



A S S I S T A N C E

The Americans with Disabilities Act: People with Disabilities and their Right to Public Services and Benefits

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Two laws protect people with disabilities

People with disabilities in Maine are protected by two laws. Both laws make it illegal for government agencies to discriminate against people with disabilities. Government agencies must also take steps to make it easier for people with disabilities to use and enjoy public services and benefits. We will start with the ADA, which applies all over the United States. Then we will look at the MHRA, a law limited to Maine.

ADA Overview

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in many areas, including:

- Work
- Government benefits and services
- Restaurants, stores, parks, schools, and other privately owned businesses that are open to the public
- Phone service

Purposes of the ADA

Congress passed the ADA because millions of Americans who have disabilities could not take part in work, government services, business services, and public events at the same level as people without disabilities. People with disabilities have the same right to enjoy all these things.

Physical barriers—like steps, narrow hallways, and high counters—prevent some people from working, getting government services, and accessing businesses and public events. Prejudice against people with disabilities also keeps them from enjoying these things.

The goal of the ADA is to remove discrimination against people with disabilities by:

- setting out clear rules, and
- giving the federal government the power to enforce the rules

This information deals with just one part of the ADA—the right to government benefits and services. These rights include services from



public housing authorities. Pine Tree has more information about housing issues for people with disabilities. If you would like this information, call one of our offices and ask for: "Fair Housing: Frequently Asked Questions about Housing Protection for People with Disabilities and Their Families."

Am I protected by the ADA?

The ADA protects you if you are a **"qualified individual with a disability."** Let's look at each part of this law.

A **disability** is a physical or mental impairment that **substantially limits** one or more of your **major life activities**.

A **major life activity** means caring for yourself, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes major bodily functions like your immune system, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

A disability **substantially limits** a major life activity if it lasts more than 6 months and has more than a minor effect on a major life activity. A disability that is treated with medicine or corrected by an aid or device **substantially limits** you if you need the medicine, aid, or device to

function. The only exception is normal glasses or contact lenses.

A **qualified individual** with a disability is someone who is eligible for the government benefits and services. A government agency may have to make reasonable changes to its rules or practices to help you become eligible if your disability makes it hard for you to get benefits or services. A government agency may have to make physical changes to allow you to access a public place or service if you are disabled. Or it may have to provide aids or other special devices (like an interpreter, reader, or special equipment) to help you use the benefit or service.

The ADA protects you if someone discriminates against you because you have a **record of disability** in the past. The ADA protects you if someone thinks you have a disability, or treats you like you are disabled, even if you are not limited in any way.

Examples:

You have a physical or mental impairment that **substantially limits a major life activity** if:

- You have a physical condition, like an injury to your spine, that makes it hard for you to walk, sit, or stand.
- You have a long-term disease, like cancer, that affects your respiratory system.



- You have difficulty seeing, and normal glasses do not correct your vision; but if you can see fine with glasses, you are not disabled due to your poor vision.
- You have a mental impairment, like mental retardation, that interferes with your ability to learn.

You have a **record** of a physical or mental impairment if:

- Other people think you have AIDS, but you don't.
- You have scars from an injury that happened a long time ago, and people treat you as if you are disabled, even though those scars don't affect you.

You are a **qualified individual** who meets essential eligibility requirements if:

- You would like to get tourist information about a town in Maine, and you have a hearing disability. The ability to hear is not an essential eligibility requirement for getting the information. The tourism information center must offer you an effective way to get the information, like TTY.

Whether a disabled person is qualified depends on **facts specific** to that person:

- Your town offers swim lessons for children ages two-six. Your disabled ten-year-old is outside the age limit for the swim lessons. She does not meet the "essential

eligibility requirement" of age, and is not a "qualified individual." But your four-year-old, who uses a wheelchair, meets the "essential eligibility requirement" of age. The ability to walk is not an "essential eligibility requirement. Your town should provide equipment or an aide to allow your child to take swim lessons.

