



Disability Discrimination – Your Rights

People with disabilities generally have the right to obtain employment, housing, education, and goods or services offered to the general public, without discrimination or harassment.

How Does the LAD Protect Against Disability Discrimination?

Disability discrimination is against the law:

- in most types of employment
- when you try to rent or buy housing or other real estate or get hotel accommodations
- when you apply to or are studying in most schools or colleges
- when you shop or engage in business transactions, or try to get goods or services or use facilities offered to the general public

The term “disability” is very broad under New Jersey law. Disability includes:

- any physical disability, infirmity, malformation, or disfigurement caused by bodily injury, birth defect or illness
- any mental, psychological or developmental disability that results from conditions that prevent the normal exercise of any bodily or mental function or which can be shown to exist through accepted clinical or laboratory diagnostic tests

In addition to any disability you have now, the LAD also prohibits discrimination based on:

- any disability that someone thinks you have now
- any disability you had in the past, or that someone thinks you had in the past
- any disability that you might get in the future

What are My Employment Rights?

Disability discrimination is unlawful during the application/hiring process:

You have the right to apply for and be fairly considered for jobs, apprenticeships and traineeships based on merit. In other words, if you are qualified for the job and you can do all the essential things that the job requires, then you should not be excluded or be

considered less qualified than other people who have the same relevant education, training, certifications, licenses and work experience that you have.

In addition, employers must provide reasonable accommodations that you need to apply for the job, to interview for the job, or to take any tests required for the job, unless it would cause them undue hardship.

An employer may not ask any applicant to take a medical examination until after making a bona fide offer of employment, but if the employer requires all people hired into a position to take a medical examination, the employer can make the medical exam a condition of your employment. The employer cannot single you out for a medical exam because of your disability, and cannot revoke your offer of employment because an exam shows medical conditions that would not prevent you from performing the essential functions of the job.

There may be times when an employer will be able to legitimately conclude that your disability prevents you from performing essential job duties or poses a probability of serious harm. For example, if your disability prevents you from getting a driver's license or using a phone, and driving or using a phone is essential to the job, the employer can refuse to hire you. However, before deciding this, the employer must first make a person-specific, job-specific inquiry to determine whether you can perform the job safely with reasonable workplace accommodations.

For example, if there is some equipment or service that would enable you to use the phone and you are otherwise qualified for the job, then the employer must provide the equipment or service unless this would cause undue hardship. Additionally, if driving or using the phone is not an essential part of the job, then the employer may not refuse to hire you merely because you cannot perform those duties.

Instead, the employer should exchange these duties for other duties that you can do or work out the problem in some other way.

Disability discrimination is unlawful after you are hired. Once you are hired, you have the right to the same types of job assignments, training, promotions and all other work benefits the employer provides to similarly

situated employees. In addition, once you are hired, employers must provide reasonable accommodations you need to do the job, such as special equipment or modified duties or schedules, unless doing so would cause them undue hardship.

Employers must do this if you have the disability when you are hired, or if a disability arises or changes after you start the job. In some cases, providing time off so that you can get treatment for a disability may be a reasonable accommodation.

Disability discrimination is unlawful when an employer is making decisions about discharging or laying-off employees. An employer must not consider your disability or your need for workplace accommodations when deciding which employees will be laid off during a reduction in force or downsizing. An employer can only terminate your employment based on your disability if the disability stops you from doing the essential parts of your job properly, and your special needs cannot be reasonably accommodated without undue hardship.

Employment-related harassment based on disability is unlawful. An employer may not harass you or permit others to harass you because of your disability; this includes making or permitting derogatory comments about your disability or about people with disabilities, or permitting people to interfere with your work because of your disability. Such bias-based harassment is unlawful during the application/hiring process, during your employment, or when you leave your job.

What are My Rights in Housing and Real Estate Transactions?

It is unlawful to discriminate against people with disabilities in the rental and purchase of housing, commercial properties and land.

EXCEPTION: The LAD does not apply to two kinds of residences:

- rental of an apartment in a two-family dwelling, if the owner occupies the other unit
- rental of a room or rooms in a one-family dwelling, if the person renting out the rooms, or that person's family, lives there

You have the right to rent or buy housing, land or commercial facilities on the same terms, and based on the same criteria, as people who do not have disabilities.

