

## Americans with Disabilities Act



<http://scinfo.org/world-wide-resources/americans-with-disabilities-act>

### Resources 2 - World Wide Resources

Too often in the past, people with sickle cell disease were denied jobs or fair treatment at work solely because they had sickle cell disease. Now, the Americans With Disabilities Act of 1990 puts the strong arm of the law on the side of fairness.

It protects many people with sickle cell disease from job discrimination. Knowing your rights is the first step to getting the treatment you deserve. The Americans With Disabilities Act The Americans with Disabilities Act is a civil rights law.

It protects the rights of disabled people in several ways. Congress intended the act to break down the barriers that keep disabled people from taking full part in society. The Americans With Disabilities Act bans discrimination against disabled people much as other laws outlaw discrimination based on age, sex, race, or religion.

Title I of the law, which deals with job discrimination, is the part of the act that affects people with sickle cell disease most.

#### ***Illegal Acts***

The act bans discrimination against qualified people with disabilities in all aspects of employment. These include application procedures, hiring, firing, promotions, pay, and training. Employers also must not discriminate in recruiting, advertising, tenure, or layoff. The act also protects disabled people from unfair treatment in leave and fringe benefits.

#### ***Are People With Sickle cell disease Disabled?***

The act defines disability in three ways. For the law to consider you disabled, you need meet only one of these definitions:

- 1.You are disabled if you have a physical or mental impairment that greatly limits one or more major life activities.
- 2.You are disabled if you once had such an impairment.
- 3.You are disabled if others regard you as having such an impairment. The act also protects you if you associate with or have a relationship with someone who has a disability.

"Major life activities" include seeing, hearing, speaking, walking, breathing, doing manual tasks, learning, caring for oneself, and working.

If your sickle cell disease has ever greatly disabled you, then the law considers you disabled. You would meet either the first or the second part of the definition.

What if your sickle cell disease has never disabled you? If an employer discriminates against you because it considers sickle cell disease a major impairment, then you meet the third definition of disabled. It doesn't matter if your sickle cell disease is actually well controlled by treatment. If your employer sees you as disabled because you take pills, then the law considers you disabled.

The act also protects your husband or wife from unfair treatment. An employer cannot treat your spouse differently just because you have sickle cell disease. Similarly, the law protects your parents, roommates, and friends from discrimination because of your sickle cell disease.

#### ***Who Is Protected And Who Is Not?***

As of July 26, 1992, companies with at least 25 workers had to obey the Americans With Disabilities Act. As of July 26, 1994, companies with at least 15 workers must also obey the law. Private companies, state and local governments, employment agencies, and labor unions must comply with the Americans With Disabilities Act. It's not yet clear whether the act also protects self-employed people who do projects for such companies. Law courts will need to decide the rights of self-employed people and others who fall into gray areas of the law.

Millions of workers can still be discriminated against legally. For example, no federal law protects people working for companies with 14 or fewer people. Perhaps 3 million American companies are this small. The act also does not protect people who work for the federal government. A similar law, the Rehabilitation Act of 1973, does protect these workers. It also protects people who work for federal contractors or for organizations that get federal funds. Other employers not covered by the act include Native American tribes

and tax-exempt private clubs. Also, the act lets stand laws that restrict disabled people from jobs for safety reasons.

If the Americans With Disabilities Act does not protect you, check with your state and city. They may have their own anti discrimination laws.

### ***Reasonable Accommodation***

The employer cannot discriminate against you if:

1. You are qualified for the job, and
2. You can do "essential functions" with or without "reasonable accommodation." Accommodation means that your employer changes your work, work area, or schedule or provides training or help to let you to do the job. For example, the company might provide a special desk or computer, allow flexibility in your work schedule, or provide training materials.

The employer does not have to make accommodations that would cause "undue hardship." In other words, the employer can discriminate against you if making accommodations would be too hard or cost too much. Courts will decide what is reasonable case by case. Essential functions are basic job duties that the worker must be able to do. For example, a job description written before a company starts to look for a worker spells out the essential functions of a job.

The company cannot make you pay for the accommodation. It can refuse to make the accommodation if it would be an undue hardship, but only if funding is not available from another source. The source could be you yourself, if you are able to afford the accommodation, or a state vocational rehabilitation agency.

The employer does not have to give you more sick leave than other workers. It does not need to find you health insurance without a preexisting conditions clause. It can hold you to the same standards of performance or production as other workers. A company does not have to give you a job just because you are disabled. Nor must it give you any preference over other qualified people who apply for the job.

### ***To Tell or Not to Tell***

Being open about your sickle cell disease can teach other people about the disease. It makes clear that people with sickle cell disease are no different from anyone else. The Americans With Disabilities Act does not require you to tell your employer that you have sickle cell disease. But the act only protects you from discrimination if your employer knows you are disabled. (Of course, if your employer doesn't know about your sickle cell disease, it isn't possible for the company to treat you unfairly because of your disease.)

You can tell your company about your sickle cell disease later and still be protected. For example, if you do not need accommodations now, but in the future you do, you can tell your company then. In that case, the act starts to protect you when you ask your employer for an accommodation.

When you apply for a job, the employer cannot ask you about a disability. (In certain cases, such as to meet affirmative action rules, a company can invite you to say that you are disabled.) The company cannot make you get a medical exam before it offers you a job. After a job offer, the company can make you have a medical exam only if it makes all new hires in that job category get one. (That is, the company cannot single you out to get an exam because you have sickle cell disease.) The company is allowed to take back a job offer because of the results of a medical exam but only if the reason is related to the job. The judgement that you are not fit must be based on current medical knowledge and objective evidence. The doctor doing the exam must know the functions of the job.

### ***When Discrimination Occurs***

There are several steps you can take when a company discriminates against you because of your sickle cell disease.

Try solving the problem by talking directly with your employer.

Enlist the help of your union or employee group.

Think about seeing a lawyer. With a telephone call or letter, a lawyer may be able to resolve your problem easily.

If you want to file charges with the Equal Employment Opportunity Commission, you can find its number in the telephone book. Look in the blue pages under U.S. Government. Usually, you must file your charge within 180 days of the act of discrimination.

If you win your case, the company must place you in the position you would have had if it had not discriminated against you. To do so, the company may need to hire, promote, or reinstate you. Also, the company may need to give you back pay or make reasonable accommodation. Sometimes, the court may require the company to pay you damages or pay your lawyer's fees.

To make your case stronger, don't quit your job. If you must leave, look for other work. It counts in your

favor if you show that you are willing and able to work. Also, keep records of your medical visits so that you can show that you keep good control of your sickle cell disease. See your doctor regularly. You may need your doctor to confirm how good your health is and how well you control your sickle cell disease.

***Important Numbers***

The President's Committee on Employment of People with Disabilities (1-202-376-6200 voice; 1-202-376-6205 TDD) can provide a packet of information on the Americans With Disabilities Act.

The Job Accommodation Network (1-800-526-7234 voice and TDD) provides free information for employers on how to make accommodations for disabled workers.

The Equal Opportunity Commission can send publications (1-800-669-3362 voice; 1-800-800-3302 TDD) and answer questions (1-800-949-4232 ) on the Americans With Disabilities Act.

The Disability Rights Education and Defense Fund (1-800-466-4343 voice and TDD) provides free technical assistance to lawyers and people with disabilities. The fund can tell you about your legal options and refer you to other places for help.

This is the US Department of Justice homepage for the Americans with Disabilities Act.  
<http://www.usdoj.gov/crt/ada/adahom1.htm>