



# Visual Disabilities in the Workplace and the Americans with Disabilities Act

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**Summary:** This document provides information on how the ADA applies to job applicants and employees with vision impairments.

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**Document Applicant:** Employees, Employers, Applicants, HR Practitioners

**Previous Revision:** Yes. This document revises and renames “Blindness and Vision Impairments in the Workplace and the ADA,” originally issued 05-07-2014 (EEOC-NVTA-2014-2).

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.

## INTRODUCTION

This document, which is one of a series of question-and-answer documents addressing particular disabilities in the workplace,<sup>[1]</sup> explains how the Americans with Disabilities Act (ADA) applies to job applicants and employees with visual disabilities. In particular, this document addresses:

- when an employer may ask an applicant or employee questions about a vision impairment and how an employer should treat voluntary disclosures;
- what types of reasonable accommodations applicants or employees with visual disabilities may need;
- how an employer should handle safety concerns about applicants and employees with visual disabilities; and
- how an employer can ensure that no employee is harassed because of a visual disability.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces and provides leadership and guidance on the employment provisions of the ADA, a federal law that prohibits discrimination against qualified individuals with disabilities. Under the ADA, individuals with disabilities include those who have “a physical or mental impairment that substantially limits one or more major life activities . . . ,” have a record (or history) of such an impairment, or are subject to an adverse action “because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.”<sup>[2]</sup> This document uses the term “visual disabilities” to refer to any disabilities related to an individual’s vision. It also uses the phrase “vision impairments” to refer to various vision-related conditions, including blindness and low vision, as well as limited visual fields, photosensitivity, color vision deficiencies, or night blindness.<sup>[3]</sup> A

vision impairment constitutes a visual disability if it meets one of the three definitions of disability (“actual,” “record of,” or “regarded as”).

Title I, the employment provision of the ADA, covers employment by private employers with 15 or more employees, as well as state and local government employers. Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act) provides similar protections to federal applicants and employees. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and may provide protections in addition to those available under the ADA.<sup>[4]</sup>

## **GENERAL INFORMATION ABOUT VISION IMPAIRMENTS**

In 2022, the U.S. Centers for Disease Control and Prevention (CDC), National Health Interview Survey, found that approximately 18.4% of all U.S. adults are blind or have “some” or “a lot” of difficulty seeing, even when wearing corrective lenses.<sup>[5]</sup>

Many different factors can affect an individual’s vision, including the physiology of the eye and differences in how the brain interprets messages from the eye. Vision impairments can start or occur at any time in life. Some major causes of blindness and low vision in U.S. adults are eye diseases, including: diabetic retinopathy; macular degeneration; cataracts; and glaucoma.<sup>[6]</sup> Other common eye conditions in the United States include amblyopia (the brain favoring one eye over the other) and strabismus (differences in alignment of the eyes), although many other conditions exist.<sup>[7]</sup> Some individuals experience eye injury, burns, or surgical complications.<sup>[8]</sup> Also, many individuals have monocular vision—good vision in one eye, but little or no vision in the other.

Many individuals with vision impairments can successfully and safely perform their jobs, with or without reasonable accommodation. Under the ADA, these individuals should not be denied employment opportunities for which they are qualified based on stereotypes or incorrect assumptions that they may cause safety hazards, may increase employment costs (whether related to provision of reasonable accommodation or for other reasons), or may have difficulty performing certain job duties.

## **1. Who is protected under the ADA?**

The ADA definition of “disability” is a three-prong definition: it lists three ways in which an individual can have a disability under the ADA. The definition should be interpreted broadly in favor of expansive coverage.<sup>[9]</sup>

### ***“Actual” Disability or a History or “Record Of” Disability***

Under the first prong of the ADA’s definition of disability, an individual with a vision impairment who is substantially limited in seeing or in the major bodily function of using special sense organs (here, the eyes), has an “actual disability.”<sup>[10]</sup> Under the second prong of the ADA’s definition of disability, an individual with a history of an impairment that substantially limits a major life activity—even if the impairment no longer exists—is considered to have a “record of” a disability.<sup>[11]</sup> An applicant or employee may have a “record of” a disability, for example, when the individual’s substantially limiting vision impairment has been corrected surgically.

Whether an impairment “substantially limits” a major life activity is not meant to be a demanding standard.<sup>[12]</sup> A vision impairment does not need to “prevent, or significantly or severely restrict,” an individual’s ability to see in order to be a disability, as long as the individual’s vision is substantially limited when compared to the vision of most people in the general population.<sup>[13]</sup> Further, a determination of disability must ignore the positive effects of mitigating measures (other than “ordinary eyeglasses or contact lenses”) that an individual uses.<sup>[14]</sup> For example, mitigating measures may include the use of low-vision devices that magnify, enhance, or otherwise augment a visual image.<sup>[15]</sup> An individual with a vision impairment who uses low-vision devices will be substantially limited in seeing compared to most people in the general population who can see without the use of such devices. Another type of mitigating measure is the use of learned behavioral modifications (for example, an individual with monocular vision may turn their head from side to side to compensate for the lack of peripheral vision).<sup>[16]</sup> An individual with monocular vision, regardless of such compensating behaviors, will be substantially limited in seeing compared to most people in the general population. An individual who is blind should easily be found to have an “actual disability” under the ADA, because they are substantially limited in the major life activity of seeing.<sup>[17]</sup>

### ***“Regarded as”***

Under the third prong of the ADA's definition of disability—the “regarded as”<sup>[18]</sup> prong—an individual is covered if an employer takes an action prohibited by the ADA (for example, refuses to hire or terminates the individual) either because of the individual's vision impairment or because of a mistaken belief that the individual has a vision impairment.<sup>[19]</sup> However, there is no “regarded as” coverage if the employer can show that the vision impairment at issue is both transitory (meaning lasting or expected to last six months or less) and minor.<sup>[20]</sup>

Coverage under any of the three prongs of the definition of disability does not mean an employer has violated the ADA; it only signifies that the individual has satisfied the definition of disability.<sup>[21]</sup> Any potential violation of the law will require additional information. Also, while some individuals who meet the definition of having an “actual” or “record of” disability may be entitled to reasonable accommodation under the ADA, an individual who is only covered under the ADA's “regarded as” prong is not entitled to reasonable accommodation under the ADA.<sup>[22]</sup>

## **2. Is everyone who wears glasses an individual with a disability?**

No, not everyone who wears glasses is an individual with a disability under the ADA.

When deciding if an individual with a vision impairment who uses (or used, in the case of a past impairment) “ordinary eyeglasses or contact lenses” is an individual with an “actual” or “record of” a disability, the ADA directs that their impairment should be assessed *as it is corrected by the lenses*.<sup>[23]</sup> The term “ordinary eyeglasses or contact lenses” means “lenses that are intended to fully correct visual acuity or eliminate refractive error.”<sup>[24]</sup> If using ordinary lenses results in no substantial limitation to a major life activity, then the individual's vision impairment does not constitute a disability under the ADA's definitions of “actual” or “record of” a disability.<sup>[25]</sup>

In contrast, for mitigating measures other than “ordinary eyeglasses or contact lenses,” the ADA directs that an individual's vision should be assessed without considering the positive effects of mitigating measures (other than “ordinary eyeglasses or contact lenses”) that may improve vision.<sup>[26]</sup> For example, an individual with low vision should be assessed without considering the positive effects of low-vision devices that enhance, magnify, or otherwise augment a visual image.

An individual who uses ordinary eyeglasses or contact lenses that are intended to fully correct their vision typically will not be covered under the ADA as an individual with an “actual” or a “record of” a visual disability.

The ADA’s rules about disability-related inquiries and medical examinations apply to all applicants and employees regardless of whether they have an ADA disability.<sup>[27]</sup>

An employer cannot require an individual to take a vision test with uncorrected vision or meet a vision standard with uncorrected vision unless that test or standard, as used by this employer, is shown to be job-related and consistent with business necessity.<sup>[28]</sup>

## **OBTAINING, USING, AND DISCLOSING MEDICAL INFORMATION**

The ADA limits an employer’s ability to ask questions related to disabilities (including visual disabilities) and to conduct medical examinations. Different rules apply for these inquiries and exams at three distinct stages: pre-offer, post-offer, and during employment.

### **Job Applicants**

#### *Before an Offer of Employment Is Made*

#### **3. May an employer ask whether a job applicant has or had a vision impairment, or treatment related to any vision impairment, before making a job offer?**

No. An employer may not ask questions about an applicant’s medical condition<sup>[29]</sup> or require an applicant to have a medical examination before it makes a conditional job offer. This means that an employer *cannot* ask an applicant such questions as:

- whether the applicant has ever had any medical procedures related to their vision (for example, whether the applicant ever had eye surgery);
- whether the applicant uses any prescription medications, including medications for conditions related to the eye; or

- whether the applicant has a condition that affects the applicant's vision or that may have caused a vision impairment (for example, whether the applicant has diabetes).

An employer may ask questions pertaining to the applicant's ability to perform job functions, *with or without reasonable accommodation*,<sup>[30]</sup> such as:

- whether the applicant can read labels on packages that need to be stocked;
- whether the applicant can work the night shift; or
- whether the applicant can inspect small electronic components to determine if they have been damaged.

