an employment action does not result from the harassment, an employer may be liable if the harassment creates a hostile work environment. The employer will be liable for a hostile work environment created by a supervisor unless the employer can show that: (1) it took reasonable steps to prevent and stop harassment, and (2) the employee unreasonably failed to use the employer’s steps to correct or prevent the harassment.



Bette supervises the nursing assistants at a nursing home. One day she sees Joe, a nursing assistant, take some medication with his lunch. She asks him what type of medication he is taking, and he voluntarily tells her he is taking prescribed medicine to treat his bipolar condition. From that day on, Bette treats Joe badly. She calls him “crazy,” “looney,” and a “nutcase” in front of patients and staff. When things get busy at work, she asks if he is “going to crack under the pressure.” On breaks, she asks him if “he has ever had shock treatment” or “tried to off himself.” She also tells other workers she hopes he will just quit before he screws up. The nursing home is liable for Bette’s harassment unless the nursing home can show they had a complaint procedure and would have promptly stopped Bette’s harassment, but Joe unreasonably refused to complain.

#### **4. Co-Worker Harassment**

An employer is liable for a co-worker’s harassing conduct if it knew or should have known of the co-worker's misconduct, unless it can show it took immediate and appropriate corrective action.

Ingrid is deaf. Her co-workers often mimic her, force her to speak, and make derogatory comments about her deafness. Her work environment has become a hostile one. This situation has continued for approximately 6 months at the same level of "hostility". Ingrid mentioned the problem several times to her shift supervisor. Ingrid's supervisor is aware of this situation and should have taken some sort of corrective action (possibly sensitivity training and discipline of offending employee), but it has not happened. Her employer is liable for the harassment by her co-workers because it has not taken any steps to correct the action.

Sara is a sous chef at a restaurant. She took some medical leave for a hospitalization related to suicidal tendencies due to severe depression. When she returned to work, a small group of her co-workers had learned about the reason for her leave and began taunting her. One day, all the knives at her work station were hidden and a note was left that no one wanted her to hurt herself. Another instance involved a bottle of candy pills that were left spilled all over her purse. Sara reported it but the management did not investigate or take any steps to correct it. The employer is liable for the harassment.

#### **5. Non-Employee Harassment**

An employer is liable for a non-employee’s harassing conduct if it knew or should have known of the non-employee’s misconduct, unless it can show it took immediate and appropriate corrective action. In most places of employment, there are other people who enter a workplace or are part of a workplace who are not employees. For example, a store, movie theater, restaurant or gallery will have patrons and customers. Also places of employment may have independent contractors who work at the facility. For example, a hospital may employ nurses,

nurses aides, medical clerks and therapists, but the doctors are independent contractors and not employees. To become responsible for the non-employee's harassing conduct, the employer must know about it. This is because it is more difficult for an employer to be aware of all of the day-to-day events at a workplace, particularly when they involve non-employees.

Jarod teaches 7th-8th graders language arts/history at a private school. The students come to believe that Jarod is gay and jump to the conclusion that he is HIV positive or has AIDS. The students spray paint offensive references to HIV in the men's bathroom. The school did not repaint the wall for over a month and did not investigate the students believed to be involved. The school will likely be liable for the harassment caused by the students.

#### **D. Duty to Employees to Avoid or Limit Harm**

In general, an employee facing harassment from a supervisor (not an owner) has a duty of reasonable care. This means that as an employee, you must use all available means of prevention *provided by the employer* to avoid harm. Failure to do this could result in the employer escaping its legal liability or possibly being required to pay less money if there is a judgment against it. As an employee, you must be aware of the opportunities made available by your employer to employees (such as a grievance procedure) to report problems and use them if faced with workplace harassment. However, there are certain situations in which failure to use the procedures might be considered reasonable. For example, if the employee reasonably believes that:

- ❖ the employer does not have a complaint system that has been given out or made available to employees;

Julie is a full-time cashier in a major department store. She is hard of hearing and requires the use of a hearing aid. After a month, Julie is periodically bothered by fellow employees, who poke fun at her and use her hearing impairment as a subject for their jokes and harassment. Julie wants to approach her supervisor about the situation, but is unaware of any avenues for her harassment complaint. As a new employee, she has not been made aware of any complaint system. There is nothing posted in the employee's lounge or in the materials given to her by her employer. Julie's employer has a duty to make all employees aware of the existence of a complaint system. In this instance, Julie's failure to make a complaint would probably be reasonable.

