

Mental Illness and Employment: Your Rights.

Finding a job is challenging. It can be even harder if you have a mental illness, yet for many people working is a key part of recovery. If you are looking for work or need help to perform your job successfully, it is important to know that federal laws protect you from unfair practices or discrimination at work.

What are the benefits of a job?

Working can help you build a better life by providing:

- Daily routine
- The chance to learn new skills
- Financial security and independence
- Health benefits
- A sense of purpose
- A way to help others
- Social interaction

What are some of the roadblocks I might face?

You may face some extra challenges in finding and keeping a job. Studies show that many individuals with mental illness are either unemployed or underemployed. Reasons for this may include:

- Frequent medical appointments
- Absences from work
- Medication side-effects
- Difficulty communicating or interacting with others
- Trouble concentrating
- Problems following a particular schedule
- Stigma, prejudice and discrimination

How do I overcome these challenges?

Know Your Rights:

Unfortunately, in our society, mental illness carries a stigma that may lead to discrimination. Many employers lack understanding about mental health issues and may have negative attitudes about meeting the needs of people with mental illness in the work place. It is important to know that you have rights. Federal laws protect individuals with disabilities against discrimination and unfair treatment at work.

Employment Rights FACT SHEET

The Americans with Disabilities Act is a federal law that protects job applicants and employees with disabilities. The ADA applies to employers who have more than 15 staff members. In order to qualify for protection under the ADA, the law states that you must be able to show:

- 1) *That you have a disability that substantially impairs one or more major life activities.* In plain English, what this means, is that you must be able to show that you have a condition that, if left untreated, interferes with daily or work activities such as concentrating, or communicating, or regulating emotions. ***Psychiatric disability*** is a legal term often used to describe a mental illness that interferes with major life activities.
- 2) *That you are able to perform the essential functions of your job with or without reasonable accommodations.* In other words, you must be able to show that you can complete the important tasks or core duties of any job that you apply for.¹

Notice the second part of the sentence in number two? That part of the sentence is important! You must be able to perform the essential tasks of the job, but you are also entitled to reasonable accommodations, or changes made to normal rules, procedures, or settings that will help you perform your job, such as:

- Flexible work schedules or start times
- Reduced distractions or noise in the work area
- Working from home or telecommuting
- Written directions and task lists
- Regular written or verbal feedback
- Flexible break schedule
- Private, quiet space to rest during a break
- Use of a job coach

There are some limits to these protections. For example:

- An employer is not required to provide reasonable accommodation if it would be unreasonably expensive or burdensome.
- An employer may take action against an employee who is a direct threat to the safety of self or others.
- An employer is not required to accommodate an individual whose performance problems because they are currently under the influence of drugs or alcohol.

The Rehabilitation Act of 1973 (Rehab Act) is a federal law, like the ADA, that protects people who work for any employer that receives federal funding, including most colleges and universities. If you plan to attend vocational school, college, graduate school or a job training program, it is important to know that these same laws protect you from discrimination at school.

Many states also have laws similar to the ADA that protect against discrimination in the workplace.

¹ 29 C.F.R. § 1630.2(g)

Looking for a job and need help?

Consider the following programs:

- **Vocational Rehabilitation:** Vocational Rehabilitation helps people with disabilities locate jobs, and in some instances, helps provide training.
- **Supported Employment Programs:** There are several types of programs designed to help you learn work skills, find work and do your job well. Supported employment programs help you stay in mental health treatment as needed while you are learning work skills, getting a job and working in paid employment.

The ADA also prohibits employers from discriminating against job applicants with mental illness. This means that:

- You do not need to tell anyone that you have a disability. During an interview, a potential employer is not allowed to ask questions about disability. A potential employer cannot ask these questions at any point before offering the job.
- You are permitted to request a reasonable accommodation during the job interview if necessary. However, to do so, you must state that you have a disability. If you believe you won't need accommodation to do the job and can complete the interview without help, you may decide not to make a request.

How do I request a reasonable accommodation?

