



The Employment Jumble: Puzzling Over the ADA and Other Laws

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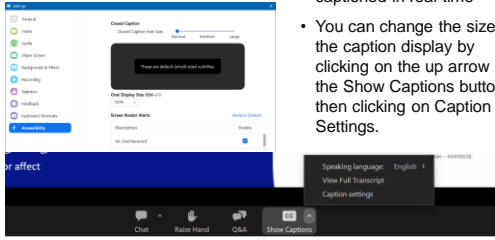
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About Your Hosts...

TransCen, Inc.

- Improving the lives of people with disabilities through meaningful work and community inclusion

Mid-Atlantic ADA Center, a project of TransCen



ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA
 - **1-800-949-4232**
 - ADAta.org



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Disclaimer



- The Mid-Atlantic ADA Center, operated by TransCen Inc., provides information, guidance, and training the Americans with Disabilities Act (ADA). The information and/or materials provided are intended solely as informal guidance and should not be construed as legal advice. The Mid-Atlantic ADA Center is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) (grant #90DPAD0008). NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). These contents do not necessarily represent the policy of NIDILRR, ACL, or HHS, and you should not assume endorsement by the federal government.



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The Employment Jumble

Puzzling Over the ADA and Other Laws



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Agenda

- Brief outline of a few federal employment laws:
 - Title I of the ADA , Sections 501 and 503 of the Rehabilitation Act, Congressional Accountability Act, Genetic Information Nondiscrimination Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Civil Rights Act, Pregnant Workers Fairness Act, Vietnam Era Veterans' Readjustment Assistance Act, and Uniformed Services Employment and Reemployment Rights Act
- RESOURCES

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ADA Title I: What Employers Are Covered?

- **State and local government agencies** and **private employers**
 - 15 or more employees
- **Employment agencies**
- **Labor unions**
 - Hiring hall or at least 15 members
- **Joint labor management committees**
 - Apprenticeship and job training programs



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Hey, What About the Federal Government?

- Executive branch: Rehabilitation Act of 1973 prohibits disability discrimination
 - **Executive agencies** (Section 501)
 - **Affirmative action required**
 - **Executive agencies' contractors** (Section 503)
 - **Affirmative action required**
- Legislative branch: Congressional Accountability Act (CAA)
- Judicial branch: Policy only



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Who's Protected?

ADA, Rehabilitation Act definition of disability

1. An individual **who has a physical or mental impairment that substantially limits** one or more **major life activities**
2. An individual **who has a record of** such an impairment
3. An individual **who is regarded as** having such an impairment



... and is **qualified** for the job

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Reasonable Accommodation: ADA Title I, Rehabilitation Act

- A modification, adjustment, allowance, or provision that facilitates an **equal employment opportunity** for a worker with a disability
 - Applying for a job
 - Performing essential job duties
 - Accessing benefits and privileges of the job
- Does not create significant difficulty or expense (undue hardship) for the employer



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Who Is Entitled to Reasonable Accommodation?

- A **qualified applicant or employee** (full- or part-time, seasonal, temporary, etc.) with
 - A **disability**
 - A **record/history of disability**



• Individuals who are *regarded* as having a disability are protected from discrimination but are *not* entitled to reasonable accommodation

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Genetic Information Nondiscrimination Act of 2008 (GINA)

- What employers are covered?
 - **Federal government**
 - **State and local governments, private employers**
 - 15 or more employees
 - **Employment agencies**
 - **Labor unions**
 - At least 15 members
 - **Joint labor management committees**



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GINA: Protections

- Protects all employees and applicants
- Prohibits discrimination based on genetic information, which includes information about:
 - An individual's genetic tests
 - The genetic tests of an individual's family members
 - An individual's family medical history



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Age Discrimination in Employment Act of 1967 (ADEA)

- What employers are covered?
 - **Private employers**
 - 20 or more employees
 - **State and local government agencies**
 - **Employment agencies**
 - **Labor unions**
 - Hiring hall or at least 25 members
 - **Joint labor management committees**
- Who's protected?
 - Applicants or employees who are 40 years old or older



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Family and Medical Leave Act (FMLA)

- What employers are covered?
 - **Private employers** with 50 or more employees
 - **Federal, state, and local government employers**
- Employees are eligible for leave if they
 - Work for a covered employer for at least 12 months
 - Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
 - Work at a location where the employer has at least 50 employees within 75 miles



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FMLA Leave

How much?

