

# INFORMATION AND RESOURCES FOR EMPLOYMENT-BASED DISCRIMINATION

*UOAA promotes quality of life for people with ostomies and continent diversions through information, support, advocacy and collaboration.*



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## **IS AN OSTOMY OR CONTINENT SURGERY DISABLING?**

While many persons who have had ostomy or continent surgery may not consider themselves to be disabled, they are protected under the Rehabilitation Act of 1973 and the Americans with Disabilities Act against employment-based discrimination in the workplace. Despite the productive lives and well-being of most individuals who have these procedures, some employers not familiar with ostomy surgery may react negatively or treat these individuals differently.

Individuals who feel they have been discriminated against due to their ostomy or continent surgery, or due to certain needs resulting from surgery, should not be embarrassed or reluctant to rely on the protections offered under the ADA.

## **THE AMERICANS WITH DISABILITIES ACT**

The Americans with Disabilities Act is a civil rights law that bans discrimination against disabled individuals. Enacted in 1990, the Title I employment provisions of the law apply to private employers, state and local governments, employment agencies and labor unions. Employers with 15 or more employees became covered under the act in 1994. Federal government employees and employees of federal contractors or organizations receiving federal funds are protected under Section 504 of the Rehabilitation Act of 1973.

The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits and all other employment-related activities.

Under the ADA, employment discrimination is prohibited against "qualified individuals with disabilities." An individual is considered to have a disability if the person has a physical or mental impairment that:

- Substantially limits one or more major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment

An individual is qualified for a job if he or she meets the requirements of the position and can perform the essential

functions of the job with or without reasonable accommodation. Employers are legally bound by the ADA to provide reasonable accommodations for disabilities, but they are not obligated to provide "special" benefits. They are only bound to treat the person no differently than anyone else.

## **WHEN DISCRIMINATION OCCURS**

There are several steps that can be taken when a company discriminates against someone because of ostomy or continent surgery or the on-going needs of a person who has had these procedures.

### **Educate**

First, try to solve the problem by talking with your employer. Many employers may not fully understand how the law applies to them. Additionally, the employer may not fully understand the needs of a person with an ostomy or continent procedure. Educating the employer about ostomy procedures and their positive outcomes may help to resolve the problem without any need for further action.

### **Negotiate**

Try to negotiate a mutually agreeable and reasonable solution while asking for any needed accommodations. Accommodations for persons with an ostomy or continent procedure could include an office near a restroom, the ability to eat when and where needed, or access to a drinking fountain. Remember, the employer is not bound to provide special benefits such as increased sick leave, but only to provide equal access and opportunity for all employees.

### **Litigate**

Litigation is the last step, but is sometimes the only way to ensure that your rights are protected. Use the resources listed on the reverse side of this panel to find a knowledgeable attorney that understands the needs of someone who has had an ostomy or continent procedure. An experienced lawyer may be able to resolve your issues with a letter or telephone call to the employer or can assist you in filing charges with the Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for enforcing the ADA's Title I prohibition against discrimination against people with disabilities in employment. An attorney is not needed to file charges, but charges must be made within 180 days of the discriminating event.

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## **RESOURCES**

### **Equal Employment Opportunity Commission**

[www.eeoc.gov](http://www.eeoc.gov) • [info@eeoc.gov](mailto:info@eeoc.gov) • 800-669-4000  
• [www.eeoc.gov/laws/types/disability.cfm](http://www.eeoc.gov/laws/types/disability.cfm)

Provides information on ADA and investigates charges against an employer under the ADA. The EEOC has regional centers that provide assistance and information. In addition, you may contact your state EOCC office by calling 800-669-4000.

### **Department of Justice**

800-514-0301 ADA Information Line  
[www.ada.gov](http://www.ada.gov)

### **Department of Labor**

800-526-7234 Job Accommodation Network  
[www.askjan.org](http://www.askjan.org) • [jan@askjan.org](mailto:jan@askjan.org)

### **Disability Rights Education and Defense Fund**

510-644-2555 • [www.dredf.org](http://www.dredf.org) • [info@dredf.org](mailto:info@dredf.org)  
A non-profit organization providing free technical advice on your legal options as well as referrals to lawyers and other assisting organizations.

### **National Disability Rights Network**

202-408-9514 • [www.ndrn.org](http://www.ndrn.org) • [info@ndrn.org](mailto:info@ndrn.org)  
This is the nonprofit membership organization for the federally mandated Protection and Advocacy Systems, which provide protection to persons with disabilities through legal-based advocacy and enforces an array of civil rights legislation. Each state has a Protection and Advocacy System, and can provide information and referrals to knowledgeable lawyers.

### **United Ostomy Associations of America, Inc.**

800-826-0826 • [www.ostomy.org](http://www.ostomy.org) • [info@ostomy.org](mailto:info@ostomy.org)  
UOAA assists its members and ostomates in general in addressing issues of discrimination by providing information on the ADA and resolution options.



P.O. Box 525  
Kennebunk, ME 04043  
800-826-0826  
[www.ostomy.org](http://www.ostomy.org)  
[info@ostomy.org](mailto:info@ostomy.org)