#### **4. Does the ADA require applicants to disclose a current or past visual disability before accepting a job offer?**

No. The ADA does not require applicants to disclose that they have or had any type of vision impairment or visual disability *unless* they are seeking a reasonable accommodation to assist with some aspect of the application process (for example, if written application materials need to be printed in a larger font or braille). As discussed in Question 1, only individuals with an "actual" or "record of" a disability are entitled to reasonable accommodations.

Some individuals with a visual disability, however, choose to disclose or discuss their condition to dispel myths about it or to ensure that employers do not assume that the disability means they are unable to do the job safely and effectively. Sometimes, the decision to disclose depends on whether an individual will need a reasonable accommodation to perform the job (for example, specialized equipment to perform a job function, removal of a marginal function, or another type of job restructuring).

An individual, however, may request an accommodation at any point during their employment, including after becoming an employee or after changing jobs, even if they did not do so when applying for the job or after receiving the job offer.

#### **5. May an employer ask questions about an obvious vision impairment or, if an applicant discloses a nonobvious vision impairment, ask disability-related questions?**

Generally, no. An employer may not ask an applicant to discuss their obvious impairments, including vision impairments. Nor may an employer ask an applicant who has voluntarily disclosed a vision impairment any questions about its nature or severity, when it began, whether and how it will progress, or how the individual manages the impairment.

However, if an applicant has an obvious impairment or voluntarily discloses the existence of a vision impairment, and based on this information, the employer reasonably believes that the applicant will require an accommodation to perform the job, the employer may ask whether the applicant will need an accommodation and, if so, what type.<sup>[31]</sup> The employer must keep any information the applicant discloses about a medical condition confidential, even if it does not relate to a disability. “**Keeping Medical Information Confidential**” (Question 8) discusses confidentiality.

**Example A:** Jo uses a white cane to navigate when entering a room for a job interview to be a school principal. The position requires significant reading. Because Jo’s vision impairment is obvious, the employer may ask if Jo will need an accommodation to perform functions that involve reading and, if so, what type of accommodation.

### *After an Offer of Employment Is Made*

After making a job offer, an employer may ask questions about the applicant’s health (including questions about the applicant’s disability, such as whether the applicant has a disability and the nature or severity of the disability) and may require a medical examination, if all applicants for the same type of job are treated equally (that is, all applicants are asked the same questions and are required to take the same examination).<sup>[32]</sup>

After an employer has obtained basic medical information from all individuals who have received job offers, it may ask specific individuals for more medical information if the request is medically related to the previously obtained medical information. For example, if an employer asks all applicants post-offer about their general physical and mental health, it can ask individuals who disclose a particular illness, disease, or impairment to provide medical information or require them to have a medical examination related to the condition they disclosed.<sup>[33]</sup>



## **6. What may an employer do when it learns that an applicant has or had a vision impairment after offering the applicant a job but before the applicant starts work?**

Under the ADA, the period after offering an applicant a job but before the individual starts working is called the “post-offer period” and the job offer may be subject to an applicant’s responses to medical questions and/or passing a medical exam. This means, when an applicant discloses *after receiving a conditional job offer but before starting work* that the applicant has or had a vision impairment, the employer may ask the applicant additional questions, such as:

- how long the applicant has had the vision impairment;
- what, if any, vision the applicant has;
- what specific visual limitations the applicant experiences; and
- what, if any, reasonable accommodations the applicant may need to perform the job.

After obtaining basic medical information from all applicants, an employer may follow up with an individual who has disclosed a vision impairment, or the extent of a vision impairment, to seek additional information, if additional questions or a requested medical examination is medically related to the information already received. An employer may ask this individual to answer questions specifically designed to assess the applicant’s ability to perform the job’s functions safely.<sup>[34]</sup>

An employer may not withdraw an offer from an applicant with a vision impairment if the individual is able to perform the essential functions of the job, with or without reasonable accommodation. If the employer has concerns that the applicant’s vision impairment may create a safety risk in the workplace, the employer may conduct an individualized assessment to evaluate whether the individual’s impairment poses a **direct threat** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(r\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(r))) (that is, a significant risk of substantial harm to the health or safety of the applicant or others that cannot be eliminated or reduced through reasonable accommodation).<sup>[35]</sup> “Accommodating Applicants and Employees” (**Questions 10-15**) and “Concerns About Safety” (**Questions 17-18**).

**Example B:** Rosa, a county sheriff with monocular vision and significant relevant experience, applied for a position with the state police as a criminal investigator. The state police department conditionally offered Rosa a position, pending qualification under the department's medical criteria for criminal investigators. The doctor who conducted the medical examination determined that because of Rosa's monocular vision, she did not meet the department's safety standards, and the department withdrew the conditional offer of employment. The state police department did not violate the ADA by requiring the medical exam. However, the department's withdrawal of the job offer is not compliant with the ADA unless it can show, based on an individualized assessment, that Rosa was unable to do the essential functions of the criminal investigator position, with or without a reasonable accommodation, or that she would have posed a direct threat in doing so (a significant risk of substantial harm that could not be reduced or eliminated by a reasonable accommodation) if she had been hired.

## *Employees*

The ADA strictly limits the circumstances under which an employer may ask questions about an employee's medical condition or require the employee to have a medical examination. Once an employee is on the job, actual performance is the best measure of ability to do the job.<sup>[36]</sup>

### **7. When may an employer ask an employee if a vision impairment may be causing an employee's performance problems?**

Generally, an employer may ask disability-related questions and/or require an employee to have a medical examination when it has a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by a medical condition, or that an employee will pose a direct threat at work due to a medical condition.<sup>[37]</sup>

Sometimes, an employer already knows about a particular employee's vision impairment, observes performance problems, and reasonably believes that the problems are related to the vision impairment. At other times, an employer may ask for medical information when it observed symptoms, such as difficulties visually focusing, or received reliable information from someone else (for example, a family member or coworker) indicating that the employee may have a vision impairment. If an employer's concerns about an employee's job performance involve health or safety, it may ask an employee about their vision or send the employee for a

medical examination when it reasonably believes the employee may pose a significant risk of substantial harm because of an impairment. “**Concerns About Safety**” contains a discussion of “direct threat.”

Poor job performance may be unrelated to a medical condition and generally should be handled in accordance with an employer’s existing policies concerning performance.<sup>[38]</sup>

**Example C:** Abdul, a data entry clerk, has recently started making numerous errors when entering information into the employer’s database. For example, he seems to be confusing the numbers 1, 7, and 9. Abdul’s supervisor also has recently begun to see Abdul rubbing his eyes frequently and looking more closely at both his computer screen and printed materials. Based on these observations, the employer has a reasonable belief based on objective evidence that Abdul’s performance problems are related to an eye condition and, therefore, may ask for medical information.

**Example D:** Charlie, a receptionist, who has early-stage cataracts, has not been answering the calls that come into the office in their usual, friendly manner. The employer may counsel Charlie about how they answer the phone but may not ask questions about Charlie’s eye condition, unless there is evidence that it may be the reason for their changed demeanor when answering the phone.

## **8. Are there any other instances when an employer may ask an employee about the employee’s vision?**

Yes. An employer also may ask an employee about a vision impairment to the extent the information is necessary:

- to support the employee’s request for a reasonable accommodation needed because of a vision impairment;
- to enable the employee to participate in a voluntary wellness program;<sup>[39]</sup>
- to comply with federal safety statutes or regulations. “**Concerns About Safety**” (**Question 20**) discusses federal safety requirements;<sup>[40]</sup> or
- to verify the employee’s use of sick leave related to a vision impairment, if the employer requires all employees to provide such information (for instance, doctors’ notes) to justify their use of sick leave. However, the employer may not

require more burdensome verification for individuals with disabilities than it requires of others.

An employer also may ask an employee for periodic updates on the employee's condition if the employee has taken leave and has not provided an exact or estimated date of return or has requested leave in addition to that already granted. <sup>[41]</sup> Of course, an employer also may call employees on extended leave to check on their progress or to express concern for their health without violating the ADA. <sup>[42]</sup>

**Example E:** An employer's leave policy requires all employees who are absent because of a medical appointment to submit a note from their doctor verifying the appointment. Jack, an employee, uses sick leave for an ophthalmological examination, an annual appointment he has due to a family history of a disease that can cause vision loss. In accordance with its policy, the employer can require Jack to submit a doctor's note for the absence; however, it may not require the note to include any information (such as detailed results of the examination or a statement about the employee's diagnosis or any treatment) beyond that which is needed to verify that he used sick leave properly.

