

EMPLOYMENT DISCRIMINATION AND THE LAW

Frequently Asked Questions for People Who Live In New York City

(1) What laws protect employees or potential employees with disabilities in New York City?

Depending on the size and nature of your employer, the Americans with Disabilities Act (ADA), Sections 501 and 505 of the Rehabilitation Act of 1973, the New York State Human Rights Act, and/or the New York City Human Rights Law may apply.

The ADA covers employers with 15 or more employees. The ADA does not apply to the United States government and to bona fide private membership clubs.

The New York State and New York City Human Rights Laws both cover employers with four or more employees.

The Rehabilitation Act of 1973 protects employees of entities receiving federal funds and most federal employees from disability-based discrimination.

There are other laws that prohibit the federal government from discriminating on the basis of disability. For example, the Civil Service Reform Act of 1978 (CSRA) prohibits most federal employees with the authority to make personnel decisions from discriminating based on disability. For more information on the CSRA, go to www.osc.gov/ppp.htm. For more information on federal sector employees' rights, go to www.eeoc.gov/federal/index.html.

(2) Am I a person with a disability?

The various disability rights laws have different definitions of a person with a disability. None of the laws discussed below protects a person who is engaged in current illegal drug use.

Americans with Disabilities Act

With the passage of the ADA Amendments Act of 2008 (ADAAA), Congress reversed the narrowing of the definition disability by the courts. Under the ADAAA, the definition of disability under the ADA is more expansive than the previous ADA court rulings so as to be more consistent with the goal of eliminating discrimination against people with disability.

An individual with a disability is defined by the ADA as a person who:

- a. Has a physical or mental impairment that substantially limits one or more major life activities;
- b. A person who has a history or record of such an impairment; or
- c. A person who is perceived by others as having such an impairment.

Under the ADA, major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. In addition, major life activities now also include the normal or regular operation of a major bodily function, including functions of the immune system, normal cell growth, digestive, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The ADA does not specifically name all of the impairments that are covered. Instead, whether a person's impairment actually meets the definition of disability is based on whether the impairment substantially limits a major life activity for that individual.

In addition, the ADAAA covers people with an impairment that is episodic or occasionally present is a disability if it would substantially limit a major life activity when the impairment is active or present. For example, a person living with epilepsy has a disability if her seizures substantially limit a major life activity, even if these seizures only occur a few times a year. Similarly, an individual with multiple sclerosis would be a person with a disability under the ADA even if the symptoms are episodic if the multiple sclerosis substantially limits a major life activity when active.

The ADAAA also states that mitigating or alleviating effects of corrective measures, such as medication, medical supplies, prosthetics, hearing aids, oxygen therapy equipment, and other devices, *are not taken into account* in determining whether an individual has a disability. For example, an individual who is unable to walk without the use of a prosthetic has a disability, even if she is able to walk when using the prosthetic. Similarly, an individual who is unable to breathe without oxygen therapy equipment has a disability, even if he is able to breathe normally when using the equipment. The exception to this rule is that the mitigating effects of ordinary eyeglasses or contact lenses *are considered* in determining whether an individual's visual impairment is a disability. In other words, if an individual's eyesight is entirely corrected by ordinary eyeglasses, than that individual's visual impairment is not a disability under the ADA.

To be "regarded as" a person with a disability under the ADA, the ADAAA makes clear that the ADA protects people from prohibited actions based on a perceived or actual impairment regardless of whether the person has an impairment that limits a major life activity or is perceived to limit a major life activity. The "regarded as" protection does not extend to people with minor or transitory impairments, which is defined as impairments with an actual or expected duration of six months or less. For example, someone with only a broken leg and no other impairments would not fall into the person regarded as a person with a disability.

If you have an impairment that would not be considered a disability under the ADA, you may still be considered a person with a disability under the New York City Human Rights Law.

Rehabilitation Act of 1973

Generally, the definition of a person with a disability is the same as the definition under the Americans with Disabilities Act.