- ❖ a risk of retaliation exists for those who use the complaint process;

Sophie is faced with harassment. She wants to file a complaint with her supervisor. However, the supervisor and the harasser are close friends. Sophie is concerned that her complaint will not be given the proper attention. The procedure does not offer any exceptions for making a complaint to someone other than a supervisor. She does not file a complaint, and the situation continues. In this case, Sophie may have acted reasonably by not filing a complaint.

- ❖ obstacles to complaints were present;

James is autistic and cannot read or write. He works as a dishwasher. The cooks and other dishwashers make fun of him. He wants to complain and tells his supervisor about the problem. His supervisor tells him he will only accept a formal written complaint and does not offer to help him write his complaint. James has not failed to take reasonable steps.

- ❖ the process for complaints was ineffective.

Shop-Mart has a written harassment policy that is available on-line. All new employees are provided training about the complaint procedures. Anyone can come to the training room to look at the policy on-line. Jerry wants to complain about customers who taunt him and treat him badly because he is an amputee, but his store manager has a well-deserved reputation for never checking into complaints and telling people to work it out for themselves. Also, several of Jerry's co-workers were marked poorly on their evaluation for not getting along with others after they made a complaint of harassment. Jerry is probably acting reasonably when he does not use these procedures.

Generally, it is better to put your complaint in writing so that you can later prove that you did let your employer know about the harassment by a co-worker, supervisor, or non-employee. You should also send a copy of your complaint to the owner or director of the company. However, at times there may be other reasons you might be justified in not making a complaint. For advice, call the ADA Employment Advice Line or a private attorney.

## **E. Employer's Responsibility to Prevent/Stop Harassment**

An employer has a duty to act reasonably to prevent and correct any harassment. The most effective way of exercising this duty is through an effective complaint procedure provided to all the employees in the workplace. If written and used properly by the employee, the employer can, in some cases, discourage harassment before it takes place and, in other cases, address it immediately to limit the harm.

To meet its duty, an employer should establish, publicize, and enforce anti-harassment policies and complaint procedures. It is the EEOC's position that all policies should be clearly understandable and accessible to all employees in the workplace. In addition, an employer

should provide extra training focusing on harassment so that all employees will be made aware of these policies.

The EEOC advises that an employer's complaint procedure should:

- ❖ provide a clear explanation of conduct that is against the law;
- ❖ assure employees who make complaints of harassment or provide information related to such complaints that they will be protected against retaliation;
- ❖ describe a complaint process that provides accessible avenues to make a complaint;
- ❖ be flexible about the format of the complaint;
- ❖ assure that the employer will protect the confidentiality of harassment complaints to the extent possible;
- ❖ make accommodations in the complaint process as needed for people with disabilities (e.g., large print policy for visually impaired employee; an interpreter to interview an employee who is deaf and complaining about harassment);
- ❖ provide a prompt, thorough, and impartial investigation; and
- ❖ assure that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

The policy should focus on the *prevention* of harassment. An effective policy of anti-harassment provides employees with protection so that they may avoid potential harassment *before* it happens. The complaint procedure should also encourage employees to report instances of harassment. It should be set up to prevent employees from being intimidated by reporting these incidents. One effective method to avoid intimidation is to have employees report complaints to other employees who are outside of the direct line of command. An employee will be more willing to report harassment if he/she does not have to go through a "higher-up" who was directly involved in the incident. The policy should also contain information on important dates and deadlines for filing a complaint with the EEOC.

Even if your employer does not have a harassment policy, you should report harassment by a co-worker, supervisor or third party to your employer.

