

APPENDIX A

**UNITED STATES COURT OF APPEALS  
For the Eleventh Circuit**

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No. 21-10545

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District Court Docket No.  
4:20-cv-00269-HLM

ZACHARY E. COLEY,

Plaintiff - Appellant,

versus

SHAW INDUSTRIES, INC.,  
Plant 3,

Defendant - Appellee.

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Appeal from the United States District Court for the  
Northern District of Georgia

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**JUDGMENT**

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: September 27, 2021  
For the Court: DAVID J. SMITH, Clerk of Court  
By: Jeff R. Patch

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-10545  
Non-Argument Calendar

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D.C. Docket No. 4:20-cv-00269-HLM

ZACHARY E. COLEY,

Plaintiff-Appellant,

versus

SHAW INDUSTRIES, INC.,  
Plant 3,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Georgia

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(September 27, 2021)

Before ROSENBAUM, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Zachary E. Coley filed a *pro se* lawsuit alleging that his former employer,

Shaw Industries, Inc., violated the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, when it refused to reduce his hours as a reasonable accommodation for his disability and then terminated his employment on August 12, 2019. The district court dismissed Coley’s complaint because he did not timely file a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) within 180 days after his termination. Coley appeals, but he has not shown that his EEOC charge was timely or that his untimely charge should be excused. We therefore affirm the dismissal of his complaint.

We review *de novo* the district court’s dismissal of a complaint and its application and construction of a limitations provision. *See La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004). We liberally construe the filings of *pro se* parties. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014). Nevertheless, *pro se* parties must still comply with procedural rules, *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007), including limitations periods, *see Outler v. United States*, 485 F.3d 1273, 1282 n.4 (11th Cir. 2007) (“[P]ro se litigants, like all others, are deemed to know of the . . . statute of limitations.”). In other words, “[l]iberal construction does not mean liberal deadlines.” *Wayne v. Jarvis*, 197 F.3d 1098, 1104 (11th Cir. 1999), *overruled on other grounds by Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003).

To file a claim for employment discrimination under the ADA, the plaintiff

must first exhaust his administrative remedies, beginning by filing a charge of discrimination with the EEOC. *Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001); *see* 42 U.S.C. § 12117(a) (incorporating the enforcement provisions of 42 U.S.C. § 2000e-5). In a “non-deferral” state,<sup>1</sup> such as Georgia, the plaintiff must file a charge of discrimination with the EEOC within 180 days after the date of the alleged discriminatory act. 29 C.F.R. § 1626.7(a); *Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1317 (11th Cir. 2001). In cases alleging unlawful termination, the “180-day period is counted from the date the employee receives notice of termination.” *Wright v. AmSouth Bancorporation*, 320 F.3d 1198, 1201 (11th Cir. 2003). If the plaintiff does not submit a timely EEOC charge, he generally may not challenge the alleged discriminatory conduct in court. *Alexander v. Fulton Cnty.*, 207 F.3d 1303, 1332 (11th Cir. 2008).

Here, the district court did not err in dismissing Coley’s complaint for failure to file a timely EEOC charge. Coley’s EEOC charge, which was attached to his complaint, reflects that he received notice of his termination by Shaw Industries on August 12, 2019, so he needed to file a charge of discrimination within 180 days of

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<sup>1</sup> Whether a state is a “deferral” or “non-deferral” state depends on whether it has laws banning the kind of discrimination alleged and whether it has state entities authorized to grant or seek relief for victims of such discrimination. *Hipp v. Liberty Nat’l Life Ins. Co.*, 252 F.3d 1208, 1214 n.2 (11th Cir. 2001). If a state has laws and entities to redress the discrimination alleged, the EEOC “defers” to the state processes in the first instance, and plaintiffs ordinarily have additional time (300 days instead of 180 days) in which to file their EEOC charge. *Id.*

that date. *See Wright*, 320 F.3d at 1201; *Wilkerson*, 270 F.3d at 1317. But Coley did not submit his EEOC charge until June 11, 2020, when he “digitally signed” it, more than 300 days later. Because Coley’s current claims under the ADA were not “the subject of a timely-filed EEOC charge,” they could not be brought in court, and the district court properly dismissed them. *See Alexander*, 207 F.3d at 1332.

Liberally construing his brief on appeal, Coley acknowledges that he “made some errors,” but he asks this Court to exercise “compassion[] and lenien[cy]” in light of his lack of experience or an attorney, the difficulties presented by the COVID-19 pandemic, and his attempt to exhaust his administrative remedies. Before the district court, Coley also asserted that he had timely filed with the EEOC but his “case worker failed [him]” due to “personal family issues.” Finally, Coley makes arguments for relief based on provisions of the Georgia Code.

