

# American with Disabilities Act (ADA): Understanding its Application to Intergenerational Trauma



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## EEOC Overview

- ▶ Federal U.S. government agency that enforces anti-discrimination laws, including the Americans with Disabilities Act (ADA)
- ▶ EEOC has statutory authority to investigate and initiate civil lawsuits against employers

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## ADA in a Nutshell

- ▶ Federal civil rights law
  
- ▶ Goal is to remove barriers to employment for individuals with disabilities by:
  - Prohibiting discrimination, harassment, interference, and retaliation
  - Requiring employers to provide reasonable accommodation for known disabilities (unless doing so would cause undue hardship)

- ▶ ADA applies to
  - Private business with 15+ employees
  - Employment agencies/labor providers
  - Unions
  
- ▶ Specific exception: Tribal nation
  - Private employers operating within reservations are covered

## Who does the ADA protect?

Qualified applicants and employees with disabilities, as defined by the statute.

Qualified = can perform *essential* functions of the job the person is applying for or holds *with or without reasonable accommodation*

- ▶ Must also meet all required skills, experience, education, etc.

## Who does the ADA protect?

Qualified applicants and employees with disabilities, as defined by the statute.

Three definitions of disability:

1. Current physical or mental impairment that substantially limits one or more major life activities
2. Record of such impairment
3. Regarded as having such impairment

## Can Intergenerational Trauma be a Disability Under the ADA?

- ▶ If symptoms meet the statutory definition, then yes
  - Major depression
  - Anxiety
  - Mood disorders
  - Sleep disorders
  - Chronic pain conditions
  - Cardiovascular conditions
  - PTSD/trauma and stress related disorders
  - Substance use disorders
  - Alcoholism
  - Type 2 diabetes
  - Immune system functioning
  - Central nervous system functioning
  - Eating disorders

## Alcoholism & Drug Use as Disabilities

- ▶ Alcoholism is an impairment and can meet disability definition
- ▶ ADA does not protect current illegal drug use, including conditions caused by current illegal drug use (e.g., psychoactive substance use disorders)
- ▶ ADA protects people who formerly used illegal drugs and individuals in recovery, including those using prescribed medication as a part of a medication assisted treatment program (“record of” prong)

## Reasonable Accommodation: What Is It?

- ▶ An individual with a disability may be entitled to a reasonable accommodation, if that will allow them to perform all essential job functions
  
- ▶ Change in the way things are normally done that enables the individual to:
  - Apply for a job
  - Do a job
  - Enjoy benefits and privileges of employment

## Reasonable Accommodation: Examples

- ▶ Altered break or work schedules
- ▶ Additional leave
- ▶ Changes in supervisory methods
- ▶ Telework
- ▶ Temporary reassignment
- ▶ Acquisition or modification of equipment/devices
- ▶ Permanent reassignment to a vacant position ("accommodation of last resort")
  
- ▶ Be creative!

## Reasonable Accommodation Limits

- ▶ Employers do NOT have to:
  - Make changes that would cause “undue hardship” (significant difficulty or expense)
  - Change, reduce, or eliminate *essential job* functions
    - E.g., lowering production quality or standards

## Reasonable Accommodation: (Typical) Process

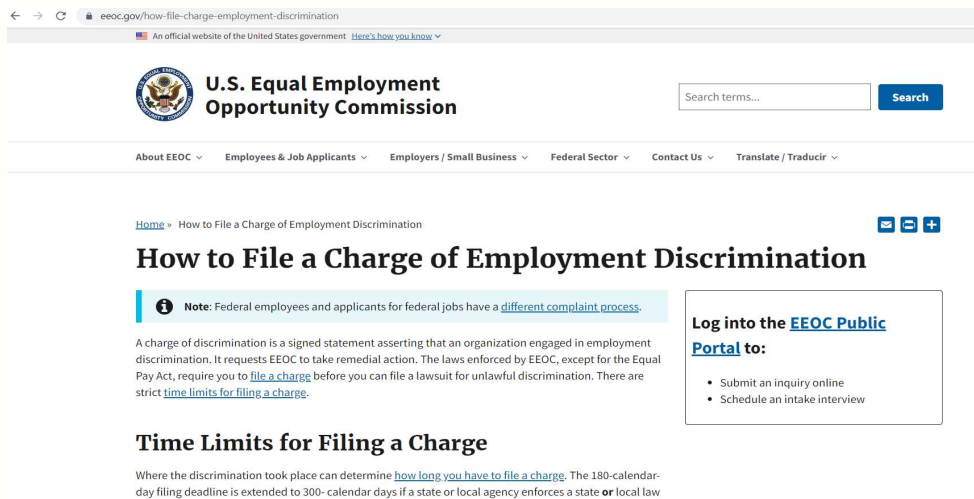
- ▶ Employee makes employer aware of need for accommodation – no “magic words” needed
  - Employer can ask employee to provide *limited* info, including documentation, about current condition and limitations related to job
- ▶ Interactive process: employer and employee work together to develop an effective accommodation that doesn’t impose undue hardship
- ▶ Employer can choose which accommodation to provide, if more than one would meet the individual’s needs (employee is not entitled to preferred accommodation)

## Confidentiality

- ▶ Information that employers obtain about an applicant's or employee's disability must be treated as confidential.
- ▶ Separate file for medical records and information

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## Filing a Charge: Starts Here