## **KEEPING MEDICAL INFORMATION CONFIDENTIAL**

With limited exceptions, an employer must keep confidential any medical information it learns about an applicant or employee. Under the following circumstances, however, an employer may disclose that an employee has a vision impairment:

- to supervisors and managers, if necessary to provide a reasonable accommodation or meet an employee's work restrictions;
- to first aid and safety personnel, if an employee may need emergency treatment or require some other assistance at work;
- to individuals investigating compliance with the ADA and similar state and local laws; and
- when needed for workers' compensation or insurance purposes (for example, to process a claim). <sup>[43]</sup>

**9. May an employer tell employees who ask why their coworker is allowed to do something that generally is not permitted (such as working at home full-time or working a modified schedule) that the coworker is receiving a reasonable accommodation?**

No. Telling coworkers that an employee is receiving an ADA reasonable accommodation amounts to a prohibited disclosure that the employee has a disability. However, rather than disclosing that the employee is receiving a reasonable accommodation, the employer may respond to coworker inquiries by stating that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy.<sup>[44]</sup> An employer may be able to make this point effectively by reassuring the employees asking the question that their privacy would similarly be respected if they obtained a workplace change for personal reasons. An employer's attempt to indirectly advise an employee's colleagues that the employee is receiving a reasonable accommodation (by, for example, telling an employee's colleagues that the ADA requires the employer to make changes for that employee) may amount to an unlawful disclosure that the employee has a disability.

Employers also may be able to avoid many of these kinds of questions by training all employees on the requirements of equal employment laws, including the ADA, and by providing information about reasonable accommodation to all of their employees. Education on reasonable accommodation may be done in a number of ways, such as through written reasonable accommodation procedures, employee handbooks, staff meetings, and periodic online or in-person training. This kind of proactive approach may lead to fewer questions from employees who misperceive coworker accommodations as "special treatment."

**Example F:** Most of the paralegals in a large law firm have relatively small computer monitors. Gage, a paralegal who is on medication for macular degeneration, which causes central vision loss and issues seeing finer details, requests and is given a larger monitor with a high contrast display that allows him to see the screen better. If the other paralegals ask why Gage has a new monitor but they do not, the employer may not divulge any information about his impairment, including the fact that the monitor is a reasonable accommodation.

# ACCOMMODATING APPLICANTS AND EMPLOYEES

The ADA requires employers to provide reasonable accommodations in three aspects of employment: (1) ensuring equal opportunity in the application process; (2) enabling a qualified individual with a disability to perform the essential functions of their job; and (3) making it possible for an employee with a disability to enjoy equal terms, conditions, benefits, and privileges of employment.<sup>[45]</sup>

Accommodations vary depending on the needs of the individual with a disability and the situation in which accommodation is needed. Not all applicants or employees with a visual disability will need an accommodation to perform their essential functions or will require the same accommodations to perform the same functions.<sup>[46]</sup>

## **10. What are examples of reasonable accommodations that some applicants or employees with visual disabilities may need?**

There is a wide range of possible changes in the application process, or in the way an employee performs the work, that can serve as reasonable accommodations for individuals with vision impairments. These can include, for example: assistive technology (such as text-to-speech software); accessible materials (such as braille or large print); modification of workplace/employer policies or procedures (such as allowing the use of guide dogs in the work area), testing (such as allowing alternative testing), or training; ambient adjustments (such as brighter office lights); sighted assistance or services (such as a qualified reader);<sup>[47]</sup> or other modifications or adjustments that allow a qualified applicant or employee with an ADA disability to enjoy equal employment opportunities.

Additional examples of the types of accommodations commonly requested by applicants and employees with visual disabilities appear immediately below, but the list is not exhaustive; individuals may need different changes or adjustments than those listed here. There also are extensive public and private resources to help employers identify reasonable accommodations. For example, the **Job Accommodation Network (<http://askjan.org>)** (JAN) is a free, federally funded, confidential service that provides information about many types of accommodations for applicants and employees with disabilities based on the needs of a given individual and the industry in which accommodation is needed.<sup>[48]</sup>

The following are examples of accommodations applicants or employees with visual disabilities may need:

## **Assistive or accessible technology or materials, including:**

- Screen readers (or text-to-speech software). Software applications that can convert written text on a computer screen into spoken words or a braille display. These tools can allow individuals to quickly review written text.
- Optical character recognition (OCR) technology that can create documents in screen-readable electronic form from printed ones, including an optical scanner (desktop, handheld, or wearable), and OCR software.
- Systems with audible, tactile, or vibrating feedback, such as proximity detectors, which can alert individuals if they are too close to an object or another person.
- Website modifications for accessibility. Taking steps to ensure that job applicants and employees can access and timely complete job applications, online tests, or other screening tools.
- Written materials in more accessible or alternate formats, such as in large print, sans serif fonts, braille, a recorded format, or an accessible shared document format, including those provided via QR code.

**Example G:** Ezra, a blind salesperson who has worked in retail for 15 years in positions of increasing responsibility, applies for a job at a newly opened clothing store. As part of the onboarding process, Ezra requests braille copies of all new employee documents, such as handbooks and forms. The store must grant this accommodation if it would not result in undue hardship.<sup>[49]</sup>

- Low-vision optical devices, which include magnifying devices, such as telescopes, prism lenses, and optical magnifiers, that can help with a variety of tasks, such as reading fine print, maps, street signs, and distant objects.
- Digital apps or recorders, including those with transcription capability.
- Smartphone and tablet apps with built-in accessibility features, such as those for screen reading/text-to-speech, magnification, OCR, braille display, color identification, wayfinding, and sighted assistance. There are also braille

keyboards for computers, and braille printers (embossers), and braille translation software.

- An interactive, tactile, graphical display.
- A desktop, handheld, or wearable video magnifier, or a closed-circuit television system (CCTV), for reading printed materials.
- Computer screen magnification tools, such as an external computer screen magnifier, a larger monitor with a high contrast theme and adjustable settings, or screen magnification software.
- Adjustable computer operating system settings, such as those that make information on screens easier to see or that allow users to listen to information.
- Prescription versions of workplace equipment, such as safety goggles.
- Wayfinding tools or tracking devices.
- Anti-glare shields, light filters, or wearable absorptive filters.
- Large print or high-contrast keyboards.
- Talking products, such as talking calculators.
- Color identification technology.
- Accessible maps for navigation and evacuation.

## **Modification of employer policies or procedures, testing, or training, including:**

- Workplace etiquette modifications, such as requesting that each speaker say their name and provide a brief description of themselves at a meeting.
- Policy modifications to allow use of personal use items, such as those needed for wayfinding.
- Dress code modifications (for example, to allow sunglasses, absorptive filters, and hats).
- Allowing use of an assistance animal, such as a guide dog, in or to access the workplace.<sup>[50]</sup>



**Example H:** A car dealership has a policy that animals are not allowed on the showroom floor because they might make some clients uncomfortable. Amari is qualified and applies for a position as a finance consultant. Finance consultants must occasionally meet with clients on the sales floor. Amari is blind due to diabetic retinopathy and requests a waiver of the no-animals policy to be able to bring a guide dog to work. The dealership must grant this accommodation if it would not result in undue hardship.

- Modifying work schedules,<sup>[51]</sup> including for the purpose of facilitating use of public transportation or transportation options offered by vocational rehabilitation.

**Example I:** Quon, who is deafblind due to Usher Syndrome, does not have easy access to public transportation and must rely on paratransit service to get to work most mornings. Quon requests a modified schedule on days when the paratransit service arrives after the employer's usual 8:30 a.m. start time, to be allowed to work later in the evening to make up the time rather than being required to take annual leave or face discipline for tardiness. The employer must grant this accommodation if it would not otherwise result in undue hardship.

- Making telework/remote work/work from home (part-time or full-time) available beyond the established policies for the position.<sup>[52]</sup>

**Example J:** Juliane, a software engineer who is blind due to albinism, is highly sensitive to sunlight and experiences significant discomfort and risk of eye injury when exposed to bright light. Juliane's employer recently transferred all employees to a bright, modern building with large windows and open concept workspaces. The new work environment cannot be sufficiently shaded to protect Juliane from discomfort and risk of injury. Juliane can perform all essential job functions from home and requests to be able to telework full-time. The employer must grant this accommodation if it would not result in undue hardship.

- Time off, in the form of accrued paid leave or unpaid leave, if paid leave has been exhausted or is unavailable.<sup>[53]</sup>

**Example K:** An employer provides a total of three weeks of paid time off (sick and annual) per employee each year. Dylan, an employee with glaucoma, has, over time, lost most vision and has decided to start using a guide dog. Training the guide dog will require Dylan to attend a six-week residential program. The needed six weeks of

time off exceeds the amount of paid leave provided to each employee, but the employer must provide additional unpaid leave as a reasonable accommodation if it would not result in undue hardship. The same analysis would apply if the employee needed time off for treatment related to a visual disability.

- Altering an employee's marginal (that is, nonessential) job functions.

**Example L:** Bay, a host at a restaurant, is primarily responsible for taking reservations, greeting patrons, showing patrons to their tables, and performing other duties as needed. Recently, one of the restaurant's delivery drivers was on vacation, and the restaurant staff were asked to assist with delivering takeout orders. Due to low vision, including peripheral vision loss, Bay is unable to drive and asks to be excused from driving to deliver orders. Since making deliveries is not an essential function of the host's job, the employer should accommodate the requested change in job duties, absent undue hardship. Alternatively, the restaurant may arrange for transportation so that Bay may deliver the orders.