The filing of a timely EEOC charge is a non-jurisdictional “requirement that, like a statute of limitation, is subject to waiver, estoppel, and equitable tolling.” *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982). “Equitable tolling pauses the running of, or ‘tolls,’ a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.” *Fedance v. Harris*, 1 F.4th 1278, 1284 (11th Cir. 2021) (quotation marks omitted). Absent one of these exceptions, however, we must “strict[ly] adhere[] to the procedural requirements specified by the legislature,”

*Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618, 632 (2007), and we cannot disregard a limitations period out of sympathy for a litigant, *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 152 (1984).

Coley has not presented grounds to excuse his untimely EEOC charge. He does not identify any conduct by his former employer that would warrant applying the doctrines of waiver or estoppel. Nor does he present grounds for equitable tolling. The allegations concerning his EEOC case worker raise the possibility that a circumstance outside his control prevented him from filing the charge of discrimination on time. *See Fedance*, 1 F.4th at 1284. But while equitable tolling might be available in such a scenario, we cannot say it applies here because Coley failed to provide any supporting facts about the case worker's conduct, how it prevented him from filing on time, or why he believes his EEOC charge was timely. *See Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993) ("The burden is on the plaintiff to show that equitable tolling is warranted."). And he has abandoned those issues on appeal by failing to address them in his briefing. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned.").

Because the record reflects that Coley failed to file a timely charge of discrimination with the EEOC, and he has not presented grounds to excuse the untimely filing, his claims under the ADA cannot be brought in court, and the district

court properly dismissed them. *See Alexander*, 207 F.3d at 1332. Nevertheless, our ruling applies to Coley's ADA claims only and does not prevent him from seeking recourse in state court under the state-law provisions he cites in his briefing.

For these reasons, we affirm the dismissal of Coley's complaint.

**AFFIRMED.**

## APPENDIX: B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

FILED IN CHAMBERS U.S.D.C. ROME
Date: Jan 14 2021
JAMES N. HATTEN, Clerk
By: s/Karl Butler
Deputy Clerk

ZACHARY E. COLEY,

Plaintiff pro se,

v.

SHAW INDUSTRIES, INC.,

Defendant.

CIVIL ACTION FILE

NO. 4:20-CV-0269-HLM-WEJ

**ORDER AND  
FINAL REPORT AND RECOMMENDATION**

This matter is before the Court on plaintiff pro se Zachary E. Coley's application to proceed in forma pauperis [2], and for frivolity review pursuant to 28 U.S.C. § 1915(e)(2). After consideration of the affidavit of indigence, the Court **GRANTS** the Motion to Proceed IFP. Plaintiff shall be allowed to proceed without prepayment of filing fees or docket costs. However, process will not issue at this time. Upon review of the Complaint [1], the undersigned **REPORTS** that this case is frivolous and, therefore, **RECOMMENDS** that the Complaint be **DISMISSED**.

### III. CONCLUSION

The Court **GRANTS** plaintiff's Motion to proceed in forma pauperis [2].

The Court **RECOMMENDS** that this action be **DISMISSED** under 28 U.S.C. § 1915(e)(2) for failure to state a claim upon which relief can be granted.

The Clerk is **DIRECTED** to terminate the reference to the undersigned Magistrate Judge.

**SO ORDERED AND RECOMMENDED**, this 14th day of January, 2021.

  
\_\_\_\_\_  
WALTER E. JOHNSON  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

ZACHARY E. COLEY,

Plaintiff,

v.

SHAW INDUSTRIES, INC.,

Defendant.

CIVIL ACTION FILE  
NO. 4:20-CV-0269-HLM-WEJ

ORDER

This case is before the Court on the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [6] and on Plaintiff's Objections to the Final Report and Recommendation [9].

**I. Standard of Review**

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The Court “must make a de novo determination of those portions of a magistrate judge’s report and recommendation to which an objection is made.” Kohser v. Protective Life Corp., 649 F. App’x 774, 777 (11th Cir. 2016) (per curiam). “However, where a litigant fails to offer specific objections to a magistrate judge’s factual findings, there is no requirement of de novo review.” Id. “A specific objection must ‘identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection.’” Id. (quoting Heath v. Jones, 863 F.3d 815, 822 (11th Cir. 1989)). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort v. Prem, Inc., 208 F. App’x 781, 784 (11th Cir. 2006) (per curiam). Legal conclusions, of course, are subject to de novo review even if no party

specifically objects. LeCroy v. McNeil, 397 F. App'x 554, 556 (11th Cir. 2010) (per curiam).