Exception: If you pose a "direct threat" to the health or safety of others, you are not a "qualified individual." Any decision about whether you pose a direct threat must be made on an individualized, case-by-case basis. This decision can't be made by prejudices, fears, stereotypes, and assumptions. If reasonable steps can remove the health or safety threat, you may still be a "qualified individual."

Other facts about protection under the ADA

*** Associated with a person with disabilities**

If you associate with or have a relationship with a qualified person with disabilities, you are also protected. If you give health care or other services to persons with disabilities you cannot be discriminated against.

For example, if you work at an AIDS hospice, you cannot be denied access to a program because of your work. Similarly, a theater group that gives a performance to a group with AIDS



cannot be denied the use of a public theater because of their contact with persons with AIDS.

If you are disabled, family members, companions, or attendants may help you. These people must get the same access you get.

* **Current illegal drug users**

- Using illegal drugs is not protected.
- But, if you are an addict, your status as an addict is protected. If you are addicted to drugs and are not currently using illegal drugs, you must be given access to public benefits and services on the same basis as others.
- If you use illegal drugs, you cannot be denied health care services because of your illegal drug use. One exception is that you can be expelled for using illegal drugs if you are receiving substance abuse treatment.

What is a Public Entity under the ADA?

Any state or local government, and any department, agency or branch of a state or local government, is a public entity. Your town office, your public housing authority, a recreation program organized by your town, a county courthouse, a public

library, and a town meeting are all examples of programs run by public entities that are covered by the ADA.

What does the ADA require from Public Entities?

The ADA prohibits requires state and local governments to give people with disabilities physical access to buildings, meetings, and events. State and local governments have to make policy changes to allow people with disabilities to benefit from public services and programs. They must provide equipment and services so people with disabilities can fully participate in civic life.

Examples:

- The public entity must **notify** everyone who applies for services, programs and activities of rights and protections against discrimination.
- You must be allowed to use the **same facilities and programs** as the general public.
- Any government-provided emergency response system (9-1-1) must provide direct access to **TTY** calls.
- Special programs for people with disabilities may be offered, but you **must not be required to use that program** if you would rather use the program offered to the public. For example, your town



offers a swim program for children. A separate program for children with disabilities may be offered, but a disabled child cannot be forced to take that specific swim program if he or she prefers the mainstream swimming program.

- If you ask, a public entity must make a **reasonable accommodation** to allow you to take advantage of a program or benefit. There are exceptions, however. The public entity can refuse to make an accommodation if it causes an undue financial or administrative burden or if it changes the fundamental nature of the program. The public entity, however, must be able to prove that these exceptions exist.
- The public entity **cannot force you to accept an accommodation.**
- The public entity must make sure that you can **communicate** with it **as effectively** as a member of the general public. If you have a preferred way of communicating, your preferences must be considered, but the public entity does not need to give you personal devices. (That is, the public entity does not have to give you a hearing aid, but it may need to use an interpreter or have TTY service.)
- A public entity must make reasonable policy changes for

people with disabilities, for example, allowing a blind person to bring a service animal into a public building or a public meeting.

- The public entity **cannot charge extra** for program accessibility.
- The public entity **cannot screen out or tend to screen out** people with disabilities.
- You must be able to **participate on planning and advisory boards.**
- The public entity must choose **accessible sites or locations.** The law does not necessarily require all existing facilities to be accessible and usable by people with disabilities. But public meetings should be held in accessible buildings.
- When a public entity builds a **new facility, it must be accessible** according to specific federal standards.
- When a public entity **alters a facility**, which affects its usability by people with disabilities, it has to make the renovated section accessible "to the maximum extent feasible."
- A public entity must **keep accessibility aids and equipment in good repair.** This means that elevators, lifts, and TTY equipment must be in good repair, safe and accessible. Furniture and



other barriers cannot block them off. Ramps must be clear of ice, snow, and clutter.