New York State Human Rights Law

Under the New York State Human Rights Law, a person with a disability is someone who has:

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques;
- a record of such an impairment; or
- a condition regarded by others as such a impairment.

In general, the courts have held that the New York State Human Rights Law's definition of a person with a disability is similar to the definition under the ADA.

New York City Human Rights Law

The New York City Human Rights Law defines "disability" as "any physical, medical, mental or psychological impairment, or a history or record of such impairment."

(3) If I believe that my employer or potential employer has discriminated against me based on my disability, whom can I contact?

Depending on the law under which you want to bring a complaint, you can go to one of the agencies discussed below. Generally, you cannot file an employment discrimination complaint based on the same facts with more than one agency. If you file with more than one agency, with the exception of the dual filing arrangement (discussed below), the second agency with which you file will usually dismiss the complaint on the grounds that there is already an agency investigating the alleged discrimination.

An exception to this rule is the dual filing arrangement. Under the dual filing arrangement, you can file a complaint with the New York State Division of Human Rights (NYSDHR) or the New York City Commission on Human Rights (NYCCHR) and have that agency file that complaint with the Equal Employment Opportunity

Commission (EEOC) if there is a claim under a federal law that the EEOC enforces, such as the Americans with Disabilities Act. Similarly, if you file a charge with the EEOC, you can ask the EEOC to dual file with the NYSDHR or the NYCCHR. Under the dual filing arrangements, the dual filing preserves the rights under the federal, state or local law, and the entity with which you filed usually retains the charge for investigation.

Equal Employment Opportunity Commission (EEOC)

What disability rights laws does the EEOC enforce?

The EEOC is in charge of enforcing the Americans with Disabilities Act and Sections 501 and 505 of the Rehabilitation Act of 1973 (for federal employees).

If I want to file an employment discrimination lawsuit under the Americans with Disabilities Act. do I have to file a charge with the EEOC?

All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court.

In New York, the EEOC has dual filing arrangements with the New York State Division of Human Rights (NYSDHR) and the New York City Commission on Human Rights (NYCCHR). Thus, you can go to either the NYSDHR or NYCCHR and file a complaint with that agency and then ask that agency to file that complaint with the EEOC. For purposes of the EEOC 300-day requirements, described below, and preserving your right to file a federal lawsuit, complaints that are dual filed with NYSDHR or NYCCHR within 300 days of the alleged discriminatory act are considered timely.

If I am a federal employee protected by Sections 501 and 505 of the Rehabilitation Act of 1973, whom do I contact first if I want to complain about employment discrimination?

There are separate procedures for federal sector employees. Before making a complaint with the EEOC, a federal sector employee must contact an EEO Counselor within 45 days of the discriminatory act or, for a personnel decision, within 45 days of the effective date of the act.

For a more information about federal sector procedures, go to www.eeoc.gov/federal/index.html or contact the EEOC.

For an ADA complaint, how much time do I have to file a charge of discrimination with the EEOC?

There are strict time limits within which charges must be filed. In New York State, a person has 300 days to file with the EEOC.

To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected.

How do I contact the EEOC?

Currently, the local New York City office of the EEOC is located at:

U.S. Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004

You can call the EEOC Monday through Friday, 9:00 a.m. to 3:00 p.m.

General Inquiries and New Charges 1-800-669-4000
TTY Number 1-800-669-6820

Individuals who need an accommodation in order to file a charge (*e.g.*, sign language interpreter, print materials in an accessible format) should inform the EEOC field office to make appropriate arrangements.

For more information, go to www.eeoc.gov.

The New York State Division of Human Rights.

What can I do if I feel that I have been discriminated against under the New York State Human Rights Law?

If you feel that you have been discriminated against under the New York State Human Rights Law, you can either file a lawsuit in state court or file a complaint with the New York State Division of Human Rights.

Are there any deadlines for filing a suit in state court or filing a complaint with the New York State Division of Human Rights?

If you file a suit under the New York State Human Rights Law in state court, you have three years from date of the alleged discriminatory act.