## **II. Discussion**

On November 20, 2020, Plaintiff filed an application for leave to proceed in forma pauperis. (Docket Entry No. 2.) On January 14, 2021, Judge Johnson issued his Order and Final Report and Recommendation. (Order & Final Report & Recommendation (Docket Entry No. 6).) Judge Johnson granted Plaintiff's application for leave to proceed in forma pauperis, and he recommended that the Court dismiss this case for failure to state a claim for relief. (See generally id.)

Plaintiff filed Objections to the Order and Final Report and Recommendation. (Objs. (Docket Entry No. 9).) The Court finds that the matter is ripe for resolution.

The Court agrees with Judge Johnson that Plaintiff's Complaint does not state a claim for relief. (Order & Final Report

& Recommendation at 3-4.) Specifically, Plaintiff failed to file his charge of discrimination with the EEOC in a timely fashion, and he failed to exhaust his administrative remedies. (Id. at 4.) Nothing in Plaintiff's Objections warrants rejecting the Order and Final Report and Recommendation. The Court adopts the Order and Final Report and Recommendation, overrules Plaintiff's Objections, and dismisses this case.

### **III. Conclusion**

ACCORDINGLY, the Court **ADOPTS** the Order and Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [6], **OVERRULES** Plaintiff's Objections [9], and **DISMISSES** this case. The Court **DIRECTS** the Clerk to **CLOSE** this action.

IT IS SO ORDERED, this the 29th day of January, 2021.

/s/ Harold L. Murphy

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SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

Zachary E. Coley,  
Plaintiff,  
vs.  
Shaw Industries, Inc. Plant 3,  
Defendant.

CIVIL ACTION FILE  
NO. 4:20-cv-269-HLM

**JUDGMENT**

This action having come before the court, Honorable Harold L. Murphy, United States District Judge, for consideration of the Magistrate Judge's final report and recommendation, and having adopted said report, it is

**Ordered and Adjudged** that the action be **DISMISSED** under 28 U.S.C. Section 1915 (e) (2) for failure to state a claim upon which relief can be granted.

Dated at Rome, Georgia, this 29th day of January, 2021.

JAMES N. HATTEN  
CLERK OF COURT

By: s/B Hambert  
Deputy Clerk

Prepared, Filed, and Entered  
in the Clerk's Office  
January 29, 2021  
James N. Hatten  
Clerk of Court

By: s/B Hambert  
Deputy Clerk

## APPENDIX: C

**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA):** The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):**

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one major life activity** need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last fewer than six months.

**“Regarded as” coverage:**

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

**Note:** *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).



# **Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act of 2008**

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- expands the definition of "major life activities" by including two non-exhaustive lists:

- the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
- the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- changes the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.

EEOC will be evaluating the impact of these changes on its enforcement guidances and other publications addressing the ADA.

**Effective Date:**

The ADA Amendments Act is effective as of January 1, 2009. EEOC's regulations to implement the equal employment provisions of the ADA Amendments Act are effective as of March 25, 2011.



# Your Employment Rights as an Individual with a Disability

This technical assistance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

**OLC Control Number:**

EEOC-NVTA-1992-1

**Concise Display Name:**

Your Employment Rights as an Individual with a Disability

**Issue Date:**

01-01-1992

**General Topics:**

ADA/GINA

**Summary:**

This document provides basic explanations for the employment provisions of the ADA

**Citation:**

ADA, Rehabilitation Act, 29 CFR Part 1630

**Document Applicant:**

Employees, Employers, Applicants, HR Practitioners

**Previous Revision:**

No

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## **Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008**

This document was issued prior to enactment of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which took effect on January 1, 2009. The ADAAA broadened the statutory definition of disability, as summarized in this [list of specific changes](#).  
<https://www.eeoc.gov/statutes/notice-concerning-americans-disabilities-act-ada-amendments-act-2008>

[The Americans with Disabilities Act of 1990](#) (<https://www.eeoc.gov/americans-disabilities-act-1990-original-text>) (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications. This booklet explains the part of the ADA that prohibits job discrimination. This part of the law is enforced by the U.S. Equal Employment Opportunity Commission and State and local civil rights enforcement agencies that work with the Commission.