The screenshot shows the EEOC website page for filing a charge. The browser address bar shows 'eEOC.gov/how-file-charge-employment-discrimination'. The page header includes the EEOC logo and name, a search bar, and navigation links: 'About EEOC', 'Employees & Job Applicants', 'Employers / Small Business', 'Federal Sector', 'Contact Us', and 'Translate / Traducir'. The main content area has a breadcrumb trail 'Home > How to File a Charge of Employment Discrimination' and a title 'How to File a Charge of Employment Discrimination'. A note states: 'Note: Federal employees and applicants for federal jobs have a [different complaint process](#).' Below this, a paragraph explains that a charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination. It requests EEOC to take remedial action. The laws enforced by EEOC, except for the Equal Pay Act, require you to [file a charge](#) before you can file a lawsuit for unlawful discrimination. There are strict [time limits for filing a charge](#). A box on the right titled 'Log into the EEOC Public Portal to:' contains two bullet points: 'Submit an inquiry online' and 'Schedule an intake interview'. At the bottom, a section titled 'Time Limits for Filing a Charge' explains that the time to file a charge depends on when the discrimination occurred. The 180-calendar-day filing deadline is extended to 300-calendar days if a state or local agency enforces a state or local law.

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## The EEOC Public Portal

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Portal Home

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### Public Portal

Filing with EEOC      My Cases      Guidance      Find an EEOC Office

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## What to do after filing a charge with the EEOC

- ▶ Keep relevant paper documents
  - Employee manuals
  - Pay records
  - Work schedule
  - Letters, memos
  - Your notes
  - Medical documents
- ▶ Keep relevant electronic
  - Emails
  - Text messages
  - Pictures
  - Social media posts
- ▶ Provide witness information

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## Recent EEOC Resolutions

- ▶ Lonza America LLC: \$150,000 to Charging Party, a 14-year employee and recovering opioid addict, who was fired after testing positive for a legally controlled substance, which was prescribed as part of a medication-assisted treatment program
- ▶ Ranew's Management Company: \$250,000 to Charging Party who, after being diagnosed with severe depression, was not allowed to return to work, despite being cleared by doctor
- ▶ America Security Insurance Company: \$49,000 to Charging Party who was denied accommodation for complications resulting from Type 2 diabetes

## EEOC Online Resources

- ▶ How to File a Charge of Employment Discrimination, <https://www.eeoc.gov/how-file-charge-employment-discrimination>
- ▶ EEOC Public Portal, <https://publicportal.eeoc.gov/Portal/Login.aspx>
- ▶ EEOC Filed Offices Map and Contact Information, <https://www.eeoc.gov/field-office>
- ▶ EEOC Newsroom, <https://www.eeoc.gov/newsroom>

## EEOC Disability-Related Resources

Search for "disability" at [www.EEOC.gov](http://www.EEOC.gov) OR visit [www.EEOC.gov/eec-disability-related-resources](http://www.EEOC.gov/eec-disability-related-resources)

- [Overview of the Disability Laws](#) that the EEOC enforces.
- [EEOC Disability-Related Publications](#) pulls together materials that help job applicants, employees, employers, medical providers, and others understand disability discrimination in the workplace. These materials include technical assistance (TA) documents, such as fact sheets and questions and answers, as well as disability-related guidance and policy documents.
- [Latest EEOC Disability News](#) provides a continually updated list of the EEOC's most recent press releases on disability-related matters.
- [How EEOC Can Help](#) group materials for applicants and employees who may wish to learn more or [may be facing discrimination](#), as well as for [employers who want to better understand](#) how to comply with the disability laws.
- [Federal Disability Laws and Regulations](#) provide the legal foundations of EEOC's guidance and technical assistance materials.
- [Other resources](#) on the employment of people with disabilities.

 Translate this Page +

**EEOC**  
**DISABILITY**  
**RESOURCES**

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## Other EEOC Online Resources - ADA

- ▶ Enforcement Guidance on Reasonable Accommodation, [https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada\[\\*\]](https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada[*])
- ▶ Mental Health Conditions Resources Page, [https://www.eeoc.gov/mental-health-conditions-resources-job-seekers-employees-and-employers\[\\*\]](https://www.eeoc.gov/mental-health-conditions-resources-job-seekers-employees-and-employers[*])
- ▶ Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights, <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights>
- ▶ Use of Codeine, Oxycodone, and Other Opioids: Information for Employees, <https://www.eeoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees>

[\*] Material published prior to 2008 ADA amendment, which broadly expanded definition of "disabled"

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## Other Online Resources

Job Accommodation Network (<https://askjan.org/>)

- ▶ Post-Traumatic Stress Disorder (PTSD), [https://askjan.org/disabilities/Post-Traumatic-Stress-Disorder-PTSD.cfm /](https://askjan.org/disabilities/Post-Traumatic-Stress-Disorder-PTSD.cfm/)
- ▶ Mental Health Conditions, <https://askjan.org/disabilities/Mental-Health-Conditions.cfm>
- ▶ Stress Intolerance, <https://askjan.org/limitations/Stress-Intolerance.cfm>



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## EEOC Outreach & Training

- ▶ No-Cost Outreach Programs: <https://www.eeoc.gov/no-cost-outreach-programs>
- ▶ Small Business Resource Center:  
<https://www.eeoc.gov/employers/small-business>
- ▶ EEOC Training Institute: <https://www.eeoc.gov/training-institute>



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## EEOC Contact Information

- ▶ Call 1-800-669-4000
- ▶ For Deaf/Hard of Hearing callers:  
1-800-669-6820 (TTY)  
1-844-234-5122 (ASL Video Phone)
- ▶ Email Inquiries: [info@eoc.gov](mailto:info@eoc.gov)

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## Thank you!



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