

HOW TO FILE A COMPLAINT

If you believe that you have been discriminated against because of your disability or denied a reasonable accommodation for your disability, you can file a complaint with the New York State Division of Human Rights.

A complaint must be filed with the Division within one year of the alleged discriminatory act.

To file a complaint:

- Visit the Division's website, at WWW.DHR.NY.GOV, and download a complaint form. Completed complaints must be signed before a notary public, and returned to the Division (by mail or in person).
- Stop by a Division office in person.
- Contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint.

For more information or to find the regional office nearest to your home or place of employment, visit our website at: WWW.DHR.NY.GOV.

SOME EXAMPLES:

Your sight is impaired and you utilize a service animal as a guide dog. However, your employer prohibits you from bringing your guide dog to your workplace. Do you have any remedies?

It is unlawful to deny a person who is visually impaired the use of a guide dog in the workplace.

You are undergoing medically necessary treatment for a medical condition related to your disability. The treatments will continue for two months and have a tendency to make you drowsy in the morning. Can you request that your employer modify your schedule to permit you to come in late, and stay late, during the period of the ongoing medical treatment?

You may ask the employer to accommodate you in this way. You and the employer should discuss the need for the modification as part of the interactive process required of employers. Your employer should grant the request unless it causes undue hardship.

You request a medical leave due to your disability. Can your employer require a doctor's note?

Yes. Reasonable substantiation of a disability may be required for a medical leave.

You injure your back in an accident and cannot sit for extended periods of time without taking a break and walking around. Your doctor certifies this is necessary due to the injury. Can you request a reasonable accommodation?

You may request that your employer permit you to take breaks to walk around if it is reasonable and does not cause undue hardship.



Division of
Human Rights

EMPLOYMENT Disability and Reasonable Accommodation

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The Employment Rights of Persons with Disabilities

The New York State Human Rights Law protects individuals from discrimination based on their disabilities.

The Human Rights Law defines a disability as:

"a physical, mental or medical impairment prevents the exercise of a normal bodily function or is demonstrable by medically accepted diagnostic techniques, or

a record of such an impairment, or

a condition regarded by others as such an impairment."

However, the term is limited to disabilities that, upon the provision of reasonable accommodations, do not prevent an individual from performing in a reasonable manner the activities involved in the job or occupation sought or held.

It is unlawful to discriminate against individuals with a disability in hiring for a job, job advancement, job training, job compensation, or other terms and conditions of employment.

It is unlawful for an employer to take a discriminatory action because of a history of disability or because of a perception of disability.

It is also unlawful for an employer to take a discriminatory action in retaliation for filing a complaint of discrimination.

Limitations

The New York State Human Rights Law does not cover employers with fewer than four employees.

Pre-Employment Inquiries

An employer should not make any inquiry of potential employees that expresses or reflects discrimination as to disability. Some examples of such questions are:

- Do you have a disability?
- Have you ever been hospitalized or treated for a physical or mental condition?
- How many days were you absent from work because of illness last year?
- Will you request leave for medical treatment once employed?
- Have you ever received worker's compensation benefits?

Employers may require applicants/employees to demonstrate capacity to perform the physical demands of a particular job, in the same way as they ask applicants to demonstrate competence and qualifications in other areas.

Employers may conduct tests of physical strength, agility, endurance, stamina, etc., insofar as such tests are non-discriminatory, can be demonstrated to be related to the specific duties of the position applied for, and are uniformly given to all applicants for the particular job category.

Essential Job Functions

An employer may ask potential employees about their ability to perform specific job functions or tasks. Under the Human Rights Law, an individual must be able to reasonably perform the essential functions of a job, i.e., those tasks that are essential to the position. A function is essential if not performing this function would fundamentally change the job or occupation.

Reasonable Accommodation

A reasonable accommodation is an adjustment or modification made to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. Some examples of possible reasonable accommodations are:

- A modified work schedule
- Reassignment of the non-essential functions of the job
- Acquisition or modification of equipment
- Provision of an accessible worksite

Reasonable accommodation does not include providing for personal care needs, such as an assistant for personal needs, or the provision of non-work related aids, such as a wheelchair.

Undue Hardship

An employer is not obligated to provide a reasonable accommodation if it will result in an undue hardship on the employer. Undue hardship means significant difficulty or expense to the employer, considering, among other factors, the size of the employer, the type of operation, and the nature and cost of the accommodation requested.

Education

The employee must make the disability and the need for the accommodation known to the employer.

An employer may require a doctor's note to substantiate a request for a reasonable accommodation.

The employer must maintain the confidentiality of an employee's medical information.

An employee may suggest, but not dictate, a specific accommodation. The employer has the right to select which reasonable accommodation will be provided, so long as it is effective in meeting the need.

An employee with an accommodation must still maintain a reasonable level of performance on the job.