

DISABILITY DISCRIMINATION IN THE DOL WORKPLACE: EMPLOYEE RIGHTS AND AGENCY RESPONSIBILITIES

Section 501 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008 (ADAAA), prohibits employment discrimination in the Federal government against qualified persons on the basis of a disability. In enacting the ADAAA, Congress made it easier for an individual seeking protection and/or a reasonable accommodation to establish that he or she has a disability within the meaning of the statute.

What protections does the law provide DOL employees and applicants for DOL employment?

No agency within the Department of Labor may:

- Treat you less favorably in any aspect of employment¹ because you have a disability;
- Treat you less favorably because you have a history of a disability (such as cancer that is controlled or in remission)
- Treat you less favorably because you are perceived to have or “regarded as having” a physical or mental impairment that is not “transitory” (i.e. lasting or expected to last six months or less) and “minor”;
- Deny reasonable accommodation to you, unless doing so would cause significant difficulty or expense for the employer;
- Treat you less favorably based on your relationship to a person with a disability (i.e. your spouse or parent who has, or is regarded as having, a disability); or
- Harass you because of your disability or retaliate against you for requesting a reasonable accommodation, filing a charge of discrimination, participating in a discrimination proceeding (such as an investigation or lawsuit), or otherwise opposing unlawful discrimination.

Are you protected under the Rehabilitation Act and ADAAA?

As a DOL employee or applicant, you are protected under the Rehabilitation Act and the ADAAA if you have a disability and are qualified to do the job.

First, you may be considered an individual with a disability if one of the following applies:

- You have an actual disability, i.e., a physical or mental impairment that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning);
- You have a “record of a disability” (such as cancer that is in remission); or

¹ This includes hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, or any other term or condition of employment.

- You are perceived to have or you are “regarded as having” a physical or mental impairment, even if you do not have such an impairment and irrespective of whether that impairment would substantially limit a major life activity.

Second, you are considered qualified if both of the following apply:

- You satisfy the Department’s requirements for the job, such as having the requisite skills, experience, education, and other related requirements of the position; and
- You can perform the essential functions of the job with or without a reasonable accommodation.

What is covered as a disability under the law?

Covered disabilities include any “physical or mental impairment,” meaning a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, that “substantially limits” a major life activity. “Substantially limits” means the impairment substantially limits your ability to perform a major life activity as compared to most people in the general population. Your impairment need not prevent, or severely or significantly restrict, you from performing a major life activity to be considered “substantially limiting.” Furthermore, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. An individualized assessment of a person’s impairment is required in every case.

- Certain physical or mental impairments will almost always constitute a disability, such as autism, bipolar disorder, blindness, cancer, cerebral palsy, deafness, diabetes, epilepsy, HIV infection, major depressive disorder, mobility impairments requiring a wheelchair, multiple sclerosis, muscular dystrophy, obsessive compulsive disorder, post-traumatic stress disorder, or schizophrenia.
- Other impairments, such as asthma, may be substantially limiting in certain cases but not in others.
- Temporary, non-chronic impairments, such as the common cold or flu, or a broken bone that is expected to heal, would not be considered disabilities under the law.

How do the recent changes in the law affect you?

In addition to making it easier for individuals to establish that they have a disability covered by the law, one of the ADAAA’s most significant changes concerns the use of mitigating measures. Mitigating measures, which eliminate or reduce the symptoms or impact of an impairment, such as hearing aids, cannot be considered by your agency when determining if you have a disability. The only exception to this rule allows the agency to consider the positive effects of ordinary eyeglasses or contact lenses. The ADAAA’s prohibition on assessing the positive effects of mitigating measures applies only to the determination of whether an individual meets the definition of a person with a disability. All other determinations – including the need for a reasonable accommodation – can take into account both the positive and negative effects of a mitigating measure.

Another change in the law concerns individuals who are perceived or regarded as having a disability. Such individuals are not impaired in performing any major life activity; however, based upon societal attitudes, they are sometimes stigmatized. You are not entitled to accommodations if you do not have a disability, but you are protected against discriminatory adverse action because of your “perceived” disability. However, the ADAAA excludes from “regarded as” coverage an actual or perceived impairment that is both transitory (i.e., will last less than six months) and minor.

What is reasonable accommodation?

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. The law requires employers, including a Federal agency such as DOL, to provide reasonable accommodation to employees or applicants with a disability unless doing so would cause significant difficulty or expense for the employer (“undue hardship”). Additional guidance regarding reasonable accommodation is also available for DOL employees, applicants, managers, and supervisors on the Civil Rights Center website at <http://www.dol.gov/oasam/programs/crc/2011-Reas-Acc-Guidance.htm>.

Can the Department require medical examinations or ask questions about a disability?

If you are an applicant for DOL employment, the Department cannot ask you if you are disabled or ask about the nature or severity of your disability. The DOL agency to which you are applying is allowed to ask if you can perform the duties of the job with or without reasonable accommodation. The agency can also ask you to describe or demonstrate how, with or without reasonable accommodation, you will perform the duties of the job.

The DOL agency cannot require you to take a medical examination before you are offered a job. Following a job offer, the agency can condition the offer on your passing a required medical examination, but only if all entering employees for that job category are required to pass the examination. However, you cannot be rejected 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 agency's business. The agency cannot refuse to hire you because of your disability if you are able to perform the essential functions of the job with an accommodation.

Once you have been hired and started work, your agency 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 agency's business. If you have requested a reasonable accommodation, your agency may request medical documentation that supports or confirms the functional impairment and the requested accommodation if the disability or need for the requested accommodation is not obvious or already known.

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

What should I do if I feel that I have been discriminated against?

Employees and applicants for DOL employment have the right to experience a workplace free of discrimination and harassment. If you believe that you have experienced discrimination, you should contact your agency's Equal Employment Opportunity (EEO) Manager or the DOL Civil Rights Center, on (202) 693-6500 or at CivilRightsCenter@dol.gov.