If you do need an accommodation it is up to you to make the request. Once you have submitted a request, an employer is required to sit down and talk with you about possible accommodations. Consider the following tips:

- Ask the employer's human resources (HR) personnel how to request accommodation. A request process may already be in place.
- Decide exactly what types of accommodations you need. Be specific. Be ready to explain how the accommodation will help you to perform the job or complete the interview.
- Put your request in writing.²
- Talk with your treatment provider and ask if they can provide documentation, usually in the form of a letter stating that you have a psychiatric disability and need accommodation. It may be helpful to share guidance³ on workplace accommodations with your provider.

² The Job Accommodations Network (JAN) is a service of the Department of Labor's Office of Disability Policy. If you are looking for further guidance on how to write a request for accommodations, this agency has produced several useful resources. See Linda Carter Batiste, *Accommodations and Compliance Series: Ideas for Writing an Accommodations Request Letter*, <http://askjan.org/media/accommrequestltr.html> (last visited 9/23/15)

³ The U.S. Equal Employment Opportunity Commission (EEOC) has developed guidance on a mental health care provider's role in the job accommodations process. It may be helpful to share this guidance with your health care professional. See EEOC, *The Mental Health Care Professionals Role in a Client's Request for Reasonable Accommodations at Work* (May 1, 2013), http://www.eeoc.gov/eeoc/publications/ada_mental_health_provider.cfm.

- Take detailed notes and keep a written record of any conversations you have with the employer. Keep copies of any e-mails you send and any forms you complete.
- Negotiate. Be flexible and ready to discuss your options.⁴

If I have experienced discrimination, what are my options?

If you feel like you have been discriminated against because you have a mental illness, a variety of legal strategies are available:

- **Filing a Complaint with the Equal Employment Opportunity Commission (EEOC).** The EEOC is the federal government agency that enforces the ADA. If the employer is covered by the ADA, you can file a complaint with EEOC. For more questions about this process check out the [EEOC's guidance on filing a claim](#).⁵
- **Federal Government Agency: Filing a Complaint with the Equal Employment Opportunity Office (EEO):** If the employer was a federal government agency, you must file a complaint with the agency's EEO Office. For more questions about this process, visit the [EEOC's guidance](#) on how to file a claim against a federal employer.⁶
- **Filing a Complaint with the state Fair Employment Practice Agency (FEPA):** Many states also have laws similar to the ADA that prohibit discrimination against individuals with disabilities in the workplace. Most states also have a Fair Employment Practice Agency that is responsible for enforcing these laws. If the employer is covered by the state law, you can file a complaint with the state FEPA. To locate your state FEPA and learn about this process see the [EEOC's guidance on FEPAs](#).⁷
- **Litigation:** Under the Americans with Disabilities Act, individuals must file a claim with EEOC, and finish the administrative process before they can file a lawsuit in federal court. There are similar rules under many state laws. If you are interested in filing a legal action, it might be helpful to seek advice from a legal expert.

Helpful tips:

- **Document:** Write everything down. Keep careful notes. Keep copies of everything. If you have a conversation in person, or over the telephone, keep a written record of the call.
- **Filing Deadlines:** Make sure to file your complaint on time. In most states EEOC claims must be filed within 180 or 300 days of discrimination. If you are not sure about the deadline for your complaint contact the EEOC, the state FEPA, or the EEO office.

⁴ JAN, *Employee's Practical Guide to Negotiating and Requesting Reasonable Accommodations Under the Americans with Disabilities Act*, <http://askjan.org/Eeguide/IIINegotiating.htm> (last visited 9/23/15)

⁵ EEOC, *How to File a Charge of Employment Discrimination*, <http://www.eeoc.gov/employees/howtofile.cfm> (last visited 9/23/15)

⁶ EEOC, *Overview of Federal Sector Complaint Process*, http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm (last visited 9/23/15)

⁷ EEOC, *State and Local Agencies*, <http://www.eeoc.gov/field/indianapolis/fepa.cfm> (last visited 9/23/15)



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- **Seek Legal Assistance:** If you need help filing a claim, you may want to look for some legal advice. If you have problems locating an attorney, call NAMI's help line at: (800) 954-6264.

If you do file a complaint against an employer, also know that it is illegal for that employer to retaliate against you or harass you for filing the complaint.

Paid employment is a vital part of the recovery process for many people living with mental illness. It is important to know your rights so that you can get the help you need to succeed in the work place and to protect yourself from discrimination. For more information: www.nami.org/supportedemployment.