- Reassignment to a vacant position.<sup>[54]</sup>

**Example M:** Cao, a city police officer, is shot and becomes blind as a result of a wound to the head. He is no longer able to perform the job of a patrol officer but is qualified for a vacant, nonemergency dispatcher position and requests to be reassigned. The job pays less than a patrol officer, but it is the closest vacant position in terms of pay, status, and benefits for which Cao is qualified, with one or more reasonable accommodations. The city must reassign him to this nonemergency dispatcher position as a reasonable accommodation if it would not result in undue hardship.

- Modifying an employment test (for example, providing the test in a more accessible format, providing a qualified reader, allowing a test to be conducted in a more accessible setting or by a vocational rehabilitation specialist who can provide documentation of the test, or allowing more time for completion).<sup>[55]</sup>

**Example N:** A consulting company decides to require all applicants for its consulting program to take and pass a timed reading comprehension and logic test on an algorithm-driven software platform. Kai, an applicant who has low vision, attempts to take the test but cannot complete it in time because the software does not support conversion of the written text on the screen into spoken words or a braille display. Kai recalls that the company initially provided contact information

for any applicants needing a reasonable accommodation. Kai emails the contact, submitting a request for an accommodation of an alternative way to take the reading and logic test. The company responds within 24 hours and engages Kai in a discussion (also known as an interactive process) to determine how the company can provide an effective accommodation. The company should provide Kai with a screen-readable version of the test so that Kai is able to complete it, if doing so would not result in undue hardship.

- Modifying employee trainings.<sup>[56]</sup>

**Example O:** An employer has decided to upgrade its computer software and train its staff about how to use it. In five “hands-on” classes, a trainer will show groups of employees how to execute various functions and then test them on carrying out those functions. Most of the demonstrations and exercises will involve use of a computer mouse to execute functions. Dakota, who is blind, uses assistive technology and will require individualized instruction that will enable her to learn how to perform necessary functions using keyboard commands. The employer must grant this accommodation if it would not result in undue hardship.

- Providing accessible training on use of assistive technologies.<sup>[57]</sup>

### **Work area adjustments,<sup>[58]</sup> including:**

- A workspace with brighter or lower lights.
- Audible or tactile signs and warning surfaces.

**Example P:** A call center facility with low-level lighting has many cubicles on different floors. Sage, a new employee who has low vision, including trouble seeing small details, due to a macular pucker, finds it difficult to navigate through the space safely. Sage requests a tactile map of evacuation and common routes through the facility, detectable warning surfaces on the floors where Sage must go, and brighter lights in his immediate work area, to help navigate the workplace safely and work effectively. The employer must grant these accommodations if they would not result in undue hardship.

### **Sighted assistance or services, including:**

- Sighted, virtual assistance via screen-sharing technology.

- A person (qualified reader) to: read printed materials (digital and hard copy); access and download materials from inaccessible databases or case management systems; complete data entry tasks (such as inputting information into inaccessible databases and case management systems); convert inaccessible files into Word or other accessible formats; and proofread/format documents.
- Sighted guides and sighted assistance for visual description and navigation.
- Worksite visits by orientation, mobility, or assistive technology professionals.
- Noise-cancelling or other types of telephone headsets to allow an employee to listen to screen-reading software and complete assignments without noise interference.
- Braille labeler and labels to enable the individual to read product labels.

## **Other modifications or adjustments that allow an applicant or employee with a visual disability to enjoy equal employment opportunities.**

**Example Q:** An employer holds a retirement party for a long-time employee, Carrie. The event includes a dinner and various presentations by Carrie’s coworkers and company management. A printed program is prepared for the event, and Darby, an employee who has difficulty reading due to macular degeneration, requests a copy of the program in large print. The employer must provide this accommodation, absent undue hardship.

**Example R:** All finalist applicants for a university position are invited to an informal meet-and-greet session with department personnel. Miyoko is blind as a result of being born without eyes (anophthalmia) and requests sighted assistance during the event to help her navigate around the room. The employer must provide this accommodation, absent undue hardship.

### **11. How does an applicant or employee request a reasonable accommodation?**

There are no “magic words” that an individual must use when requesting a reasonable accommodation. An individual simply must tell the employer that the individual needs an adjustment or change at work because of an impairment. A request for reasonable accommodation also can come from a family member,

friend, health professional (such as a rehabilitation counselor), or other representative on behalf of an individual with a disability. If an employer requires more information about the disability and why an accommodation is needed, it should engage in an “interactive process”—a dialogue with the applicant or employee—to obtain information that will help the employer in appropriately handling the request.<sup>[59]</sup>

While individuals may request accommodations at any time, employees who become aware that a disability may affect their work may wish to inform an employer as soon as they realize they need accommodations to assist them in performing their jobs. Applicants and employees also may find it helpful to discuss any necessary accommodations with the employer prior to starting a new position or assuming new job duties, even if an accommodation was provided during the job application process or in a previous position. Employers may, as a best practice, inform all new hires post-offer that they may request any needed accommodation in advance of their start date or once on the job.

**Example S:** Addie, who is blind, attempts to complete a job application on a company website portal. The job application is not compatible with Addie’s screen-reading software. Addie requests an alternative way to complete the application, because of her vision impairment. This is a request for a reasonable accommodation.

**Example T:** While Zuri has been out on extended medical leave for diabetes, their visual disability has worsened. When Zuri returns to work, they present a note from a doctor stating that they will need “some assistance” in order to perform the essential functions of the job. This is a request for a reasonable accommodation. The employer should initiate the interactive process to obtain any additional information needed.

## **12. May an employer request documentation when an applicant or employee requests a reasonable accommodation?**

Yes, but only under certain circumstances. When an individual’s visual disability and/or need for accommodation is not obvious or already known, the employer may ask the individual to provide reasonable documentation about how the condition limits the function of the eyes, seeing, or other major life activities (that is, whether the individual has a disability) and why a reasonable accommodation is needed. An employer, however, is entitled only to documentation sufficient to

establish that the individual has a visual disability and to explain why an accommodation is needed. A request for an individual's entire medical record, for example, would be inappropriate, as it likely would include information about unrelated conditions and may include unnecessary details about the individual's visual disability (such as treatment received while the individual was a child).<sup>[60]</sup>

**Example U:** Sasha, a customer service representative who developed diabetes later in life and was recently diagnosed with diabetic retinopathy, a nonobvious vision impairment, requests a larger computer monitor. Sasha's ophthalmologist provides a letter describing the impairment and limitations. The letter explains that Sasha can read standard-sized print but only very slowly, for short periods of time, and with considerable effort. The ophthalmologist concludes that providing some kind of magnification device for the computer or a larger monitor would be helpful. Sasha has provided sufficient documentation that the eye condition is an ADA disability and that a reasonable accommodation is needed. The employer may not request further documentation, such as the results of all the tests conducted to diagnose the condition.

### **13. Does an employer have to grant every request for a reasonable accommodation?**

No. An employer does not have to provide an accommodation if doing so would be an undue hardship.<sup>[61]</sup> Undue hardship means that providing the reasonable accommodation will result in significant difficulty or expense.<sup>[62]</sup> An employer also does not have to provide employees with personal use items, such as eyeglasses or other devices that are used both on and off the job.<sup>[63]</sup> Nor does an employer have to eliminate an essential function of a job as a reasonable accommodation, tolerate performance that does not meet its standards, or excuse violations of conduct rules that are job-related and consistent with business necessity and that the employer applies consistently to all employees (such as rules prohibiting violence, threatening behavior, theft, or destruction of property).<sup>[64]</sup> However, an employer may not justify an adverse action by claiming that an employee has performed poorly, when the poor performance is caused by an unlawful failure to accommodate.<sup>[65]</sup>

If more than one accommodation would be effective, the individual's preference should be given primary consideration, although the employer is not required to provide the individual's choice of reasonable accommodation.<sup>[66]</sup> The employer

may choose between accommodations if the accommodations are effective in meeting the individual's needs.<sup>[67]</sup>

**Example V:** Ngozi, an editor for a publishing company, has a corneal dystrophy (a condition in which deposits form on the cornea, the clear layer covering the front of the eye, affecting its shape or transparency). She needs magnification to read text. Ngozi asks the company to hire a full-time reader. The employer is able to purchase a computer program that will magnify text on the screen and speak the words to Ngozi. If the employer determines that the software would allow Ngozi to do the work effectively and does not pose an undue hardship, then the employer may choose to provide the software as a reasonable accommodation rather than hire a full-time reader.

**Example W:** Rachel, a blind job applicant, requests to be allowed to use an optically scanned version of a written employment test. The employer, instead, requires Rachel to take the test in braille, although she has told the employer she is not proficient in braille. In this situation, because providing the test in braille is not an effective accommodation, the employer must provide Rachel the optically scanned version, unless to do so would be an undue hardship.

#### **14. May an employer be required to provide more than one accommodation for the same applicant or employee with a visual disability?**

Yes. The duty to provide a reasonable accommodation is an ongoing one. Although some applicants or employees with visual disabilities may require only one reasonable accommodation, others may need more than one. An employer must consider each request for a reasonable accommodation and determine whether it (or an alternative accommodation) would be effective and whether providing it would pose an undue hardship.