## **F. Steps to Take If Your Employer Does Not Take Appropriate Action**

### **Practical Tips to Help You Deal with Harassment**

- check any materials you were given as an employee or that are available to all employees (e.g., internet site) to see if there is a procedure for reporting discrimination and harassment to your employer;
- if there is no procedure for reporting complaints, see if there is a procedure for reporting

any problems and use it;

- keep a journal of what has been done to you, by whom, when, how often, where and how this affected your ability to do your job;
- be specific about the harassment that occurred;
- **even if you are not sure whether the misconduct is offensive enough to be unlawful ADA harassment, you can still report it. It gives your employer a chance to stop offensive conduct before it becomes unlawful.**
- talk with a trustworthy friend or a hotline for support...problems at work can be hard to live through, and sometimes it can seem like you're imagining things;
- if you are not afraid of the harasser, talk to the offender and tell them the behavior is offensive and keep notes of this conversation (and date them);
- talk to your supervisor or another person in authority and tell them what's happening;
- put your complaint in writing;
- use the 'legal' words defined and explained in this guide so your employer will have a clear idea of what you are requesting; and
- send a copy of the complaint to the management or owner of the company.

Keep in mind that in most cases of harassment (except by owner, CEO, director, etc.), the employer is not liable unless he/she knew or should have known about the harassment. This means that in general it is a good idea for employees to report the harassment to the company. If there is a complaint procedure for reporting harassment, you should use the procedure to notify the company.

### **Get Legal Advice**

One way to get brief legal advice is to call the Arizona Center for Disability Law at 1-800-927-2260 (toll-free statewide) or at (602) 274-6287 in the Phoenix area, to an experienced advocate or attorney who can provide you with information about the protections of the ADA.

If you want more information, you may request copies of the Center's self-advocacy guides about the employment protections of the ADA and sign up for a free legal training in Tucson or Phoenix. Information about the guides and training is available at [www.azdisabilitylaw.org](http://www.azdisabilitylaw.org). The Center can also provide you with lists of attorneys who practice employment law in Tucson and Phoenix.

## **File a Charge of Discrimination**

You can also file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). "Charges" are complaints of discrimination. You can do it immediately or wait until you have first complained to your employer. The EEOC will investigate your charge and determine whether there is reasonable cause to believe discrimination has occurred. It will then issue a right to sue letter in all cases (except for the few selected cases in which it will file a lawsuit). In Arizona, the Civil Rights Division of the Arizona Attorney General's Office (ACRD) will also take your charge. You do not have to pay to file a charge with these offices. You can call (800) 669-4800 (voice) or (800) 669-4820 (TTY) for the EEOC or (520) 628-6500 for the ACRD in Southern Arizona.

You must file a charge with the EEOC or the ACRD to be allowed to bring a lawsuit for employment discrimination based on disability. You have 180 days to file a charge under state law and up to 300 days to file under federal law. For more complete information about filing a charge, please see the Center's guide "How to Enforce Employment Rights under the Americans with Disabilities Act." Before you go to the EEOC or ACRD, please read the guide.

## **G. Introduction to the Americans with Disabilities (ADA) and this Guide**

### **1. What Does the ADA Cover?**

On July 26, 1990, the ADA was passed by Congress. The ADA provides major civil rights protection to individuals with disabilities. The intent of this federal law is to reduce barriers to persons with disabilities and provide equal opportunity in employment, public accommodations, public services, transportation, and telecommunications. The various titles of the ADA affect many aspects of the lives of people with disabilities.

- Title I makes it unlawful to discriminate against qualified people with disabilities in employment.
- Title II makes it unlawful for state and local governments and their agencies to discriminate in programs and services, including public transportation.
- Title III prohibits discrimination in access and enjoyment of public accommodation and commercial facilities, such as hotels, motels, restaurants, professional offices, doctor's offices, lawyer's offices, convention centers, stores, banks, museums, parks, schools, and recreation facilities.
- Title IV requires accessibility of telecommunication services to hearing impaired persons and other individuals with disabilities.
- Title V provides for recovery of legal fees and establishes a mechanism for technical assistance. Additionally, Title V includes a provision prohibiting either (a) coercing or

threatening or (b) retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

## **2. How Does the Arizona Center for Disability Law Assist People with Disabilities?**

If you believe you have been discriminated against on the basis of a disability in employment or access to public services, public accommodations, public transportation or telecommunication services, staff at the Arizona Center for Disability Law can provide you with information about the ADA and enforcing your rights under the ADA. The Arizona Center for Disability Law is a non-profit, public interest law firm providing fee advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal representation to individuals with disabilities and advocacy organizations throughout Arizona. The Center is the designated protection and advocacy (P&A) system providing services for Arizonans with a wide range of physical and mental disabilities. Assistance is provided for disability-related issues in established priority areas.