- **Signs showing wheelchair accessible entrances** must be posted at each entry that is not accessible. Signs must show the location of accessible restrooms, elevators, and interior ramps.
- A public entity must go through a **self-evaluation process** to see whether its policies and practices are discriminatory and to correct those inconsistent with the ADA. A public entity with 50 or more employees must make its self-evaluation available for public review for three years.
- A public entity **cannot avoid** its responsibilities by contracting with private agencies that have discriminatory policies or practices .
- The public entity **may not threaten, intimidate, or retaliate** against you for using your rights or encouraging others to exercise their rights to be free from discrimination.

MHRA Overview

The Maine Human Rights Act (MHRA) forbids disability discrimination in Maine. The MHRA forbids discrimination against people with disabilities in:

- Work
- Housing
- Public accommodation
- Money lending
- Education

"Public Accommodation" means buildings or services that are owned or run by a government agency, and businesses that are open to the public. The MHRA gives people with disabilities the right to full and equal enjoyment of these public businesses and services.

MHRA and ADA

The MHRA is like the ADA. But more people with disabilities are covered by the MHRA. Under this state law you are disabled if:

- You have a physical or mental impairment that:
 - * Makes it hard for you to hear, walk, talk, read, think, or care for yourself,
 - * Impairs your physical or mental health, or
 - * Causes you to get special education or rehabilitation services;
- You have one of the disabilities listed in the MHRA, like missing arms or legs; alcoholism; ALS; bipolar disorder; blindness; cancer; cerebral palsy; CPOD; Crohn's disease; cystic fibrosis; deafness; diabetes; epilepsy; heart disease;



HIV or AIDS; kidney disease; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis, Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; or acquired brain injury;

- You had a disability in the past; or
- Someone treats you like you are disabled, or thinks you will become disabled.

Like the ADA, a disabled person must be qualified to use the public place, program, or activity. A person must meet the eligibility standards for the place, program, or activity.

What Does the MHRA Require from Public Entities?

The MHRA requires state and local governments to give qualified people with disabilities equal access to all public places, programs, and activities. People with disabilities must be able to use the same buildings, and join in the same activities as others. Separate facilities are illegal.

For example:

- A City bus system must have wheelchair lifts, ramps, and seating space that allow people in wheelchairs to use regular City buses.

- Public housing built after 1988 must have 10% accessible apartment units on each floor, and elevator service to the upper floors.
- Any new or re-done street must have ramps or slopes at street corners.
- A service animal that helps a disabled person must be allowed in a government building or at an activity, unless it is likely to harm people or property.

What can I do if a Public Entity engages in illegal discrimination?

You have several choices:

- You can file a complaint with the public entity .
- You can file a complaint with any federal agency that you think may give funding to the public entity.
- You can file a complaint with the U.S. Department of Justice.
- You can bring a lawsuit in court against the public entity.
- You can contact the Maine Human Rights Commission at **624-6050** or file an online intake form at www.maine.gov/mhrc/file_a_charge/index.html.

You must file a complaint with a federal agency within **180 days** of the discrimination. You must file a Charge of Discrimination with the



Maine Human Rights Commission within **300 days** of the discrimination. If you think the discrimination is ongoing, you have to file within **300 days** of the most recent discriminatory act.

The best approach is often to file a complaint with:

U.S. Department of Justice
1-800-514-0301
TTY: 1-800-514-0383
www.usdoj.gov/crt/ada/enforce.htm

AND

Maine Human Rights Commission
624-6050
TTY: 1-888-577-6690
www.maine.gov/mhrc/file_a_charge/index.html

For legal help in Maine, you may also contact:

Disability Rights Center
1-800-452-1948 V/TTY
www.drcme.org

Eligibility requirements apply. Even if they are unable to take your case, they may be able to tell you how to file a complaint, or refer you to a private attorney who could be paid by the defendant if you win your case.

For more information on agencies that may help you with ADA questions, check the ADA Information Services web site at
www.usdoj.gov/crt/ada/agency.htm.

Notice



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