- Up to 12 workweeks of leave in a 12-month period for any FMLA reason
- Up to 26 workweeks of military caregiver leave during a single 12-month period
 - May be combined, but total leave cannot exceed 26 weeks

What for?

- Serious health conditions for themselves or immediate family members
- Some reasons related to a family members military service
- Birth of a child or placement of a child for adoption or foster care

• Leave may be unpaid, or may be used at the same time as employer-provided paid leave

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Title VII of the Civil Rights Act of 1964 (CRA)

- Prohibits discrimination based on race, color, religion, sex, and national origin
 - Employers must reasonably accommodate an employee's religious beliefs or practices, unless it would cause an undue burden
- Pregnancy Discrimination Act of 1978 (PDA) amended the CRA to clarify that sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions
- Supreme Court decision in 2020 clarified that sex discrimination includes discrimination based on sexual orientation or gender identity



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Title VII of the CRA

• What employers are covered?

- **Federal government**
- **State and local governments, private employers**
 - 15 or more employees
- **Employment agencies**
- **Labor unions**
 - At least 15 members
- **Joint labor management committees**



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Pregnant Workers Fairness Act of 2022 (PWFA)



• Employers must provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless it would cause an undue hardship

• "Limitations" do **not** need to meet the definition of disability

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PWFA

• What employers are covered?

- **Federal government**
- **State and local governments, private employers**
 - 15 or more employees
- **Employment agencies**
- **Labor unions**
 - At least 15 members



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Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA)



- **Federal contractors** are prohibited from discriminating against veterans who have served honorably, including veterans with disabilities
- Affirmative action to recruit, hire, promote, and retain veterans
- Reasonable accommodation for qualified veterans with disabilities

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Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- Protects past, present, and potential service members from discrimination based on uniformed service
- Rights to reemployment in civilian jobs following honorable service
 - Veterans disabled in military service should be reemployed in the most comparable jobs possible if they cannot return to previous job
 - What employers are covered?
 - Almost all employers, regardless of size, including **private employers and federal, state, and local governments**



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Don't Forget Your State Laws!

- Some state (or even local) laws protect people based on additional factors, cover smaller employers, or provide for greater remedies
 - Check with your state's attorney general or fair employment practices agency

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Resources
(1 of 4)

- [U.S. Equal Employment Opportunity Commission \(EEOC\)](https://www.eeoc.gov/)
eeoc.gov/
 - Information/enforcement: ADA Title I, GINA, ADEA, CRA Title VII/PPDA, PWFA
 - Information on 501 (workers should contact agency EEO Office with complaints)
- [Office of Congressional Workplace Rights \(OCWR\)](https://www.ocwr.gov/)
ocwr.gov/
 - Congressional Accountability Act

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Resources
(2 of 4)

- [U.S. Department of Labor \(DOL\), Office of Federal Contract Compliance Programs \(OFCCCP\)](https://www.dol.gov/agencies/ofcccp/)
dol.gov/agencies/ofcccp
 - Section 503, VEVRAA
- [U.S. Department of Labor \(DOL\), Veterans Employment and Training Service](https://www.dol.gov/agencies/vets/)
dol.gov/agencies/vets
 - USERRA, VEVRAA
- [U.S. Department of Labor \(DOL\), Wage and Hour Division \(WHD\)](https://www.dol.gov/agencies/whd/fmla/)
dol.gov/agencies/whd/fmla
 - FMLA

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Resources
(3 of 4)

- U.S. Department of Labor
 - [Office of Disability and Employment Policy \(DOL/ODEP\)](https://www.dol.gov/agencies/odep/)
dol.gov/agencies/odep
 - [Job Accommodation Network \(JAN\)](https://www.askjan.org/)
askjan.org/
 - [Employer Assistance and Resource Network on Disability Inclusion \(EARN\)](https://www.askearn.org/)
askearn.org/
 - [Partnership on Employment and Accessible Technology \(PEAT\)](https://www.peatworks.org/)
peatworks.org/

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Resources (4 of 4)

- [State Vocational Rehabilitation Agencies](https://rsa.ed.gov/about/states)
rsa.ed.gov/about/states
- [Centers for Independent Living](https://ilru.org/projects/cil-net/cil-center-and-association-directory)
ilru.org/projects/cil-net/cil-center-and-association-directory
- [Disability:IN](https://disabilityin.org/)
disabilityin.org/

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Mid-Atlantic ADA Center

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2:00 – 3:00 p.m. **November 29, 2023**

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