If you file a complaint under the New York State Human Rights Law with the New York State Division of Human Rights, you must file within one year of the alleged discriminatory act.

Remember, if you file a complaint with the New York State Division of Human Rights (NYSDHR) and have the NYSDHR dual file with the EEOC, you must meet the 300-day deadline required for the EEOC filing in order for you to pursue your ADA claims in federal court. Similarly, if you file a charge with the EEOC and want the EEOC to dual file with the NYSDHR, you must file within the one-year deadline to preserve your rights with the NYSDHR.

How can I contact the New York State Division of Human Rights?

In New York City, the New York State Division of Human Rights has several locations.

BRONX

New York State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458
Telephone No. (718) 741-8400
infoBronx@dhr.state.ny.us

BROOKLYN

New York State Division of Human Rights
55 Hanson Place, Room 304
Brooklyn, New York 11217
Telephone No. (718) 722-2856
infoBrooklyn@dhr.state.ny.us

LOWER MANHATTAN, below 42nd Street, AND STATEN ISLAND

New York State Division of Human Rights
20 Exchange Place, 2nd Floor
New York, New York 10005
Telephone No. (212) 480-2522
infoLowerManhattan@dhr.state.ny.us

UPPER MANHATTAN, above 42nd Street, AND THE BRONX

New York State Division of Human Rights
Adam Clayton Powell State Office Building
163 West 125th Street, 4th Floor
New York, New York 10027
Telephone No. (212) 961-8650
infoUpperManhattan@dhr.state.ny.us

For more information, go to www.nysdhr.com.

The New York City Commission on Human Rights

What can I do if I feel that I have been discriminated against under the New York City Human Rights Law?

If you feel that you have been discriminated against under the New York City Human Rights Law, you can either file a lawsuit in state court or file a complaint with the New York City Commission on Human Rights.

Are there any deadlines for filing a suit in state court or filing a complaint with the New York City Commission on Human Rights?

If you file a suit under the New York City Human Rights law in state court, you have three years from the date of the alleged discriminatory act to file suit.

If you file a complaint under the New York City Human Rights Law with the New York City Commission on Human Rights, you must file within one year of the alleged discriminatory act.

Remember, if you file a complaint with the New York City Commission on Human Rights (NYCCHR) and have the NYCCHR dual file with the EEOC, you must meet the 300-day deadline required for the EEOC filing in order for you to pursue your ADA claims in federal court. Similarly, if you file a charge with the EEOC and want the EEOC to dual file with the NYCCHR, you must file within the one-year deadline to preserve your rights with the NYCCHR.

How can I contact the New York City Commission on Human Rights?

The New York City Commission on Human Rights is located at:

BRONX

New York City Commission on Human Rights
1932 Arthur Avenue, Room 203A
Bronx, New York 10457
Telephone No.: (718) 579-6900

BROOKLYN

New York City Commission on Human Rights
275 Livingston Street, 2nd Floor
Brooklyn, New York 11217
Telephone: (718) 722-3130

MANHATTAN

New York City Commission on Human Rights
40 Rector Street, 10th Floor
New York, New York 10006
Telephone No.: (212) 306-5070

QUEENS

New York City Commission on Human Rights
136-56 39th Avenue, 3rd Floor
Flushing, New York 11354
Telephone No.: (718) 886-6162

STATEN ISLAND

New York City Commission on Human Rights
60 Bay Street, 7th Floor
Staten Island, New York 10301
Telephone No.: (718) 390-8506

To file a discrimination complaint with the New York City Commission on Human Rights, call 311 or (212) 306-7450. An appointment is necessary for an intake interview. If you are unable to travel to the Bureau's offices, an investigator will conduct an intake interview by telephone or will arrange a home visit. To schedule an intake interview, call (212) 306-7450.

For more information, go to www.ci.nyc.ny.us/html/cchr/home.html.

DUE TO THE GENERAL NATURE OF THE DISCUSSION, THIS FACT SHEET
SHOULD NOT BE REGARDED AS LEGAL. ADVICE