**Example X:** Jamie, who was born blind, uses assistive technology to access the employer's network and to send and receive email messages easily. When the employer adopts new instant messaging and collaboration software for all employees, it must provide new or updated assistive technology, as necessary, so that Jamie will be able to use the new software, absent undue hardship.

**Example Y:** Jelani is an employee with retinitis pigmentosa, a degenerative eye condition that results in total or near total blindness over time. Jelani has been able to read printed materials related to his job with a magnifier and some adjustments

to work area lighting. When Jelani is no longer able to do this, he asks for a reader. Absent undue hardship, the employer must provide a reader.

**15. Does an employer have to provide a reasonable accommodation to an applicant with a disability during the application process, even if it believes that it will be unable to provide this individual with a reasonable accommodation on the job?**

Yes. An employer must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless the employer can show undue hardship).

Individuals with disabilities should not be excluded from the application process because the employer speculates, based on a request for reasonable accommodation to apply for the job, that the individual will need reasonable accommodation to perform the job. In many instances, employers will be unable to determine whether an individual needs reasonable accommodation to perform a job based solely on a request for accommodation during the application process. And even if an individual will need reasonable accommodation to perform the job, it may not be the same type or degree of accommodation that is needed for the application process. An employer should assess the need for accommodations for the application process separately from those that may be needed to perform the job.<sup>[68]</sup>

**Example Z:** An employer is impressed with Natoya's resume and asks her to come in for an interview and skills assessment. Natoya, who has low vision due to glaucoma, requests to bring a guide dog to the interview and test because the building in which they are taking place is unfamiliar. The employer cancels the interview and refuses to consider Natoya's application further. The employer has violated the ADA. The employer should have proceeded with the interview, absent a determination based on specific facts that permitting entry to the guide dog for the interview and testing will cause undue hardship. If the employer had provided the reasonable accommodation and interviewed Natoya, accompanied by her guide dog, the employer could have inquired at the interview whether Natoya would need a reasonable accommodation to perform the functions of the job and if so, what kind.

In some cases, an employer may allow a requested accommodation to enable an applicant with a vision impairment to fully participate in the application process,



but the applicant will still fail a required test that is part of the application process. In such cases, if the poor performance is unrelated to the vision impairment, the employer does not have to provide any further reasonable accommodations for this individual, because the individual is no longer qualified to continue with the application process.<sup>[69]</sup>

**16. Does an employer have an obligation to make reasonable accommodations to applicants or employees with visual disabilities who request them in connection with the employer’s use of software that uses algorithms or artificial intelligence (AI) as decision-making tools?**

Yes. Algorithmic or AI decision-making tools might intentionally or unintentionally “screen out” individuals with disabilities in the application process and when employees are on the job, even though such individuals are able to do jobs with or without reasonable accommodation.<sup>[70]</sup> For example, an applicant or employee may have a visual disability that reduces the accuracy of an AI assessment used to evaluate the applicant or employee. In such cases, the employer has an obligation to provide a reasonable accommodation, such as an alternative testing format, that would provide a more accurate assessment of the applicant’s or employee’s ability to perform the position, absent undue hardship.

**17. What steps can employers take to help ensure algorithmic or AI decision-making tools do not “screen out” or otherwise unfairly disadvantage applicants or employees with disabilities?**

Employers may, as a promising practice, take steps to provide information about how the technology evaluates applicants or employees (thus alerting those with visual disabilities that the technology might not accurately assess their qualifications) and provide instructions for how to seek a reasonable accommodation. Employers should appropriately respond to requests for reasonable accommodations related to the employer’s use of algorithms or AI as decision-making tools.<sup>[71]</sup>

**Example AA:** An agency has decided to use an algorithm to evaluate employees’ productivity. The algorithm takes into account the employee’s average number of keystrokes per minute. If the employer does not inform its employees that it is using this algorithm, an employee who is blind or has a vision impairment and who uses voice recognition software instead of a keyboard may be rated poorly and lose out on a promotion or other job opportunity as a result. If the employer informs its

employees that they will be assessed partly on the basis of keyboard usage, however, that same employee would know to request an alternative means of measuring productivity—perhaps one that considers the use of voice recognition software rather than keystrokes—as a reasonable accommodation.

### **18. What kinds of reasonable accommodations are related to the terms, conditions, and privileges of employment?**

Reasonable accommodations related to the terms, conditions, and privileges of employment are not limited to those relating to performing the job. Such possible accommodations include a wide range of policy modifications or other adjustments that are needed to accommodate individuals with disabilities. Such accommodations include but are not limited to accommodations for access to work or the workplace itself, services, facilities, or portions of facilities to which all employees are granted access (for example, employee break rooms, gyms, and cafeterias, and employee assistance programs); access to information communicated in the workplace; and the opportunity to participate in employer-sponsored training and social events.<sup>[72]</sup>

**Example BB:** An employer offers employees opportunities to attend trainings, which are considered valuable opportunities that can lead to employee advancement. Harris, an employee with age-related macular degeneration, who has worked successfully in his current position with slight modifications to computer equipment, asks to attend a training that involves a review of significant handwritten materials that cannot be scanned for optical character recognition. To ensure he has an equal opportunity to take the training and advance, Harris asks that a part-time reader be provided. The employer may not deny Harris access to the training because of the need to make a reasonable accommodation and must provide a reader or another effective accommodation that would not result in undue hardship.

**Example CC:** An employer routinely posts job openings on an employee break room bulletin board, where employees are encouraged to share information. Daryon, an employee with blurriness and blind spots in his vision, requests electronic notice of all the postings via email so that he will have timely notice of the postings. The employer must provide electronic notice or another effective accommodation that would not result in undue hardship.

An employer will not be excused from providing an employee with a disability with a necessary accommodation because the employer has contracted with another entity to conduct the event.

**Example DD:** An employer offers its employees a training course on organization and time management provided by a local company with which the employer has contracted. Harlow, an employee who is blind due to cataracts, wants to take the course and asks that the materials be made available in braille. The employer claims that the company conducting the training is responsible for providing what Harlow needs, but the company responds that the responsibility is the employer's. Even if the company conducting the training has an obligation, under Title III of the ADA,<sup>[73]</sup> to provide "auxiliary aids and services," which would include providing written materials in braille, the employer is still obligated to provide Harlow with a reasonable accommodation for the training. While both the employer and the training company each remain obligated to ensure that individual receives the reasonable accommodation, to help avoid confusion and to ensure compliance, they can designate in a contract whether the employer or the training company will be providing necessary accommodations to individuals with disabilities.<sup>[74]</sup>

Failure by the local company to fulfill its obligations under another part of the ADA (such as Title III) does not excuse the employer's refusal to provide reasonable accommodation that enables Harlow to take the course.

## **CONCERNS ABOUT SAFETY**

When it comes to safety concerns, an employer should be careful not to act on the basis of myths, fears, or stereotypes about vision impairments. Instead, the employer should evaluate an individual on their skills, knowledge, and experience, and, if any, their disability-related limitations. If the employer has a reasonable belief based on objective evidence that an individual's visual disability may pose safety issues, then it should follow the ADA's "direct threat" analysis, which involves both assessing potential risk and discerning the possibility that reasonable accommodations might reduce or eliminate any such risk.

However, if an employer imposes a vision-related requirement that is necessary to comply with a federal safety law or regulation, the "conflict with other federal laws"

defense will apply, and the employer's safety-based qualification standard will be a permissible business necessity under the ADA.<sup>[75]</sup>

**19. When may an employer, because of safety concerns, refuse to hire, terminate, or temporarily restrict the duties of an individual who has or had a vision impairment?**

An employer may exclude an individual with a vision impairment from a job for safety reasons only when the individual poses a direct threat. A "direct threat" is a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced through reasonable accommodation.<sup>[76]</sup> To determine if there is a direct threat, first, an employer should conduct an individualized assessment of an individual's ability to safely perform the essential functions of the job.<sup>[77]</sup> This determination must be based on reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence.

The employer should evaluate whether there is a significant risk of substantial harm by considering:

- (1) the duration of the risk;
- (2) the nature and severity of the potential harm;
- (3) the likelihood that the potential harm will occur; and
- (4) the imminence of the potential harm.<sup>[78]</sup>

The risk of harm must be serious and likely to occur, not remote or speculative.

Second, if the employer determines there is a significant risk of substantial harm, then the employer must determine whether any reasonable accommodation would reduce or eliminate the risk.<sup>[79]</sup>

**Example EE:** Ali, an assembly line worker, has lost most vision, but because she has held the job for more than ten years, she can effectively perform the job's functions using a combination of low vision and touch. The employer's normal practice is to flash an alarm light when there is an assembly line malfunction that could cause injuries to workers. Rather than discharging Ali, who is no longer able to see the flashing light and therefore could be in harm's way, the employer should consider whether installing an audio alarm, or other reasonable accommodation, would be

effective in reducing the threat to an acceptable level. If it would not impose an undue hardship, then the employer must provide the accommodation.

