

## Legal Rights on Hearing Loss

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Numerous state and federal laws have been passed which seek to minimize the effects of disability bias and give people with disabilities equal opportunities. People with hearing loss have the right under these laws to be free from discrimination in employment, public accommodations, transportation, education, and communication. This article surveys rights under state and federal disability laws, especially the rights of employees with hearing impairments, and provides links to references and other resources.



### **IS MY HEARING LOSS A "DISABILITY"?**

Your rights under disability laws depend on whether your hearing loss is considered a legal "disability." Various laws use different definitions of disability, but the most common legal definition is the one used by the Americans with Disabilities Act (ADA). A hearing impairment is considered a disability under the ADA if:

1) it substantially limits a major life activity;

*Example:* Hearing is a major life activity.

2) it substantially limited a major life activity in the past;

*Example:* Your hearing used to be substantially impaired but is now improved due to surgery or an assistive device.

3) you are regarded (or treated) as if your hearing impairment was substantially limiting.

*Example:* You use an assistive device that improves your hearing so that you are no longer substantially limited in a major life activity, but you are nonetheless treated differently because your employer believes you to be substantially limited.

This determination is made on a case-by-case basis. It's important to note that if you use "mitigating devices", such as hearing aids, cochlear implants, or other equipment that improves your ability to hear, these must be considered in determining whether you have a disability under the ADA. However, strategies that compensate for hearing loss, such as lip-reading or sign language, are not considered mitigating measures. This may change if the proposed ADA Restoration Act (HR3195) is passed. Then mitigating situations may not be considered. It is important that people with disabilities lobby for this or a similar restoration of the original intent of the ADA.

State and local laws and other federal laws may use a different definition of disability, but the ADA's definition is helpful to identify the factors necessary to determine if you are considered to have a disability under the law.

### **IF MY HEARING LOSS IS CONSIDERED A DISABILITY, WHAT ARE MY RIGHTS?**

You have a number of employment, public accommodations, transportation, education, and communication, among other, rights under state and federal laws. While this article focuses on federal laws, many states and local areas have separate protections for people with disabilities. They are often similar to federal laws, but there can be important differences regarding who is covered by the law and what protection the law affords. So it is important to consider applicable state and local laws in addition to the federal laws discussed in this article. Rights for children in grades kindergarten through 12th grade are covered under another federal law, the Individuals with Disabilities Education Act (IDEA). See the Better Hearing Institute website for more information.

### **Employment: The ADA and Reasonable Accommodations**

Employment is one of the most important areas of legal rights for people with hearing loss. The ADA is the primary federal law relating to employment of people with disabilities. The law requires employers with 15 or more employees to provide qualified individuals with disabilities equal access to the employment opportunities available to others. The ADA prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other terms and conditions of employment. It restricts questioning about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless the accommodation would create an undue hardship for the employer. The larger the employer, the less likely they can successfully claim "undue hardship."



## ***The Accommodation Process***



For employees with hearing loss, it is important to know how to request reasonable accommodations in employment and what "reasonable" means. ADA accommodations may be relevant both in the initial application or interview process as well as in the day-to-day activities of the position. It is important to remember that employers do not need to provide accommodations if they are not aware of the individual's need. However, they cannot ignore the situation if the employer "knows or has reason to know" that the employee is experiencing workplace problems because of the disability, particularly if the disability may prevent them from asking for an accommodation. (see <http://www.gtlaw.com/pub/alerts/1999/eeoc99.htm>). For instance, someone with hearing loss may not be aware that they do not correctly understand communications. In these instances, the employer should inquire if reasonable accommodations are needed.

Requests for accommodations do not have to be in writing, but it is a good idea to make a written request in the event that there is a dispute about whether or when you requested accommodation. You may want to include the following information in your request:

- Identify yourself as a person with a disability;
- State that you are requesting accommodations under the ADA (and any relevant state law or the Rehabilitation Act if you are a federal employee);
- Identify your specific problematic job tasks;
- Identify your accommodation ideas;
- Request your employer's accommodation ideas;
- Refer to any attached medical documentation if appropriate; and
- Ask that your employer respond to your request in a reasonable amount of time.

Once you have made a request, your employer is obligated under the ADA to engage in an informal, interactive process with you. This process focuses on whether you have a disability under the ADA and why your requested accommodation is needed. In many instances, a simple conversation will suffice to resolve these issues but if it does not, the employer may ask for additional information. The employer may request reasonable documentation from an appropriate health care or vocational rehabilitation professional about your disability and functional limitations. If you do not use the "proper" language it does not excuse the employer from identifying and providing accommodations you need.



There are three categories of "reasonable accommodations":

- (1) changes to a job application process;
- (2) changes to the work environment, or to the way a job is usually done; and
- (3) changes that enable an employee with a disability to enjoy equal benefits and privileges of employment (such as access to training).

While employers are required to consider reasonable accommodations, they do not have to provide a reasonable accommodation that causes "undue hardship." Undue hardship may include accommodations that are too expensive, unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Once the employer and employee have engaged in this process, the employer may choose among reasonable accommodations as long as the chosen accommodation is effective. It is important to remember that reasonable accommodations are unique to each individual and their employer. Important factors may include the nature and requirements of the business and job at issue, the financial and other resources of the employer, and the nature and extent of the employee's disability.

