



CHALLENGES OF THE AMERICANS DISABILITIES ACT: *Employment*

Part 1 of a 5 Part ADA Series

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The Americans with Disabilities Act (ADA) of 1990, under Title I prohibits protected individuals with disabilities from discrimination in various aspects of life, especially in the workplace of private companies or government positions.

However, the persistent infractions of ADA employment rights by companies raise concerns about accessibility, inclusivity, and the need for effective dispute resolution. In this article, we delve into why companies are violating ADA rights, the prevalence of ADA violations, and how mediation becomes a crucial avenue for disability discrimination resolution.

The ADA prohibits discrimination against qualified individuals with disabilities in various aspects of employment, including hiring, promotions, job assignments, and termination. The people who fall into this category are individuals who have physical or mental impairments, who may have a record of the health challenge, and who have announced to have such limitations. The ADA Act mandates that employers must provide reasonable accommodations, the Interactive Process, to enable individuals with disabilities to perform essential job functions.



The Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act mentions that persons with an impairment, who understand their need for a reasonable accommodation, must translate their need to the employer. There are no magic words an employee must use to trigger the Interactive Process. Nor is an employee obligated by a certain period to announce that he or she needs assistance during the employee's employment. Lastly, the Interactive Process can go into effect by the employee verbally stating that he or she needs help, and this does not necessarily need to be in writing regardless of corporate policy.

In certain instances, the employer is obligated to start the Interactive Process without receiving a request from the employee when the following is determined under the EEOC's guidance: "An employer should initiate the reasonable accommodation interactive process without being asked if the employer (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation." [i] If an accommodation is clear, an employer cannot withhold assistance because the employee has not verbalized a need for accommodation. Simply ignoring non-verbal displays of help violates the Interactive Process.

[i]

The ADA Landscape

According to a report from the American Psychological Association, in 2019 approximately 7.3% of people with visible and invisible disabilities were unemployed and only 19.3% were employed. Whereas people without a disability have an unemployment rate of 3.5% and 66.3% were employed [i]. Highlighting the disparities in employment and the implicit biases of employers.

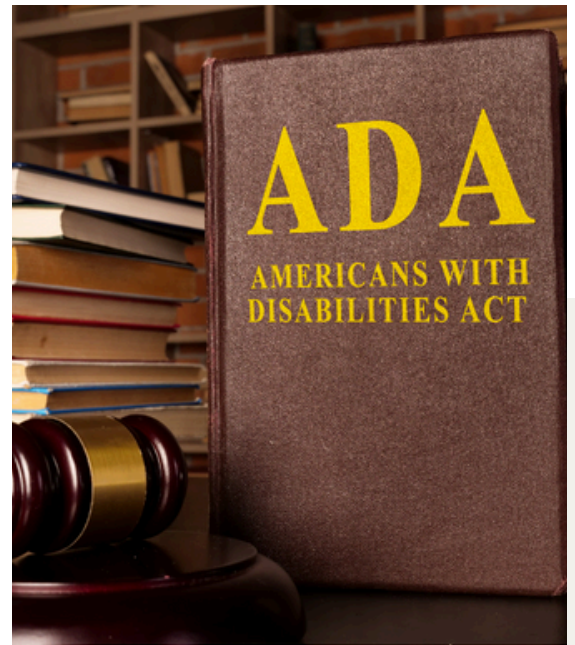
According to recent statistics from the U.S. Equal Employment Opportunity Commission (EEOC), ADA-related charges accounted for a substantial portion of overall discrimination charges. In 2020 alone, the EEOC received over 24,000 charges related to ADA violations, indicating a pressing and prevalent issue. [ii]



{i} An employer's duty to initiate the 'interactive process' without a request for accommodation from the employee - McAfee & Taft ([mcafeetaft.com](https://www.mcafeetaft.com))

{ii} Despite the ADA, equity is still out of reach ([apa.org](https://www.apa.org))

{iii} [Sources: U.S. Equal Employment Opportunity Commission (EEOC) Charge Statistics: <https://www.eeoc.gov/statistics/charge-statistics> Americans with Disabilities Act (ADA): <https://www.ada.gov/>]



Common ADA Violations

Failure to Provide Reasonable Accommodations:

Employers often fall short in providing reasonable accommodations, also known as Interactive Process, for employees with disabilities, which may include modifications to workspaces, flexible schedules, or assistive technologies. In certain cases, an unspoken reliance on an employee's lack of understanding of his or her ADA rights can provide the employer an opportunity to not trigger the Interactive Process or terminate an employee's employment due to personal dislike, racism, or bias.

Discrimination in Hiring and Promotion:

Prejudice during the hiring process or denial of promotions based on disabilities continues to be a significant concern, reflecting a lack of understanding, poor oversight practices, and awareness from HR professionals and management.

Inaccessible Facilities:

Companies may neglect to make their physical spaces accessible, hindering the mobility and participation of employees with disabilities.

Harassment and Hostility:

Employees with disabilities sometimes face harassment or a hostile work environment, exacerbating the challenges they already encounter. An unjust work experience can manifest when employees with disabilities face ridicule, unfair treatment, or exclusion. This not only violates ADA employment rights but also contributes to a toxic workplace culture.



Solutions to ADA Employment Rights Violations

Education and Training:

Companies should prioritize comprehensive training programs to educate employees at all levels about ADA regulations, emphasizing the importance of inclusivity and the legal consequences of not enforcing reasonable accommodations.

Accessible Policies:

Employers must establish and communicate clear policies that adhere to ADA guidelines, ensuring that all employees are aware of their rights and the company's commitment to diversity and inclusion.



Civil Mediation on ADA Employment Infractions

To address ADA violations, both parties must agree to move forward and proceed to mediation. Mediation offers a confidential and collaborative environment for parties to work toward a resolution. A neutral mediator facilitates communication and helps parties find mutually agreeable solutions.

Mediation often results in collaborative solutions that benefit both parties. This might include revised workplace policies, enhanced training programs, the implementation of specific accommodations, or financial settlements for damages.

Mediation can be a cost-effective alternative to litigation for both parties involved. The cost of mediation varies, but it is lower than the expenses associated with protracted legal battles.

In the pursuit of fostering inclusive workplaces, companies must acknowledge the prevalence of ADA employment rights violations and take initiative-taking measures to prevent and address them. By prioritizing education, accessible policies, and embracing mediation as a resolution tool, companies can contribute to a workplace culture that respects and values the rights of individuals with disabilities, thereby avoiding costly legal ramifications.



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