**Example FF:** Paul, a blind sous-chef who began working as a line cook and has worked in restaurants for 15 years in positions of increasing levels of responsibility, applies for a job at a newly opened restaurant. Although it initially takes him slightly more time than other workers to learn the layout of the kitchen, once he does so he is able to move about easily and safely. The combination of his experience, his use of touch to perform some tasks that other workers perform visually, and a few accommodations, such as braille labels on oven controls, enables him to use the kitchen equipment and to supervise kitchen staff. The restaurant may not refuse to hire this chef on the ground that he cannot work safely in a busy kitchen.

**Example GG:** Michal, a line cook, develops a visual disability and has difficulty adjusting to the vision loss. As a result, she has problems navigating in the kitchen and barely avoids bumping into three different coworkers, two of whom were carrying trays of food just removed from the oven and one of whom was carrying a pot of boiling water. She also was warned twice about placing her hands too close to open flames and fryers filled with hot oil.

Based on objective evidence of Michal's vision impairment, the employer can seek medical information and an individualized assessment of Michal's ability to safely perform the essential functions of the line cook job, along with advice on any reasonable accommodations that could enable safe performance. If it is determined that Michal, working in the line cook position, poses a significant risk of substantial harm to the health or safety of herself or others, the employer should explore if there are any reasonable accommodations that could reduce or eliminate that risk.

If the employer's individualized assessment determines that Michal, working as a line cook, poses a significant risk of substantial harm to the health or safety of herself or others and no reasonable accommodation can eliminate or reduce the risk to a safe level, then Michal poses a direct threat. In that instance, she may be removed from the line cook position. The employer must still offer her a reasonable accommodation of reassignment to a vacant position for which she is qualified, if such a position exists and doing so would not pose an undue hardship.

**20. What should an employer do when another federal law prohibits it from hiring individuals with vision impairments for particular positions?**

If a federal law prohibits an employer from hiring or retaining an individual with a vision impairment for a particular position, the employer would not be liable under the ADA. The employer should be certain, however, the prohibition actually applies. The employer also should be sure that the law does not contain any exceptions or waivers that apply to the individual with the vision impairment.

**Example HH:** Prakash has monocular vision and applies for a position with a courier service to drive a commercial motor vehicle. This position is subject to vision requirements and other standards enforced by the U.S. Department of Transportation (DOT), and Prakash has not been certified under DOT's **alternative vision standard (<https://www.fmcsa.dot.gov/regulations/medical/vision-evaluation-report-form-mcsa-5871>)**. The employer may rely on DOT's vision requirement in denying Prakash employment driving commercial motor vehicles to which the requirements apply. However, the employer may not rely on a DOT vision requirement that does not apply in a certain context to exclude Prakash from a position, such as driving small trucks. If the employer denied Prakash a position driving smaller trucks to which the DOT requirements do not apply, because of his visual disability, the employer would have to establish that Prakash would pose a direct threat, within the meaning of the ADA.

## HARASSMENT

The ADA prohibits harassment, or offensive conduct, based on disability just as other federal laws prohibit harassment based on race, sex, color, national origin, religion, age (40 and over), genetic information, and pregnancy, childbirth, or related medical conditions. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive music or other sounds, and interference with work performance. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

**Example II:** Nate, a grocery store cashier with a visual disability, is frequently taunted by coworkers. They regularly ask Nate how many fingers they are holding up and take away Nate's white cane and hide it. Nate complains to a supervisor in

accordance with the employer's anti-harassment policy. The employer must promptly investigate and address the harassing behavior.

## **21. What should employers do to prevent and correct harassment?**

Employers should make clear that they will not tolerate harassment based on disability or on any other protected basis. This can be done in a number of ways, such as through a written policy, employee handbooks, staff meetings, and periodic training. The employer should emphasize that harassment is prohibited and that employees should promptly report such conduct to a manager. Finally, the employer should immediately conduct a thorough investigation of any report of harassment and take swift and appropriate corrective action. For more information on the standards governing harassment under all of the equal employment opportunity laws, see EEOC's **Harassment** (<https://www.eeoc.gov/harassment>) webpage.

# **RETALIATION AND INTERFERENCE**

The ADA prohibits retaliation by an employer against someone who opposes discriminatory employment practices, files a charge of employment discrimination, or testifies or participates in any way in an investigation, proceeding, or litigation related to a charge of employment discrimination. It is also unlawful for an employer to retaliate against someone for requesting a reasonable accommodation or to **interfere with the exercise of ADA rights** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#III.ADA>). Individuals who believe that they have been retaliated against or subjected to ADA interference may file a charge as described below.

# HOW TO FILE A CHARGE OF EMPLOYMENT DISCRIMINATION

## Against Private Employers and State/Local Governments

If you believe that your employment-related ADA rights may have been violated, the EEOC can help you decide what to do next. For example, if the employer refuses to consider your request for a reasonable accommodation to complete an application process or perform your job, and if you think you would be able to do the job with a reasonable accommodation, you might consider filing a charge of discrimination with the EEOC. A discrimination charge is an applicant's or employee's statement alleging that an employer engaged in employment discrimination and asking the EEOC to investigate.

If you **file a charge of discrimination (<https://www.eeoc.gov/how-file-charge-employment-discrimination>)**, the EEOC will conduct an investigation. Mediation, which is an informal and confidential way for people to resolve disputes with the help of a neutral mediator, may also be available. Because you must file an EEOC charge within 180 days of the alleged violation in order to take further legal action (or 300 days if the employer is covered by a state or local employment discrimination law), it is best to begin the process early. It is unlawful for an employer to retaliate against you for contacting the EEOC or filing a charge.

If you would like to begin the process of filing a charge, go to our **EEOC Online Public Portal (<https://publicportal.eeoc.gov/Portal/Login.aspx>)**, contact **your local EEOC office (<https://www.eeoc.gov/field-office>)** (contact information available on the local office page), or contact us by phone at 1-800-669-4000 (voice), 1-800-669-6820 (TTY), or 1-844-234-5122 (ASL Video Phone).

## Against the Federal Government

If you are a federal employee or job applicant and you believe that a federal agency has discriminated against you, you have a right to file a complaint. Each agency is required to post information about how to contact the agency's EEO Office. You can contact an EEO Counselor by contacting the office responsible for the agency's EEO complaints program. Generally, you must contact the EEO Counselor within 45



calendar days from the day the discrimination occurred. In most cases the EEO Counselor will give you the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

If you do not settle the dispute during counseling or through ADR, you can file a formal discrimination complaint against the agency with the agency's EEO Office. You must file within 15 calendar days from the day you receive notice from your EEO Counselor about how to file.

Once you have filed a formal complaint, the agency will review the complaint and decide whether or not the case should be dismissed for a procedural reason (for example, your claim was filed too late). If the agency does not dismiss the complaint, it will conduct an investigation. The agency has 180 days from the last amendment to your complaint to finish the investigation or up to 360 days after the filing of the original complaint, whichever is earlier. When the investigation is finished, the agency will issue a notice giving you two choices: either request a hearing before an EEOC Administrative Judge or ask the agency to issue a decision as to whether the discrimination occurred. A **[detailed description of the federal sector EEO process \(https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process\)](https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process)**, is available on our website.

If you require assistance (such as sighted assistance or assistive technology) to file a complaint, participate in an EEO investigation, or as part of an EEOC hearing process, you should submit a request to your agency's EEO Office for assistance. It will then be the responsibility of your agency to respond to your request.<sup>[80]</sup>

*This information is not new policy; rather, this document applies principles already established in the ADA's statutory and regulatory provisions as well as previously issued guidance. The contents of this publication do not have the force and effect of law and are not meant to bind the public in any way. This publication is intended only to provide clarity to the public regarding existing requirements under the law. As with any charge of discrimination filed with the EEOC, the Commission will evaluate alleged ADA violations based on the facts and circumstances of the particular matter and applicable legal principles.*

[1] See **[EEOC Disability-Related Resources \(http://www.eeoc.gov/laws/types/disability.cfm\)](http://www.eeoc.gov/laws/types/disability.cfm)** and **[People with Certain Types of Health Conditions/Disabilities \(https://www.eeoc.gov/eeoc-disability-related-resources/people-certain-types-health-conditionsdisabilities\)](https://www.eeoc.gov/eeoc-disability-related-resources/people-certain-types-health-conditionsdisabilities)**.

**[2] 42 U.S.C. § 12102(1) and (3) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(g) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(g\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(g)))**.

**[3] See, e.g., National Institutes of Health, *Eye Conditions and Diseases* (<https://www.nei.nih.gov/learn-about-eye-health/eye-conditions-and-diseases>)** (last visited July 24, 2023).

