

Information and Resources for Employment-Based Discrimination[®]

Is an Ostomy or Continent Diversion Disabling?

While many persons who have had ostomy or continent diversion surgery may not consider themselves to be disabled or impaired, they are protected under the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) against employment-based discrimination in the workplace. According to the ADA an ostomy is considered a physical impairment that affects an activity of daily living, which requires a prosthetic to replace the function of a body part. It likely falls into the hidden disability group as it is not immediately visible. It's also important to note that under the Social Security Act ostomy supplies are defined as a prosthetic to replace the loss of a body part for excreting bodily waste.

Despite the productive lives and well-being of most individuals who have these surgical 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 diversion 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 and employers do not have to compromise the essential functions of the job. They are only bound to treat the person no differently than anyone else.

Most states also have laws to protect the disabled. Sometimes state law applies to smaller employers who are not covered by the Americans with Disabilities Act, sometimes the rights under state law are more broad than federal law. If you feel your rights have been violated you should be sure to inquire about federal law as well.

When Discrimination Occurs

There are several steps that can be taken when an employer discriminates against (or treats someone differently) because of ostomy or continent diversion 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 diversion. Educating the employer about ostomies 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 diversion could include an office near a restroom, waste receptacle in restroom stall, 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 below to find a knowledgeable attorney in disability law that understands the needs of someone who has had an ostomy or continent diversion. 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) or your state enforcement agency. 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. Also check with your state agency that enforces discrimination laws. Information about state enforcement agencies are published on the EEOC website.

Resources

Equal Employment Opportunity Commission

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 EEOC office by calling 800-669-4000. www.eeoc.gov * info@eeoc.gov

Department of Justice - ADA Information Line

www.ada.gov * 800-514-0301

Department of Labor - Job Accommodation Network

www.askjan.org * 800-526-7234 * jan@askjan.org

Disability Legal Rights Center

Disability Rights Legal Center (DRLC) is a 501C-3 non-profit, public interest advocacy organization that champions the civil rights of people with disabilities as well as those affected by cancer and other serious illnesses. They provide free legal assistance to people with disabilities experiencing discrimination in violation of their civil rights.

www.thedrlc.org * drlc@drlcenter.org

Central Intake Line - 213-736-1334;

Nationwide Toll-Free Number - 866-999-3752

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Disability Rights Bar Association

The DRBA is an online network of attorneys who specialize in disability civil rights law. The DRBA has an on-line directory of attorneys who help with disability law. www.disabilityrights-law.com * drbalaw@syr.edu

Disability Rights Education and Defense Fund

A non-profit organization providing free technical advice on your legal options as well as referrals to lawyers. www.dredf.org * 510-644-2555 * info@dredf.org

National Disability Rights Network

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. *Check with your state agency that enforces discrimination laws.* www.ndrn.org * 202-408-9514 * info@ndrn.org

United Ostomy Associations of America, Inc.

*UOAA strives to protect the rights of people with an ostomy or continent diversion and eliminate discrimination at school, work, and elsewhere in their lives by sharing information and resources for individuals to self-advocate. **Does not offer legal advice nor does it provide legal services.* www.ostomy.org * 800-826-0826 * info@ostomy.org