For example:

- you may not be charged extra rent or security or higher fees just because of your disability
- you may not be required to contract for a shorter or longer tenancy just because of your disability
- you may not be evicted just because of your disability

- a person must not refuse to rent or sell to you because other tenants, occupants or neighbors might be offended or troubled by your disability
- you may not be denied the opportunity to rent or buy housing because someone who will reside with you or someone associated with you, has a disability

In certain situations, the law provides some additional protections for people with disabilities:

- you may not be denied the opportunity to rent or buy housing, or to stay in housing you already occupy, because you will have a trained service or guide dog living in the premises
- you may not be required to pay extra rent or fees because a service or guide dog will be living with you, but if the dog damages the premises, you may be liable for the costs of repairing the damage
- you may not be denied the opportunity to rent or buy housing because you will need to make reasonable modifications to the premises to accommodate your disability, such as installing grab bars or ramps. You may, however, be responsible for the cost of such modifications, and in some cases you may be required to pay for the cost of removing the modifications when you move out

Disability-based harassment is unlawful in housing and real estate transactions. It is unlawful for anyone involved in the sale or rental of real estate to harass you or permit others to harass you because of your disability; this includes making or permitting derogatory comments about your disability or about people with disabilities, or permitting people to interfere with your use of the premises because of your disability. Such bias-based harassment is unlawful both during the application process and while you live there.

What are My Rights to Education?

The New Jersey Law Against Discrimination prohibits most schools and educational institutions from discriminating based on disability in the educational and other activities and services they provide.

EXCEPTION: Any school or educational facility that is operated or maintained by a bona fide religious institution is exempt from the LAD.

When you apply to a school or educational facility, you generally have the right to be evaluated using the same academic, aptitude or achievement criteria applied to everyone else. If admission is based on testing, and your disability limits your ability to take the test in the manner or place it is normally given, you may be entitled to reasonable accommodations in taking the test, as long as the modifications you need do not impair the validity of the test or constitute an undue hardship.

If you meet the school or educational facility's enrollment criteria, you cannot be denied admission or enrollment because you will be using a service or guide dog trained to assist you, or because you will need other disability accommodations that can be provided without undue hardship.

For example:

- if you have limited mobility, the school may need to accommodate you by ensuring that your classes are in rooms that are accessible and near enough to allow you to get to each class
- if you have difficulty writing, it may be appropriate to provide accommodations that enable you to tape classes
- if you have a visual or hearing impairment, it may be appropriate to provide equipment or alternative versions of educational materials

What are My Rights with Regard to Businesses and other Public Accommodations?

Public Accommodations, including shops, restaurants, resorts, camps, entertainment places, banks, professional offices, medical facilities, state and local government agencies, and public transportation, are prohibited from discriminating based on disability in providing goods or services or in permitting people access. They are also required to provide reasonable accommodations to give people with disabilities access to their facilities, goods and services, unless needed accommodations would impose an undue hardship on their operations. Individuals and businesses may not refuse to contract with you or otherwise do business with you because of your disability.

- you have the right to get most goods or services in the same way, and on the same terms and prices, as people without disabilities
- you may not be turned away because someone thinks that you might offend or worry other customers
- you may not be refused service because you use a wheelchair or a device to assist walking, unless the physical design of that building makes it impossible for you to enter or move about, or if your entry or movement in the building would cause a reasonable probability of serious harm to you or to other people. If your access to a particular building cannot be accommodated, it may be appropriate to reasonably accommodate you in other ways, such as arranging for you to access the goods or services in another manner or at an alternate location

- your use of the facilities may not be restricted because of your disability, unless access, use or participation would cause a reasonable probability of serious harm to you or to other people. For example, if you want to dance on a dance floor in a wheelchair, the establishment should allow this, unless the specific conditions or setup make it dangerous
- you may not be denied access because you are accompanied by a service or guide dog trained to assist you; the dog may accompany you at all times - including into eating areas
- where it will not impose an undue hardship on their operations, owners or other people in charge of businesses and public accommodations may be required to make some modifications to their buildings, facilities, and equipment to reasonably accommodate people with disabilities.