Information about the eligibility requirements and priorities are available from the Center upon request. Assistance is provided according to program eligibility requirements, priorities and staff availability.

### **This Guide is Not a Substitute for Legal Advice!**

**The Arizona Center for Disability Law recommends that persons obtain professional legal advice to resolve a legal dispute regarding discrimination on the basis of a disability. This guide is not a substitute for legal advice. This guide is meant to provide people with disabilities with information and examples about employment protections under the ADA. The information in this guide is based in part on court cases interpreting the ADA. Courts in the various parts of the country interpret the ADA differently. Not all of this information may be true for people living outside of Arizona.**

## **3. Why Does the ADA Include Employment Protections?**











Oftentimes, people with disabilities do not have an equal opportunity to work or advance in their employment. People with disabilities are often restricted in employment opportunities by many different kinds of barriers. Some face physical barriers that either make it difficult or impossible to get into and around a workplace or to use work equipment at the site. Some are excluded because they communicate differently than their co-workers. Still others are excluded because of rigid work schedules which do not permit flexibility for people with special needs because of a disability.

In other cases, people are not denied opportunities because of actual barriers, but because of

prejudice. These are the barriers in other people's minds: fears, stereotypes, presumptions and misconceptions about job performance, safety, absenteeism, costs or lack of acceptance by co-workers and customers.

Congress enacted the ADA to eliminate these barriers to equal opportunity in employment. The ADA makes it unlawful for an employer covered by the law to discriminate against applicants and employees with disabilities. The United States Equal Employment Opportunity Commission (EEOC) is responsible for enforcing this law. People with disabilities also have the right to bring private lawsuits against employers who discriminate against them if they first file a charge of discrimination with the EEOC within the time limits set out by the ADA. See the Center's guide, *How to Enforce Your Employment Rights Under the ADA*, for more information about how to file a charge. However, the U.S. Supreme Court recently ruled that private individuals may not sue state employers for money damages under the ADA. Individuals may still file charges of discrimination with the EEOC against their state employer for other relief, such as court orders to stop discrimination. The U.S. Government can still file lawsuits against states for violating the ADA.

The list of guides available through the Center about employment rights under the ADA include:

-  *An Overview of the Employment Protections of the Americans with Disabilities Act (ADA)*
-  *The ADA and the Job Applicant*
-  *The ADA and Reasonable Accommodations*
-  *The ADA and Drug Testing*
-  *How to Enforce Employment Rights Under the ADA*
-  *The ADA and Medical Examinations*
-  *The ADA and Confidentiality of Medical Information*
-  *Taking Action—How to File a Charge When You've Been Treated Unfairly by an Employee Because You Have a Disability*
-  *How to Ask Your Employer for an Accommodation That You Need*
-  *Have you been Treated Unfairly at Work?*

#### **4. When Do the ADA Employment Protections Apply?**

The ADA does not cover every employment situation between an applicant and an employer or an employee and an employer. For the ADA to apply to an employment arrangement, each of the following has to be true:

- the employer is covered by the ADA;

- the employee or applicant has a disability according to the ADA;
- the employee or applicant is qualified to perform the job; and
- the employer discriminates against an applicant or employee on the basis of disability.

For more information about each of these requirements, see the guide, *An Overview of the Employment Protections of the ADA*.

## 5. What Employers are Covered by the ADA?

### ▪ **The ADA applies to private employers with 15 or more employees.**

- Includes employment agencies and labor unions.
- Includes a location or facility of a business with less than 15 employees whose total number of employees for the company in all locations and facilities combined equal 15 or more.

Other laws may apply to persons with disabilities who are employed by smaller businesses. For more information, contact the Arizona Center for Disability Law or a private attorney.

