

Employee Workplace Disability Discrimination Prevention Toolkit:
(Your guide to preventing and identifying disability discrimination in the workplace)

| Question: | Answer: |
|---|--|
| What is disability discrimination? | Disability discrimination involves treating a “qualified individual with a disability” who is an applicant or employee unfavorably because of his or her disability. Further, disability discrimination exists if an agency fails to provide a reasonable accommodation for the known physical or mental limitations of a qualified individual with a disability, absent undue hardship. |
| What is a disability? | A disability is a physical or mental impairment that substantially limits one or more major life activities. |
| Who is an individual with a disability? | An individual with a disability is one who: <ul style="list-style-type: none"> • Has a <i>physical or mental impairment</i> which <i>substantially limits</i> one or more major life activities; and/or • Has a record of such impairment; and/or • Is regarded as having such an impairment |
| What is a major life activity? | “Major life activities” refers to those activities that are of central importance to daily life. |
| What are types of major life activities? | Major life activities include, but are not limited to: <ul style="list-style-type: none"> -Walking -Seeing -Hearing -Speaking -Breathing -Sleeping -Learning -Working -Concentrating -Performing manual tasks -Lifting -Interacting with others |
| Who is a “qualified individual with a disability” | A qualified individual with a disability is a person with a disability who: <p>Satisfies the requisite skill, experience, education, or other requirements of the employment position such individual holds or seeks, and who can perform the “essential” functions of the position with or without reasonable accommodation.</p> |
| What law(s) are violated by disability discrimination? | Disability discrimination violates Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disability Act (ADA), and the Americans with Disability Act Amendment Act (ADAAA) of 2008. |
| What is a reasonable accommodation? | A reasonable accommodation is any change in the work environment (or in the way things are |

| | |
|---|--|
| | customarily done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits or privileges of employment. |
| What are some types of reasonable accommodations? | Reasonable accommodations might include: <ul style="list-style-type: none"> • Providing readers or interpreters • Assistive Devices • Modifying work sites • Modifying work schedules • Flexi-time • Accessible facilities • Telework • Reassignment (accommodation of last resort) |
| What are essential functions? | Essential functions are the basic job duties that an employee or applicant must be able to perform, with or without reasonable accommodation. Essential functions are the fundamental, crucial job duties performed in a position. They do not include marginal functions, which are extra or incidental duties. A function may be essential because: <ol style="list-style-type: none"> 1. The position exists to perform that function. 2. There are limited number of employees available who could perform that function. 3. The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it. |
| How should an employee request a reasonable accommodation? | An employee should request a reasonable accommodation from his or her supervisor. The request may be made orally or in writing. |
| What course of action can an employee take if denied a reasonable accommodation? | If an employee believes their reasonable accommodation request was denied due to discrimination than he or she has a right to file an EEO complaint and may contact the OEODM office within 45 calendar days of the denial. |
| What course of action should a victim of disability discrimination in the form of harassment take? | <ol style="list-style-type: none"> 1. The employee or applicant should first attempt addressing his or her concerns with the alleged offender and inform the harasser that the conduct is unwelcome and must stop immediately. 2. If confronting the alleged offender is ineffective the employee or applicant should |

| | |
|--|---|
| | <p>report the behavior as soon as possible to a managing official.</p> <p>3. An employee or applicant may initiate the administrative inquiry process by contacting a supervisor who will conduct an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution.</p> <p>4. Employees and applicants should also maintain a record of relevant events and communications between all parties involved in the event another incident arises and further action is needed.</p> |
| <p>Is an employee or applicant who brings a disability discrimination claim protected from retaliation/ reprisal?</p> | <p>Yes. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. If an employee wishes to file an EEO complaint of reprisal he or she may contact the OEODM office within 45 calendar days of the alleged occurrence(s) of retaliation discrimination.</p> |

| Area: | Key Points: |
|---------------------------------|---|
| Protection | <ul style="list-style-type: none"> • Must be a “qualified individual with a disability” to be protected from employment disability discrimination under the law. |
| Disability | <ul style="list-style-type: none"> • Determination of whether an individual has a disability is made on a case-by-case basis. |
| Practices and activities | <ul style="list-style-type: none"> • Disability discrimination is prohibited in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities. |

| | |
|---------------------------------|---|
| EEO activity | <ul style="list-style-type: none"> • Making a request for a reasonable accommodation is considered participation in the EEO process. |
| Reasonable Accommodation | <ul style="list-style-type: none"> • A qualified individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. • Once a reasonable accommodation request is made the manager and the qualified individual with a disability should engage in an interactive process to clarify what the individual needs and identify the appropriate reasonable accommodation. • The reasonable accommodation provided must be effective, not the accommodation of choice. |
| Performance | <ul style="list-style-type: none"> • A request for a reasonable accommodation does not require an employer to excuse past misconduct or poor performance. |
| Job functions | <ul style="list-style-type: none"> • An employee or applicant must be able to perform the essential functions of their position or desired position with or without reasonable accommodation. |
| Confidentiality | <ul style="list-style-type: none"> • Medical information about all applicants and employees must be kept confidential. |

| |
|--|
| <p>What You Should Know, but Probably Don't</p> <ul style="list-style-type: none"> • Persons discriminated against because they have a known association or relationship with a disabled individual are protected. |
|--|

Case Examples

| Addresses: | Case |
|---|---|
| Impermissible Dissemination of Medical Information | <u>Price v. USPS</u> |
| Disability-Based Harassment | <u>Rainbolt v. Department of Transportation</u> |
| No Disability | |

| | |
|--|---|
| Discrimination: Failure to Meet Qualification Standards | <u>Patrick Jean-Julien v. Department of State</u> |
| Failure to accommodate | <u>Haggard v. United States Postal Service</u> |

Contacts:

(Who to ask about what)

[Resolutions and Equity](#)

[Employee Relations Contacts](#)

[Identify Your Formal Complaints Specialist](#)

[Guidance Contact](#)

[NIH Ombudsman contact](#)

Resources:

(Where to go for more information)

[Title VII of the Civil Rights Act of 1964](#)

[The ADA: Questions and Answers](#)

[NIH Policy Manual 2204-Reasonable Accommodations](#)

[HHS Reasonable Accommodation Policy and Procedures Manual](#)

[EEOC Enforcement Guidance: Reasonable Accommodation](#)

[Your Employment Rights as an Individual With a Disability](#)

[Job Applicants and the ADA](#)

[ABCs of Schedule A Documents](#)

[Understanding Your Employment Rights Under the ADA: A Guide for Veterans](#)

[The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964](#)