**[4] For example, disability laws in California, Pennsylvania, New Jersey, New York, and a number of other states, apply to employers with fewer than 15 employees.**

**[5] National Center for Health Statistics, *Percentage of Any Difficulty Seeing for Adults Aged 18 and Over, United States* ([https://wwwn.cdc.gov/NHISDataQueryTool/SHS\\_adult/index.html](https://wwwn.cdc.gov/NHISDataQueryTool/SHS_adult/index.html))**, National Health Interview Survey (2022) (generated interactively on July 24, 2023). According to the U.S. Census Bureau, more than 8 million people of all ages (approximately 2.5% of the population) in the United States are blind or have serious difficulty seeing, even when wearing glasses. U.S. Census Bureau, ***American Community Survey, 1-Year Estimates Subject Tables [Table S1810, Disability Characteristics]*** (<https://data.census.gov/table?q=Disability&g=010XX00US&tid=ACSS1Y2021.S1810>) (2021) (last visited July 24, 2023). See also U.S. Centers for Disease Control, Vision and Eye Health Surveillance System (VEHSS), ***Composite Prevalence Estimates*** (<https://www.cdc.gov/visionhealth/vehss/estimates/index.html>) (last visited July 24, 2023).

**[6] U.S. Centers for Disease Control and Prevention, Vision Health Initiative, *Common Eye Disorders and Diseases* (<https://www.cdc.gov/visionhealth/basics/ced/index.html>)**, (last visited July 24, 2023). According to the CDC, diabetic retinopathy is the leading cause of blindness among U.S. working-aged adults aged 20–74 years, with an estimated 4.1 million and 899,000 individuals in the United States affected by retinopathy and vision-threatening retinopathy, respectively. *Id.* Macular degeneration affects an estimated 1.8 million individuals in the United States, aged 40 years and older, and an additional 7.3 million with large drusen (deposits under the retina) are at substantial risk of developing macular degeneration. *Id.* An estimated 20.5 million (17.2%) individuals in the United States aged 40 years and older have cataract in one or both eyes, and 6.1 million (5.1%) have had their lens removed operatively. *Id.*

Glaucoma, a group of eye diseases that can cause low vision and blindness by damaging the optic nerve, is sometimes treated with surgery; however, surgery for glaucoma carries some risks, including risk of cataract or vision loss. U.S. National Institutes of Health, National Eye Institute, ***Glaucoma Surgery*** (<https://www.nei.nih.gov/learn-about-eye-health/eye-conditions-and-diseases/glaucoma/glaucoma-surgery>) (last updated Jan. 3, 2022; last visited July 24, 2023). Similarly, other surgeries used to treat vision impairments, such as LASIK, carry the risk of side effects, including permanent vision impairment. See, e.g., U.S. National Institutes of Health, National Eye Institute, ***Surgery for Refractive Errors*** (<https://www.nei.nih.gov/learn-about-eye-health/eye-conditions-and-diseases/refractive-errors/surgery-refractive-errors>) (last updated June 26, 2019; last visited July 24, 2023). See also National Eye Institute, National Institutes of Health, ***Low Vision*** (<https://www.nei.nih.gov/learn-about-eye-health/eye-conditions-and-diseases/low-vision>) (last visited July 24, 2023).

[7] See U.S. Centers for Disease Control and Prevention, Vision Health Initiative, ***Common Eye Disorders and Diseases*** (<https://www.cdc.gov/visionhealth/basics/ced/index.html>) (last visited July 24, 2023). See also U.S. Centers for Disease Control, ***Vision and Eye Health Surveillance System (VEHSS)*** (<https://www.cdc.gov/visionhealth/vehss/index.html>) (last visited July 24, 2023).

[8] See U.S. Centers for Disease Control, ***Vision and Eye Health Surveillance System (VEHSS)*** (<https://www.cdc.gov/visionhealth/vehss/index.html>) (last visited July 24, 2023).

[9] The question of whether an individual has a “disability” under the ADA should not demand extensive analysis. Instead, the primary focus in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. **42 U.S.C. § 12102(4)(A)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.1(c)(4)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.1\(c\)\(4\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.1(c)(4))).

[10] See **42 U.S.C. § 12102(1)(A)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.2(i)(1)(ii)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(i\)\(1\)\(ii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(i)(1)(ii))).

<sup>[11]</sup> 42 U.S.C. § 12102(1)(B) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(k)(1) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(k\)\(1\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(k)(1))).

<sup>[12]</sup> 42 U.S.C. § 12102(4) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. §§ 1630.1(c)(4) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.1\(c\)\(4\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.1(c)(4))), 1630.2(j)(1) ([https://www.ecfr.gov/current/title-29/part-1630#p-1630.2\(j\)\(1\)](https://www.ecfr.gov/current/title-29/part-1630#p-1630.2(j)(1))).

<sup>[13]</sup> 29 C.F.R. § 1630.2(j)(1)(i) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(1\)\(i\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(1)(i))), (ii) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(1\)\(ii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(1)(ii))).

<sup>[14]</sup> 42 U.S.C. § 12102(4)(E)(i)-(ii) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(j)(1)(vi) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(j\)\(1\)\(vi\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(j)(1)(vi))).

<sup>[15]</sup> 42 U.S.C. § 12102(4)(E)(iii)(II) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(j)(5)(i) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(5\)\(i\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(5)(i))).

<sup>[16]</sup> 42 U.S.C. § 12102(4)(E)(i)(IV) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(j)(5)(iv) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(5\)\(iv\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(5)(iv))).

<sup>[17]</sup> 29 C.F.R. § 1630.2(j)(3)(iii) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(3\)\(iii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(3)(iii))).

<sup>[18]</sup> 42 U.S.C. § 12102(1)(C) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>), (3) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(g)(1)(iii) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(g\)\(1\)\(iii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(g)(1)(iii))), (I).

([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(l\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(l))).

<sup>[19]</sup> *Id.*

<sup>[20]</sup> 42 U.S.C. § 12102(3)(B) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(g)(1)(iii) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(g\)\(1\)\(iii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(g)(1)(iii))).

<sup>[21]</sup> 42 U.S.C. § 12102(1) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>), (3) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(l)(3) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(l\)\(3\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(l)(3))).

<sup>[22]</sup> 42 U.S.C. § 12201(h) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(o)(4) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(o\)\(4\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(o)(4))).

<sup>[23]</sup> 42 U.S.C. § 12102(4)(E)(ii) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>), (iii)(I) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(j)(1)(vi) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(1\)\(vi\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(1)(vi))).

<sup>[24]</sup> 42 U.S.C. § 12102(4)(E)(iii)(I) (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § 1630.2(j)(6) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(j\)\(6\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(j)(6))).

<sup>[25]</sup> Someone who uses ordinary eyeglasses or contact lenses is not automatically considered to be outside the ADA's protection, however. Such an individual may demonstrate that their vision, even with the use of ordinary eyeglasses or contact lenses, is still substantially limited when compared to most people. See **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>) at Section 1630.2(j)(1)(vi), “Mitigating Measures.”

<sup>[26]</sup> **42 U.S.C. § 12102(4)(E)(i)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. §§ 1630.2(j)(1)(vi)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(1\)\(vi\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(1)(vi))), **(5)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(j\)\(5\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(j)(5))).

<sup>[27]</sup> **42 U.S.C. §12112(d)(4)(A)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.13** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.13>).

<sup>[28]</sup> **42 U.S.C. § 12113(c)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.10(b)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.10\(b\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.10(b))).

<sup>[29]</sup> Federal contractors are required under **41 C.F.R. § 60-741.42(a)** (<https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60/part-60-741/subpart-C/section-60-741.42>), a regulation issued by the Office of Federal Contract Compliance Programs (OFCCP), to invite applicants to voluntarily self-identify as individuals with disabilities for affirmative action purposes. The ADA prohibition on asking applicants about medical conditions at the pre-offer stage does not prevent federal contractors from complying with the OFCCP's regulation. See **Letter from Peggy R. Mastroianni, EEOC Legal Counsel to Patricia A. Shiu, Director of OFCCP** ([https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/sec503/Self\\_ID\\_Forms/OLC\\_letter\\_to\\_OFCCP\\_8-8-2013\\_508c.pdf](https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/sec503/Self_ID_Forms/OLC_letter_to_OFCCP_8-8-2013_508c.pdf)) (Aug. 8, 2013) (last visited July 24, 2023).

<sup>[30]</sup> **Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>), at The Pre-Offer Stage/What is a Disability Related Question?.

<sup>[31]</sup> **Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA** (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at General Principles/Background, note 6.

[32] See **42 U.S.C. § 12112(d)(3)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.14(b)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(b\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(b))). See also *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA* (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at General Principles/Background. See also *id.* at note 7.

[33] See *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>), at The Post-Offer Stage.

[34] See **42 U.S.C. § 12112(d)(4)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.14(c)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(b\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(b))). See also *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA* (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at Questions 1 and 12.

[35] See **42 U.S.C. §§ 12111(3), 12111(8), 12112(d)(3)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>), **12113(a)-(b)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. §§ 1630.14(b)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(b\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(b))), **1630.2** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2>) **(q)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(q\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(q)))-(r) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(r\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(r))); **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.14(b), “Employment Entrance Examination.” See also *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA* (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at General Principles/Background and at Question 5.

[36] See ***Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA*** (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at Job-Related and Consistent with Business Necessity. See also *id.* at Section D. Periodic Testing and Monitoring.