## **What Employers Are Covered by the ADA?**

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,

- employment agencies,
- labor organizations,
- and labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the ADA, enforced by the U.S. Department of Justice, prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the ADA establishes overlapping responsibilities in both EEOC and DOJ for employment by State and local governments, the Federal enforcement effort is coordinated by EEOC and DOJ to avoid duplication in investigative and enforcement activities. In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor similarly coordinate the enforcement effort under the ADA and the Rehabilitation Act.

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## **Are You Protected by The ADA?**

If you have a disability and are qualified to do a job, the ADA protects you from job discrimination on the basis of your disability. Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity. The ADA also protects you if you have a history of such a disability, or if an employer believes that you have such a disability, even if you don't.

To be protected under the ADA, you must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing,

seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

If you have a disability, you must also be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. This means two things. First, you must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, you must be able to perform the essential functions of the job with or without reasonable accommodation. Essential functions are the fundamental job duties that you must be able to perform on your own or with the help of a reasonable accommodation. An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job.

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## What is Reasonable Accommodation?

Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include:

- providing or modifying equipment or devices,
- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- adjusting or modifying examinations, training materials, or policies,
- providing readers and interpreters, and
- making the workplace readily accessible to and usable by people with disabilities.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the

accommodation would be an undue hardship -- that is, that it would require significant difficulty or expense.

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## **What Employment Practices are Covered?**

The ADA makes it unlawful to discriminate in all employment

- practices such as:
- recruitment
- firing
- hiring
- training
- job assignments
- promotions
- pay
- benefits
- lay off
- leave
- all other employment related activities.

It is also unlawful for an employer to retaliate against you for asserting your rights under the ADA. The Act also protects you if you are a victim of discrimination because of your family, business, social or other relationship or association with an individual with a disability.

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## **Can an Employer Require Medical Examinations or Ask Questions**

# About a Disability?

If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability. An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can also ask you to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

An employer cannot require you to take a medical examination before you are offered a job. Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for that job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. The employer cannot refuse to hire you because of your disability if you can perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your employer cannot require that you take a medical examination or ask questions about your disability unless they are related to your job and necessary for the conduct of your employer's business. Your employer may conduct voluntary medical examinations that are part of an employee health program, and may provide medical information required by State workers' compensation laws to the agencies that administer such laws.

The results of all medical examinations must be kept confidential, and maintained in separate medical files.

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# Do Individuals Who Use Drugs Illegally Have Rights Under the ADA?

Anyone who is currently using drugs illegally is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from testing applicants or employees for current illegal drug use.

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# **What Do I Do If I Think That I'm Being Discriminated Against?**

If you think you have been discriminated against in employment on the basis of disability after July 26, 1992, you should contact the U.S. Equal Employment Opportunity Commission. A charge of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to file a charge if there is a State or local law that provides relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact EEOC promptly if discrimination is suspected.

You may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States. If you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to hiring, promotion, reinstatement, back pay, or reasonable accommodation, including reassignment. You may also be entitled to attorneys fees.

While the EEOC can only process ADA charges based on actions occurring on or after July 26, 1992, you may already be protected by State or local laws or by other current federal laws. EEOC field offices can refer you to the agencies that enforce those laws.

To contact the EEOC, look in your telephone directory under "U.S. Government." For information and instructions on reaching your local office, call:

- (800) 669-4000 (Voice)
- (800) 669-6820 (TDD)
- (In the Washington, D.C. 202 Area Code, call 202-663-4900 (voice) or 202-663-4494 (TDD).)

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## **Can I Get Additional ADA Information and Assistance?**

The EEOC conducts an active technical assistance program to promote voluntary compliance with the ADA. This program is designed to help people with disabilities understand their rights and to help employers understand their responsibilities under the law.

In January 1992, EEOC published a Technical Assistance Manual, providing practical application of legal requirements to specific employment activities, with a directory of resources to aid compliance. EEOC publishes other educational materials, provides training on the law for people with disabilities and for employers, and participates in meetings and training programs of other organizations. EEOC staff also will respond to individual requests for information and assistance. The Commission's technical assistance program is separate and distinct from its enforcement responsibilities. Employers who seek information or assistance from the Commission will not be subject to any enforcement action because of such inquiries.

The Commission also recognizes that differences and disputes about ADA requirements may arise between employers and people with disabilities as a result of misunderstandings. Such disputes frequently can be resolved more effectively through informal negotiation or mediation procedures, rather than through the formal enforcement process of the ADA. Accordingly, EEOC will encourage efforts of employers and individuals with disabilities to settle such differences through alternative methods of dispute resolution, providing that such efforts do not deprive any individual of legal rights provided by the statute.