These may include things like making a restroom accessible, rearranging merchandise displays to create accessible paths of travel, installing automatic door opening devices, and ensuring that seating is available for wheelchair-users

- where a business or other public accommodation requires people to show an ID, and you do not have a driver's license, you must be permitted to provide a different identification document that contains the relevant information, such as your age and a photograph. No one may insist that you show only a driver's license

Disability-based harassment in public accommodations and business transactions is unlawful. It is unlawful for any proprietor, employee or agent of a business or other public accommodation to harass you or permit others to harass you because of your disability; this includes making or permitting derogatory comments about your disability or about people with disabilities, or permitting people to interfere with your use of the premises or facilities because of your disability.

Am I Protected From Reprisal or Retaliation?

Yes. The LAD also prohibits reprisal or retaliation because an individual made a good faith complaint about discrimination or harassment based on disability, or assisted someone else in making such a complaint.

What Should I Do Next?

When the parties are unable to resolve a dispute themselves, the law provides two basic ways to seek relief under the Law Against Discrimination.

Administrative remedy:

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the Law Against Discrimination (LAD). If you believe that you have been the victim of unlawful discrimination, please visit or phone us at the Division on Civil Rights office closest to where you live or where the discrimination occurred. Our addresses and phone numbers are at the end of this fact sheet, or visit us on the web at www.NJCivilRights.gov.

A complaint must be filed with the New Jersey Division on Civil Rights within 180 days of the act of discrimination. An initial evaluation will be conducted to determine if you state a claim for relief under the LAD. If so, the Division will prepare a complaint for you to sign and then the Division will conduct an investigation into your allegations. If the investigation shows enough evidence to support your complaint (known as probable cause), and your complaint cannot be settled, a hearing will be held in the Office of Administrative Law. You may choose to retain a private attorney to represent you at the hearing, or a lawyer will be provided to prosecute the case on behalf of the New Jersey Division on Civil Rights. At the conclusion of the hearing, the Director of the Division on Civil Rights will make a final decision as to whether unlawful discrimination has been proven and, if so, what remedies should be awarded to the complainant. Other than fees for a private attorney, if applicable, there is no cost to the individual for these services.

Judicial Remedy:

In the alternative, an individual who believes he or she has been discriminated against in violation of the LAD may file a complaint and try his or her case in New Jersey Superior Court. Individuals usually hire an attorney to represent them in a Superior Court action. A party cannot file with the Division on Civil Rights and in Superior Court at the same time. A Superior Court action must be filed within two years from the act of discrimination.

What Remedies Are Available?

In employment cases, a prevailing complainant may be entitled to be placed into the job he or she was unfairly denied, with back pay and interest; restoration of employee benefits that the complainant would have received but for the unlawful discrimination; damages for pain, humiliation, and emotional distress caused by the unlawful discrimination; reasonable attorney's fees if the complainant was represented by counsel; and out-of-pocket expenses associated with pursuing the complaint.

In housing cases, a prevailing complainant may be entitled to the house or apartment that was unfairly denied, plus costs associated with finding another place to live; damages for pain, humiliation and emotional distress caused by the unlawful discrimination; and reasonable attorney's fees if the complainant was represented by counsel.

In addition, the Division may impose penalties on the party who violated the LAD of up to \$10,000 for the first violation, up to \$25,000 for a second violation within 5 years, and up to \$50,000 for third and subsequent offenses within 7 years. These penalties are payable to the State, not the complainant. Punitive damages are only available in Superior Court actions.

Remember, it's against the law for anyone to retaliate against you because you have exercised your rights under the New Jersey Law Against Discrimination.



NJ Office of the Attorney General

CIVIL RIGHTS

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the law. To file a complaint, contact or visit the office nearest you:

South Shore Regional Office:

1325 Boardwalk, Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401
Phone: **(609) 441-3100** • Fax: (609) 441-3578

Southern Regional Office:

5 Executive Campus, Suite 107
Cherry Hill, NJ 08034
Phone: **(856) 486-4080**

Northern Regional Office:

31 Clinton Street, Newark, NJ 07102
Phone: **(973) 648-2700** • Fax: (973) 648-4405

Central Regional Office:

140 East Front Street / P.O. Box 090
Trenton, NJ 08625-0090
Phone: **(609) 292-4605** • Fax: (609) 984-3812

Visit our web site at **www.NJCivilRights.gov**