### ▪ **The ADA applies to state and local governments.**

- Includes all state and local governmental agencies, departments and entities regardless of their size or number of employees. Although the ADA applies to state employers, the U.S. Supreme Court recently ruled that employees (and applicants) can not sue state employers in court for money damages. Individuals can still file charges of discrimination with the EEOC against their state employer. Individuals can still sue to require state employers to take action or stop discriminatory action. The U.S. Government can still file lawsuits against state employers under the ADA.
- Examples of state and local employers include: public schools, public universities, police and fire departments, public libraries, museums, public parks and recreation facilities, and social welfare offices.

### ▪ **The ADA does NOT apply to the federal government.**

The ADA does apply to employees of the U.S. Senate. However, generally if a person with a disability works or applies for a job with the federal government, a federal agency, or a fully owned U.S. Government corporation, then the ADA does not apply. However, the Rehabilitation Act of 1973 is another anti-discrimination law that offers employment protections. For more information about that law, contact the Arizona Center for Disability Law or an EEO officer of the federal agency where you work or a private attorney.

### ▪ **Title I (Employment) of the ADA does NOT apply to Indian Tribes.**

Tribes may have their own affirmative action or anti-discrimination laws which may address discrimination on the basis of disability. Some tribes have adopted tribal laws or entered into agreements to abide by federal discrimination laws similar to the ADA. Contact a tribal legal office for more information about the tribal laws or agreements that may apply.

## **H. Legal Resources**

Lawyer Referral Service for Maricopa County  
Maricopa County Bar Association  
Phoenix, AZ  
(602) 257-4434

Provides referrals to attorneys practicing in the area of your legal problem at a reduced rate for the initial consultation.

Self Service Center  
Maricopa County Superior Court  
101 W. Jefferson, 4<sup>th</sup> Floor  
Phoenix, AZ  
(602) 506-7353

Maintains a list of lawyers willing to advise self-represented individuals on a per-hour, non-retainer basis.

Lawyers Referral Service for Pima County  
Pima County Bar Association  
Tucson, AZ  
(520) 623-4625

Provides referrals to attorneys practicing in the area of your legal problem at a reduced rate for the initial consultation.

Mohave County Bar Association  
c/o Delores Milke, President  
Mohave County Bar Association  
519 Hall Street, 1<sup>st</sup> Floor  
Kingman, AZ  
(520) 753-1177 ext 13

Provides a list of practicing attorneys for individuals to call to find an attorney.

<b>Services for People with Low Incomes</b>	
<b>Office</b>	<b>Telephone Number</b>
Southern Arizona Legal Aid (SALA) - Tucson Office	(520) 248-6789
SALA - Cochise County office	(800) 231-7106
SALA - Safford Office	(800) 293-4213
SALA - Lakeside Office	(520) 537-8383
SALA - Santa Cruz Office	(520) 587-9441
Community Legal Services - Maricopa County Volunteer Lawyer Program	(602) 258-3434
Community Legal Services - Mesa Office	(602) 833-1442
Community Legal Services - Urban Indian Law Project	(602) 263-0021
Community Legal Services - Westside Office	(602) 934-7867
Community Legal Services - Four Rivers Indian Legal Services	(602) 874-8150
Community Legal Services - Mohave Office	(800) 255-9031
Community Legal Services - Yavapai County Office	(520) 445-9240
Community Legal Services - Yuma/La Paz County Office	(520) 782-7511
Coconino County Legal Aid	(520) 774-0653
White Mountain Legal Services	(520) 338-4845
DNA People's Legal Services - Window Rock Office	(520) 871-4151
DNA People's Legal Services - Chinle Office	(520) 674-5242
DNA People's Legal Services - Tuba City Office	(520) 283-5265

**Arizona Modest Means Panel**

(602) 266-2322

People with incomes that are 125-200% of the Federal Poverty Guidelines may receive low-cost assistance from the Arizona Modest Means Project. For those who qualify an initial 30-minute consultation is provided and further assistance costs \$30 per hour.

Also available from the Center are attorney referral lists for Tucson and Phoenix and some surrounding communities. Please call and request an attorney referral list if you would like one.