Know Your Employment Rights Under the ADA

A Guide for Veterans

Kentucky Affiliate of the Southeast ADA Center
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The Americans with Disabilities Act (ADA)

Over the past decade, millions of veterans have returned from serving in Iraq and Afghanistan. Many have returned with disabilities. It is estimated that nearly 40,000 men and women veterans have a service-related disability. Disabilities include such things as the loss of limbs, spinal cord injuries, hearing and vision loss, severe burns, PTSD, and traumatic brain injury (TBI).

As a veteran with a disability, you are protected under the Americans with Disabilities Act (ADA). The ADA is a civil rights act, enacted in 1990, that guarantees that people with disabilities have the same opportunities and rights to participate in life activities as any other citizen. There are ADA regulations governing employment, access to goods and services provided by businesses, equal access and participation in state and local government programs and services.

Who is Protected

The ADA has a broader definition of disability than the military. The ADA defines a person with a disability as:

- An individual who has a physical or mental impairment that substantially limits one or more major life activities. Major life activities include such things as:
  - Caring for oneself
  - Performing manual tasks
  - Walking, seeing, hearing, speaking, breathing
  - Learning
  - Concentrating, thinking

- An individual who has a record of such impairment

- An individual who is regarded, or treated by an employer, as having such an impairment

This does not include persons who abuse legal and illegal drugs and are not in a rehabilitation program, individuals who are homosexual and bisexual or individuals with certain behavior disorders.
Title I of the ADA

Title I of the ADA protects you from discrimination in your job search.

An employer cannot discriminate against you if you are a qualified applicant. A qualified applicant is defined as:

An individual who meets the skill, experience, education and other job-related requirements of a position held or desired and who with or without reasonable accommodation can perform the essential functions of the job.

The qualifying requirements include the education, experience, skills, licenses and certifications needed and that all applicants must meet. A reasonable accommodation is a change in job procedures (for example, providing applications in large print, allowing more time to take a job-related test), a change in the way an essential function is performed, or a modification in the work environment, such as a raised desk to accommodate a wheelchair.

Essential functions are the fundamental job duties, for example, packing 100 boxes an hour, operating a binder.

Employers cannot discriminate against you just because you have a disability in regard to employment practices or terms, conditions and privileges of employment. This includes:

- application
- promotion
- layoff/recall
- testing
- termination
- evaluation
- assignments
- leave
- training
- compensation
- benefits
- disciplinary actions
- medical examinations

**What does this mean?** It means that if you apply for a job as a cook and you have the experience, the skills, the education required and can meet the duties described in the application, you cannot be denied that job based solely on the fact that you have one arm. Also, if you have had that job in the past and return to the job after a deployment where you had an arm amputation, you cannot be fired from that job if you can prove that you still meet the job requirements and perform the essential functions, even if you need an accommodation.
Do Veterans have preference?

An employer is not required to hire you over other applicants, although as a veteran you may be given preference if the employer chooses to do this. There are several initiatives that support employers in giving preference to veterans with disabilities. (See page 8)

Reasonable Accommodation
Reasonable accommodation is a critical component of Title I of the ADA. Reasonable accommodation is any change in the work environment or in how things are usually done that results in an equal employment opportunity. An employer is not required to make a reasonable accommodation if it has an excessive cost or fundamentally alters the nature or operation of the business. Reasonable accommodations may include, but are not limited to:

- Making structural changes to improve access
- Modifying the work schedule, for example delaying your job’s daily start and end time to accommodate paratransit schedules
- Reassignment to another available position if possible
- Acquiring or modifying equipment or devices
- Providing training materials in large print or allowing more time on tests
- Modifying policies, for example, allowing a service animal to accompany an employee

What does this mean? It means that you may ask for an application in large print. It means that an employer may give you increased breaks if you have difficulty standing for a long period of time. It may mean that you have a computer terminal that has screen reading or magnifying software if you have a vision disability. It could mean that even though you have the same job title as the person next to you, your exact duties or how you do them are different as long as you both perform the job’s essential functions. It could mean that you have a flexible schedule to go to doctor’s appointments.

When asking for an accommodation based on your disability, if your disability is not readily known or obvious, you may be asked to provide a note from your medical provider documenting that you have a disability that prevents you from doing specific activities without one or more reasonable accommodations. However, the documentation does not need to disclose the full details about the full nature and severity of your disability.