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## **More Questions and Answers About the ADA**

### **Q. Is an employer required to provide reasonable accommodation when I apply for a job?**

A. Yes. Applicants, as well as employees, are entitled to reasonable accommodation. For example, an employer may be required to provide a sign language interpreter during a job interview for an applicant who is deaf or hearing impaired, unless to do so would impose an undue hardship.

**Q. Should I tell my employer that I have a disability?**

A. If you think you will need a reasonable accommodation in order to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodation only for the physical or mental limitations of a qualified individual with a disability of which they are aware. Generally, it is the responsibility of the employee to inform the employer that an accommodation is needed.

**Q. Do I have to pay for a needed reasonable accommodation?**

A. No. The ADA requires that the employer provide the accommodation unless to do so would impose an undue hardship on the operation of the employer's business. If the cost of providing the needed accommodation would be an undue hardship, the employee must be given the choice of providing the accommodation or paying for the portion of the accommodation that causes the undue hardship.

**Q. Can an employer lower my salary or pay me less than other employees doing the same job because I need a reasonable accommodation?**

A. No. An employer cannot make up the cost of providing a reasonable accommodation by lowering your salary or paying you less than other employees in similar positions.

**Q. Does an employer have to make non-work areas used by employees, such as cafeterias, lounges, or employer-provided transportation accessible to people with disabilities?**

A. Yes. The requirement to provide reasonable accommodation covers all services, programs, and non-work facilities provided by the employer. If making an existing facility accessible would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy benefits and privileges of employment similar to those enjoyed by other employees, unless to do so would be an undue hardship.

**Q. If an employer has several qualified applicants for a job, is the employer required to select a qualified applicant with a disability over other applicants without a disability?**

A. No. The ADA does not require that an employer hire an applicant with a disability over other applicants because the person has a disability. The ADA only prohibits discrimination on the basis of disability. It makes it unlawful to refuse to hire a qualified applicant with a disability because he is disabled or because a reasonable accommodation is required to make it possible for this person to perform essential job functions.

**Q. Can an employer refuse to hire me because he believes that it would be unsafe, because of my disability, for me to work with certain machinery required to perform the essential functions of the job?**

A. The ADA permits an employer to refuse to hire an individual if she poses a direct threat to the health or safety of herself or others. A direct threat means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire you because of a slightly increased risk or because of fears that there might be a significant risk sometime in the future. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

**Q. Can an employer offer a health insurance policy that excludes coverage for pre-existing conditions?**

A. Yes. The ADA does not affect pre-existing condition clauses contained in health insurance policies even though such clauses may adversely affect employees with disabilities more than other employees.

**Q. If the health insurance offered by my employer does not cover all of the medical expenses related to my disability, does the company have to obtain additional coverage for me?**

A. No. The ADA only requires that an employer provide employees with disabilities equal access to whatever health insurance coverage is offered to other employees.

**Q. I think I was discriminated against because my wife is disabled. Can I file a charge with the EEOC?**

A. Yes. The ADA makes it unlawful to discriminate against an individual, whether disabled or not, because of a relationship or association with an individual with a known disability.

**Q. Are people with AIDS covered by the ADA?**

A. Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

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For more specific information about ADA requirements affecting *employment* contact:

**Equal Employment Opportunity Commission**

P.O. Box 7033  
Lawrence, Kansas 66044  
(800) 669-4000 (Voice), (800) 669-6820 (TDD)

For more specific information about ADA requirements affecting *public accommodations and State and local government services* contact:

**Department of Justice**

Office on the Americans with Disabilities Act  
Civil Rights Division  
P.O. Box 66118  
Washington, DC 20035-6118  
(202) 514-0301 (Voice)  
(202) 514-0381 (TDD)  
(202) 514-0383 (TDD)

For more specific information about requirements for *accessible design in new construction and alterations* contact:

**Architectural and Transportation Barriers**

**Compliance Board**  
1111 18th Street, NW  
Suite 501  
Washington, DC 20036  
800-USA-ABLE  
800-USA-ABLE (TDD)

For more specific information about ADA requirements affecting *transportation* contact:

**Department of Transportation**

400 Seventh Street, SW

Washington, DC 20590

(202) 366-9305

(202) 755-7687 (TDD)

For more specific information about ADA requirements for *telecommunications* contact: Federal Communications Commission 1919 M Street, NW Washington, DC 20554 (202) 634-1837 (202) 632-1836 (TDD)

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You may obtain this booklet in alternate formats, upon request by dialing 800-669-3362 or 800-800-3302.

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