### ***Examples of Reasonable Accommodations***

Reasonable accommodations may include everything from simple paper notepads to employer-paid sign language interpreters or stenographers. Employers, however, do not have to provide "personal use" items, such as eyeglasses, hearing aids, or similar devices. Examples of accommodations that may be reasonable for individuals with hearing loss include:

- Substituting computer technologies such as email, instant messaging, or chat or voice recognition software for audible communication;
- Providing assistive listening devices that enable an individual to focus directly on the sound source, reducing distractions from background noise;
- Providing sign language interpreters or stenographers;
- Training coworkers in basic sign language;
- Providing phone amplification technology, headsets, or TTY; and
- Considering environmental factors in meetings or other communications such as background noise, seating and positioning.

### ***ADA Enforcement***

Enforcement of the ADA is carried out by the U.S. Equal Employment Opportunity Commission (EEOC) or state and local agencies that work with the EEOC. Complaints under the ADA generally must be filed within 180 days of the discrimination or within 300 days if filing with state or local agencies. Some state laws have different time limits and procedural requirements. Individuals may file their own lawsuit in federal court only after they receive a "right-to-sue" letter from a designated government agency.

### **Rights in Other Areas.**

#### ***Public Services, Public Accommodations and Transportation***

The ADA also has important protections relating to state and local government, public accommodations and transportation. The law requires state and local governments to give people with disabilities equal access to programs, services, and activities. This encompasses such areas as public education, transportation, recreation, health care, social services, courts, voting, and town meetings.

The ADA also prohibits exclusion, segregation, and unequal treatment by "public accommodations" and transportation providers, such as buses, trains, restaurants, retail stores, hotels, movie theaters, private schools, doctors' offices, day care centers, recreation facilities, and other places open to the public. Reports of violations can be filed with the U.S. Department of Justice, Civil Rights Division and related state agencies. As with employment, state and local laws may differ from the ADA about public accommodations and transportation. Private schools, recreational organizations, daycare centers, museums and institutions are public accommodations covered by the ADA and, as such, must provide auxiliary aids and services when necessary to provide equal access to people with disabilities. The costs for such aids may not be imposed upon the individual with disabilities.

#### ***Education***

Public schools, colleges, and universities that receive federal assistance (which includes virtually all such institutions) are required to provide interpreters or other auxiliary aids to people with disabilities when necessary. The ADA also requires access for people with disabilities in all state and local government programs, including public schools, colleges, and universities, regardless of whether or not the programs get federal assistance.

In addition, the Individuals with Disabilities Education Act (IDEA) requires public school systems to provide a "free, appropriate public education" to children who need specialized services because of a disability. It establishes a procedure for developing an individual education program (IEP) and identifying needed support services for individual children.

#### ***Communication***

The ADA requires telephone and television access for people with hearing and speech disabilities. It requires telephone companies to establish interstate and intrastate telecommunications relay services (TRS) 24 hours a day, 7 days a week. The law also requires closed captioning of federally funded public service announcements. The Federal Communications Commission (FCC) enforces these provisions and also works with broadcast providers to encourage additional captioning.

The FCC has additional captioning requirements as well. As of January 1, 2006, all new English-language programming must be captioned and 75% of previously uncaptioned materials must be captioned by the first quarter of 2008. Spanish-language programming must also be captioned as of 2010 and 2012.

Perhaps most importantly, the FCC mandated that emergency situations be captioned. Should you become aware that your local broadcasters are not in compliance, you can file a complaint by contacting the relevant station and also the FCC. You can contact the FCC by any reasonable means, including its on-line complaint form, e-mail, fax, or U.S. mail. You can also submit your complaint in an alternate format audio-cassette recording, or by phone at: 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY. Your complaint should include as much information as possible such as the name of the video programming distributor, the TV channel name and number, the date and time of the omission of captioning of emergency information, the type of emergency, and your contact information.

Another federal law, the Telecommunications Act, requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities. This law helps ensure that people with disabilities have access to telecommunications devices, including telephones, cell phones, pagers, call-waiting, and operator services. All electronic and information technology developed, maintained, procured, or used by the federal government must be accessible to people with disabilities, including both federal employees and members of the public.

#### ***Other Areas***

Other areas are covered by disability laws. For example, the Fair Housing Act and similar state and local laws prohibit landlords, real estate sellers, management companies and homeowners' associations from discrimination based on disability. The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires polling places across the United States to be physically accessible to people with disabilities for federal elections.

It is important that you familiarize yourself with these laws and assert your rights when necessary. There is no reason that your hearing loss should be counted against you or hold you back from life's opportunities. Fortunately, the law is usually on your side in this effort.

### **OTHER RESOURCES**

FCC Consumer Facts on Close Captioning: <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html>

EEOC, [Fact Sheet: Questions and Answers about Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act](#), available at: [/pdfs/gaEEOC.pdf](#)

EEOC, "Disability Discrimination" Web Page and linked documents, available at: <http://www.eeoc.gov/types/ada.html>

National Association of the Deaf, [Legal Rights](#), available at: <http://www.nad.org/legalrights>

U.S. Department of Justice, [A Guide to Disability Rights Laws](#), available at: <http://www.usdoj.gov/crt/ada/cguide.htm>

Job Accommodation Network, [Work-Site Accommodation Ideas for Individuals Who Are Deaf or Hard of Hearing](#), available at: <http://www.jan.wvu.edu/media/Hearing.html>

Reasonable accommodation is clarified at the following site: <http://www.gtlaw.com/pub/alerts/1999/eeoc99.htm>

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