

DISABILITY PROTECTIONS IN EMPLOYMENT

INTRODUCTION

The federal Americans with Disabilities Act (ADA) of 1990 and the Michigan Persons with Disabilities Civil Rights Act (PDCRA) of 1976 as amended both make it unlawful to discriminate against qualified individuals with disabilities in making employment decisions. Even so, the federal Equal Employment Opportunity Commission (EEOC) and the Michigan Department of Civil Rights (MDCR) receive thousands of disability discrimination claims every year.

To avoid being involved in such claims, employers must understand and follow the provisions of both federal and state law, as employees may bring legal action under both. Employers must also be mindful of differences between the two acts, with the Michigan PDCRA imposing higher standards in certain areas. For example, the ADA applies to employers with fifteen or more employees, while the PDCRA applies to those with one or more employees.

Where the laws differ, Michigan employers must always follow the higher standard.

WHO IS PROTECTED?

The ADA and the PDCRA protect qualified individuals with disabilities. Both laws include the following conditions in their definition of disabilities:

- a physical or mental impairment that substantially limits one or more of the major life activities:
 - “major life activities” include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;
 - “major life activities” also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;
- conditions such as Down Syndrome, Cerebral Palsy, HIV, AIDS, Multiple Chemical Sensitivity, and psychiatric disorders;
- being unable to read, as long as the inability results from a medically certifiable condition such as dyslexia;
- alcoholism, though the employer has the right to hold the person to the same standards of performance and conduct as are applied to other employees;

- a documented history of such an impairment; meaning a medical history of a condition such as cancer, heart disease or chronic back pain;
 - the intent is to protect individuals from discrimination as a result of a medical condition that once existed but currently has abated;
- being regarded as having such an impairment, including individuals with a disfigurement or individuals who associate with or care for people with disabilities, including HIV or AIDS;
- the ADA, but not the PDCRA, may consider a person to be disabled as a result of their relationship to a disabled person. (For example, the ADA protects someone who is caring for a person with AIDS even though the caregiver is not infected.)

WHO IS EXCLUDED FROM DISABILITY PROTECTIONS?

- The laws do not protect people with temporary conditions such as broken legs.
- The laws do not protect persons who currently use drugs illegally; persons with specific behavior disorders such as pedophilia, compulsive gambling, kleptomania, or pyromania; or individuals suffering from psychoactive substance use disorders resulting from the current illegal use of drugs.

PROHIBITED EMPLOYER ACTIONS

The ADA and the PDCRA prohibit employers from discriminating against qualified individuals with disabilities during the hiring process or while the person is an employee.

- A “qualified individual with a disability” is a person who, with or without accommodation, meets the essential eligibility requirements of the job and can perform its essential functions.
- “Essential functions” are those that are important to the position and are actually performed by people who are currently in the position on a daily basis.
- If a candidate with a disability meets the requirements of the job and can perform its essential functions, the employer may not eliminate them from consideration because of the disability.
- Employers may not eliminate a candidate from consideration based on concerns about workers’ compensation claims or increased health care benefit costs for the individual or their family member who is protected under the ADA or PDCRA.
- Employers may not ask prospective or current employees if they have a disability. However, if a candidate has an obvious physical disability, the employer may ask how they would accomplish the essential functions of the job.
- An employer may not retaliate against an applicant or employee for asserting their rights under the ADA or PDCRA.

Exceptions

- Employers need not hire or employ a disabled individual who, with or without reasonable accommodations, cannot perform the essential functions of the job.
- Employers need not hire or employ a person with disabilities if doing so would pose a direct threat to the health and safety of the individual or of others. However, the employer must be able to demonstrate a direct threat and have solid medical evidence.

MAKING REASONABLE ACCOMMODATIONS

Employers are required to reasonably accommodate applicants or employees with physical or mental disabilities so that they may be considered for a position or be effective in their job.

- A “reasonable accommodation” is any change in the work environment or work processes that results in an equal employment opportunity for an individual with disability.
- The applicant or employee, not the employer, is responsible for activating this requirement by making known their need for accommodation.
- Examples of common accommodations are:
 - modifying equipment such as raising desk height for a person using a wheelchair;
 - modifying a work schedule;
 - job restructuring to eliminate non-essential functions the individual cannot perform. The employer may substitute other functions the individual is able to perform;
 - having an interpreter available during an interview with a hearing-impaired individual.
- Under the Michigan PDCRA, employers with fewer than 15 employees do not need to modify a work schedule or restructure a job. This is one area in which the state law is less demanding than federal law. However, bear in mind that Michigan employers of all sizes must still comply with the federal ADA and may be sued for violation of the higher federal standard.

AN INTERACTIVE DIALOGUE

It is important that employers not adopt a ‘take-it-or-leave-it’ attitude during the reasonable accommodation adoption process. The process needs to be an interactive dialogue between the candidate/employee and the employer, with the goal of mutually developing and agreeing on an accommodation that best addresses both the individual’s needs and the employer’s business requirements and resources.

THE “UNDUE HARDSHIP” EXCEPTION

The ADA and PDCRA provide that employers may refuse to make reasonable accommodation if it would impose an undue hardship on the employer.

- “Undue hardship” means that the accommodation would be too expensive, too difficult, or too disruptive to normal business operations or that the employer has too few employees to shift job responsibilities if that is what is needed to make a reasonable accommodation. However, employers should explore all options before arriving at this conclusion.

The EEOC applies a sliding scale when evaluating an employer’s ability to reasonably accommodate.

- The larger the employer, the more likely it will be required provide accommodation.
- The EEOC will consider the nature and cost of the accommodation as one factor in determining undue hardship, including evaluating the overall financial resources of the organization, the worksite, and type of operation.
- One undue hardship argument that the EEOC will not accept is a claim that reasonably accommodating a disabled individual would cause resentment among remaining employees. The ADA requires that managers and supervisors deal with employees who feel that disabled employees are getting preferential treatment.

The PDCRA sets specific formulas for measuring the reasonableness of an accommodation for private employers. Public employers are not limited to this ceiling and are therefore held to a higher standard.

INFORMATION RESOURCES

US Department of Justice ADA website:

<https://www.ada.gov/>

EEOC Disability-Related Resources:

<https://www.eeoc.gov/eeoc-disability-related-resources>

Michigan Persons with Disabilities Civil Rights Act:

<https://www.michigan.gov/-/media/Project/Websites/mdcr/legal/pwdcra.pdf?rev=1b443a3e9bd14b0c90e1d05a6503110e>

Michigan Department of Civil Rights, Disability Rights and Compliance Division

<https://www.michigan.gov/mdcr/disability-rights-and-compliance-division>

Michigan Municipal League Risk Control Solution *Disability Protections in Government Services*, available at: <https://mml.org/programs-services/risk-management/risk-management-resources/risk-control-solutions/>

***Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.***



Important Phone Numbers

MML Risk Management Services	800.653.2483
Loss Control Services	800.482.2726
Michigan Department of Labor	517.373.1820
Michigan Department of Civil Rights	313.456.3700
Equal Employment Opportunity Commission	800.669.4000

Note:

This document is not intended to be legal advice.

It only identifies some of the issues surrounding this topic.

***Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***