[37] *Id.* at Question 5.

[38] See ***Applying Performance and Conduct Standards to Employees with Disabilities*** (<https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities#application>), at Application of ADA Legal Requirements to Performance and Conduct Standards/Performance Standards. An employer also may ask an employee about the employee’s vision or send the employee for a medical examination when it reasonably believes the employee may pose a direct threat because of an impairment. See “**Concerns About Safety**,” *supra*.

[39] The ADA allows employers to conduct voluntary medical examinations and activities, including obtaining voluntary medical histories, which are part of a voluntary employee wellness program (such as a smoking cessation program), if any medical records (including, for example, the results of any diagnostic tests) acquired as part of the program are kept confidential. A wellness program is “voluntary” if an employer neither requires participation nor penalizes employees who do not participate. See ***Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*** (<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>), at Question 22.

[40] ***Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>), at Question 21.

[41] ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Question 44.

[42] ***Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA***



<https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>), at Question 16.

<sup>[43]</sup> See **42 U.S.C. §§ 12112(d)(3)(B), 12112(d)(4)(C), 12201** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. §§ **1630.14(b)(1)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(b\)\(1\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(b)(1))), **1630.14(c)(1)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(c\)\(1\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(c)(1))), **1630.14(d)(4)(i)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14\(d\)\(4\)\(i\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.14(d)(4)(i))). See also ***Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>).

<sup>[44]</sup> ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Question 42.

<sup>[45]</sup> **42 U.S.C. § 12111(9)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **42 U.S.C. § 12112(a), (b)(5)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); 29 C.F.R. § **1630.2(o)(1)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(o\)\(1\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(o)(1))). See also ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).

<sup>[46]</sup> See **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at “Process of Determining the Appropriate Reasonable Accommodation.”

<sup>[47]</sup> A qualified reader is one of the “auxiliary aids and services” identified by the ADA as “effective methods of making visually delivered materials available to individuals with visual impairments.” **42 U.S.C. § 12103(1)(B)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>).

[48] For more information on specific accommodation ideas for different types of disabilities, see the Job Accommodation Network’s **Searchable Online Accommodation Resource** (<https://askjan.org/soar.cfm>) (SOAR) (last visited July 24, 2023). JAN can also be reached at 800-526-7234 (Voice) or 877-781-9403 (TTY).

[49] Several examples throughout this document describe scenarios where an employer must grant an accommodation absent undue hardship. In situations in which more than one accommodation will be effective, an employer may provide an alternative effective accommodation. The preference of the individual with a disability should be given primary consideration, although the employer providing the accommodation has the ultimate discretion to choose between effective accommodations. See **42 U.S.C. § 12111(9); 42 U.S.C. § 12112(b)(5)(A)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.2(o)(1)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(o\)\(1\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(o)(1))); **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.9, “Process of Determining the Appropriate Reasonable Accommodation.” See also Question 13, *supra*.

[50] See **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.2(o), “Reasonable Accommodation.”

[51] See **29 C.F.R. § 1630.2(o)(2)(ii)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(o\)\(2\)\(ii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(o)(2)(ii))).

[52] For more information regarding an employer’s responsibility to provide telework for covered individuals, see ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Question 34; ***Work at Home/Telework as a Reasonable Accommodation*** (<https://www.eeoc.gov/laws/guidance/work-hometelework-reasonable-accommodation>).

[53] For more information regarding an employer’s responsibility to provide leave for covered individuals, see **Appendix to Part 1630, Title 29**

(<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.2(o), “Reasonable Accommodation”; ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Questions 17-21; ***Employer-Provided Leave and the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/employer-provided-leave-and-americans-disabilities-act>).

[54] 29 C.F.R. § 1630.2(o)(2)(ii) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(o\)\(2\)\(ii\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(o)(2)(ii))). For more information regarding reassignment to a vacant position as a form of reasonable accommodation, see the discussion of “Reassignment” in ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).

[55] 29 C.F.R. § 1630.2(o)(2)(ii). For more information regarding modification of tests, training materials, or policies as a form of reasonable accommodation, see generally ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).

[56] *Id.*

[57] For more information regarding an employer’s responsibility to provide training and accessible technology for covered individuals, see generally ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>).

[58] 29 C.F.R. § 1630.2(o)(2)(i) ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(o\)\(2\)\(i\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(o)(2)(i))). For more information regarding work area adjustments as a form of reasonable accommodation, see generally ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act***

**(<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>)**.

<sup>[59]</sup> **29 C.F.R. § 1630.2(o)(3)** (**[https://www.ecfr.gov/current/title-29/part-1630#p-1630.2\(o\)\(3\)](https://www.ecfr.gov/current/title-29/part-1630#p-1630.2(o)(3))**). For more information regarding the interactive process, see ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (**<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>**), at Question 1 and Questions 5-10.

<sup>[60]</sup> See ***Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA*** (**<https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>**), at Question 10. Requests for documentation to support a request for accommodation may violate Title II of the Genetic Information Nondiscrimination Act (GINA) when they are likely to result in the acquisition of genetic information, including family medical history. **29 C.F.R. § 1635.8(a)** (**[https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1635/section-1635.8#p-1635.8\(a\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1635/section-1635.8#p-1635.8(a))**). For this reason, employers may want to include a warning in the request for documentation that the employee or the employee's doctor should not provide genetic information. *Id.* **§ 1635.8(b)(1)(i)(B)** (**[https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1635#p-1635.8\(b\)\(1\)\(i\)\(B\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1635#p-1635.8(b)(1)(i)(B))**).

<sup>[61]</sup> **42 U.S.C. § 12112(b)(5)(A)** (**<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>**); **29 C.F.R. § 1630.9(a)** (**[https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.9#p-1630.9\(a\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.9#p-1630.9(a))**).

<sup>[62]</sup> **42 U.S.C. § 12111(10)** (**<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>**); **29 C.F.R. § 1630.2(p)** (**[https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2\(p\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/section-1630.2#p-1630.2(p))**).

<sup>[63]</sup> See ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (**<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#general>**), at General

Principles/Reasonable Accommodation; **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.9, “Not Making Reasonable Accommodation.”

[64] See ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Questions 35 and note 103; ***Applying Performance and Conduct Standards to Employees with Disabilities*** (<https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities>).

[65] See **42 U.S.C. § 12112(b)(5)(B)** (<https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada>); **29 C.F.R. § 1630.9(b)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.9\(b\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.9(b))).

[66] **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>), at Section 1630.9, “Process of Determining the Appropriate Reasonable Accommodation.”

[67] *Id.*

[68] ***Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act*** (<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>), at Question 13.

[69] *Id.* at Question 13, Example B.

[70] For more information on the ADA and artificial intelligence and algorithms to assess job applicants and employees, see ***The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees*** (<https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence>) and ***Tips for Workers: The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence*** (<https://www.eeoc.gov/tips-workers>).

**americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence).**

[71] *Id.*

[72] The Architectural Barriers Act (ABA) applies to facilities that are designed, built, altered, or leased with federal funds. For more information on the accessibility requirements of the ABA, visit the website for the **U.S. Access Board** (<https://www.access-board.gov/aba/>).

[73] For more information on the requirements of Title III of the ADA, visit the website for the **U.S. Department of Justice, Civil Rights Division, Disability Rights Section** (<http://www.justice.gov/crt/about/drs/>) or **www.ADA.gov** (<http://www.ADA.gov>).

[74] An employer should include, as part of any contract with an entity that conducts training, provisions that allocate responsibility for providing reasonable accommodations. This can help to avoid conflicts or confusion that could arise and result in an employee being denied a training opportunity. An employer should also remember, however, that it remains responsible for providing a reasonable accommodation that an employee needs to take advantage of a training opportunity, regardless of how that responsibility has been allocated in the contract.

[75] **29 C.F.R. § 1630.15(e)** ([https://www.ecfr.gov/current/title-29/part-1630#p-1630.15\(e\)](https://www.ecfr.gov/current/title-29/part-1630#p-1630.15(e))).

[76] **29 C.F.R. § 1630.2(r)** ([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2\(r\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#p-1630.2(r))). See also **Appendix to Part 1630, Title 29** (<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630/appendix-Appendix%20to%20Part%201630>) at Section 1630.2(r), “Direct Threat.”

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] See **29 U.S.C. § 791** (<https://www.eeoc.gov/statutes/rehabilitation-act-1973>) (Section 501 of the Rehabilitation Act); **29 U.S.C. § 794**

**(<https://www.govinfo.gov/content/pkg/USCODE-2021-title29/pdf/USCODE-2021-title29-chap16-subchapV-sec794.pdf>)** (Section 504 of the Rehabilitation Act); **29 U.S.C. § 794d(a)(1)** (**(<https://www.govinfo.gov/content/pkg/USCODE-2021-title29/pdf/USCODE-2021-title29-chap16-subchapV-sec794d.pdf>)**) (Section 508 of the Rehabilitation Act); **29 C.F.R. § 1614.203(d)(4)** (**([https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1614#p-1614.203\(d\)\(4\)](https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1614#p-1614.203(d)(4)))**).