If there is no reasonable accommodation that will allow you to perform the essential functions of the job position, then you are not a “qualified employee with a disability” under the ADA.
Disclosing your disability

Even if you have an obvious disability, an employer is prohibited from asking you about it. You do not need to disclose a disability on an application. However, if you need something like extra time to take a job-related test, or an application in a different format, or want to make sure the interview will be held in an accessible location, you may want to request an accommodation.

At the application and interview stage of employment, an employer is not allowed to ask you directly or on the application form if you have a disability. However, an employer may ask on an application form or directly if you are a disabled veteran if being a disabled veteran gives you additional “points” or a preference over other equally qualified applicants. It must be stated in writing by the employer that this information is for affirmative action purposes. This is legal as long as it is being requested for affirmative action purposes only and, even then, you are not required to answer.

Also, if your disability is obvious and it seems likely that you may need a reasonable accommodation, an employer may ask if an accommodation is needed and what that might look like. An employer may also ask you to describe or demonstrate how you would perform a job duty. However, before a job is offered, an employer may not ask specific questions about the type of disability, how long you have had it, or how it was acquired.

**What does this mean?** As you complete an application, you might tell an employer that you have a disability and you will need extra time to take a test. You still do not need to disclose the exact nature of your disability.

If the job you are applying for requires you to lift boxes, and you are in a wheelchair, you may be asked to talk about how you would do that, you may be asked to demonstrate how you would do it and you may be asked what you would need in order to lift the boxes.

Once an employer makes a job offer, it is then legal to ask specific questions about your disability or injury. It is also legal to ask that you have a medical exam, as long as medical exams are required of all other employees or applicants in that specific job position.
Violation of your employment rights

If you feel that your employment rights have been violated based on your disability, you may elect to make a formal complaint with the EEOC.

- File a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC). This must be filed by mail or in person at the local EEOC office within 180 days of the alleged violation. If your state has an anti-discrimination law and an agency authorized to enforce it, a complaint must be presented to that state or local agency first.

- In any case, it is best to contact the EEOC promptly when discrimination is suspected. EEOC will contact you to let you know that your complaint has been received—and to inform you if you must first file with a state or local agency.

- The EEOC will send you and the employer a copy of the charge and may ask for supporting documentation.

- You and your employer may be asked to “mediate” the charge with the EEOC’s mediation program. This is a free service, confidential and voluntary.

- If not sent to mediation, or if mediation is unsuccessful, the EEOC will investigate to determine if there is “reasonable cause”.

- If the EEOC fails to find “reasonable cause” it may send you a notice of “right to sue”, which will give you 90 days to file a court action.

- If you have access to an attorney, please consult with your attorney before filing a court action.

- There are different rules governing a complaint against a federal employer. You must contact the agency’s EEO Office and speak with an EEO counselor.
Veteran employment initiatives and related web sites:

- Vietnam Era Veteran’s Readjustment Assistance Act (VEVRAA)
  - VEVRAA Overview and Materials
    www.dol.gov/compliance/laws/comp-vevraa.htm
  - VEVRAA – Office of Federal Contract Compliance Programs (OFCCP)
    www.dol.gov/ofccp/regs/compliance/ca_vevraa.htm

- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
  and 2011 updates
  - USERRA Overview and Materials
    www.dol.gov/compliance/laws/comp-usera.htm
  - USERRA Advisor
    www.dol.gov/elaws/vets/usera/usera.asp

- VetGuide from the U.S. Office of Personnel Management (OPM)
  www.opm.gov/staffingportal/vetguide.asp

- Disabled Veterans Affirmative Action Program (DVAAP)

- Equal Employment Opportunity Commission (EEOC)
  www.eeoc.gov

- Veterans Employment and Training Service (VETS)
  www.dol.gov/vets

- Office of Federal Contract Compliance Programs (OFCCP)
  www.dol.gov/ofccp/

- Career One Stop – Pathways to Career Success
  www.careeronestop.org

- National Resource Directory
  www.nationalresourcedirectory.gov

- Employer Assistance and Resource Network (EARN)
  www.askearn.org

- Job Accommodation Network (JAN)
  www.askjan.org

- ADA National Network
  wwwadata.org

- Southeast ADA Center
  www.adasoutheast.org