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The PA Human Relations Commission
focuses on disability discrimination and
reasonable accommodation

Hiring disABILITY

Introduction

Laws prohibiting discrimination on the basis of a disability have been in effect in Pennsylvania since December 1974 under the Pennsylvania Human Relations Act. Prohibitions against disability-based discrimination were strengthened further in 1990 with the passage of the federal Americans with Disabilities Act (ADA).

Despite the state and federal law protection that has been in effect for many years, discrimination based on a disability still occurs at an alarming rate in Pennsylvania. Jobs are denied. Unequal conditions are established. Access is denied. Accommodations are refused. And ability is lost.

Routinely, the staff at the Pennsylvania Human Relations Commission receives questions related to disability issues: “What does the law mean?” “Am I allowed to ask about his disability?” “Did I offend her when I said ‘wheelchair bound?’” And many more. This pamphlet is designed to encompass these wide-ranging issues that relate to discrimination because of a disability and reasonable accommodation.*

Understanding the Law

State



The Pennsylvania Human Relations Commission (PHRC) is a state agency, which enforces the laws (**Pennsylvania Human Relations Act (PHRAct)**) and the **Pennsylvania Fair Educational Opportunities Act (PFEOA)**) prohibiting discrimination because of a disability, use of a guide or support animal due to blindness, deafness or physical disability or because the user is a handler or trainer of such animals, or the disability of an individual with whom the person is known to have a relationship or association. PHRC’s jurisdiction covers employment, housing and commercial property, public accommodations and education.

* This publication is intended to be used for general informational purposes only. The information contained in this document is not intended as legal advice. To determine your specific rights and responsibilities under either state or federal law, you may wish to consult with a private attorney.

Section 3 of the PHRA declares that individuals have a right to freedom from discrimination in employment, housing, commercial property and public accommodation:

The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any public accommodation and of any housing accommodation and commercial property without discrimination because of...handicap or disability, ... the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this (PHR) Act.

Section 4 of the PHRA Act provides key definitions in understanding the law.

The term “handicap or disability,” with respect to a person, means:

- a physical or mental impairment which substantially limits one or more of such person’s major life activities;
- a record of having such an impairment; or
- being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802).

The term “non-job related handicap or disability” means any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a handicap or disability job related.

The term “accessible” means being in compliance with the applicable standards set forth in the following:

- (1) Fair Housing Act (Public Law 90-284, 42 U.S.C. §3601 *et seq.*);
- (2) Americans with Disabilities Act of 1990 (Public Law 101-336, 42 U.S.C. §12101 *et seq.*); and
- (3) Act of September 1, 1965 (P.L.459, No. 235) entitled, as amended, “An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement.”

Federal

Title I of the **Americans with Disabilities Act of 1990** prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.

An individual with a disability is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.



A qualified individual with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

The U.S. Equal Employment Opportunity Commission enforces the provisions of Title I of the ADA. As of July 26, 1994 the ADA covers employers with 15 or more employees.

Definitions

Disability is a physical or mental impairment that substantially limits one or more major life activities such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

Essential Functions are job functions that are basic, necessary or vital to the job itself. Walking up the stairs to get to the job location is not an essential function of the job.

Person with a disability is someone who meets the skill, experience, education and other job-related requirements.

Physical or Mental Impairment means a physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine or a mental or psychological disorder, such as mental illness, and specific learning disabilities.

Reasonable accommodation is any modification or adjustment that allows qualified applicants or employees with disabilities to participate in the application process or to do the job's essential functions. Examples include:

- job restructuring
- part-time or modified work schedules
- purchasing or modifying equipment or devices
- adjusting or modifying exams
- writing new training materials or policies
- providing qualified readers or interpreters
- ensuring that facilities used by persons with disabilities are accessible and usable

Record of Impairment means having a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities. Examples: a person who has recovered from cancer or a recovering alcoholic.

Regarded as Disabled means having a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator or provider of a public accommodation as constituting a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment, or has none of the physical or mental impairments as defined above but is treated by an employer or owner, operator or provider of a public accommodation as having an impairment. An example is a person who is severely scarred but is not disabled.

Undue hardship means an accommodation would be unduly costly, extensive, substantial or disruptive or would fundamentally alter the nature or operation of the business. Factors to be considered in determining an undue hardship include the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation.

Pre-Employment Inquiries – Health and Disability

The PA Human Relations Act (PHRA) and the Americans with Disabilities Act (ADA) provide that an employer may not ask about the existence, nature or severity of a disability and may not conduct medical examinations until **after** it makes a conditional job offer to the applicant. This prohibition ensures that the applicant's hidden disability is not considered prior to the assessment of the applicant's non-medical qualifications. At this pre-offer stage, employers **may** ask about an applicant's ability to perform specific job-related functions. An employer also may ask other questions that are not disability-related and may require job-related examinations that are not medical, provided that all applicants are asked these questions or are given these examinations.

The following examples are acceptable inquiries if asked of all applicants:

- Can you perform the functions of this job with or without reasonable accommodations? (Examples: Can you carry a 20-pound bag? Or can you distinguish color for color-coded wires?) If the applicant needs a reasonable accommodation to demonstrate their ability, that accommodation should be provided or the person should be permitted to explain how they could do the job with accommodation.
- Please describe or demonstrate how you would perform these functions?
- How well can you handle stress?
- Can you meet the attendance requirements of this job?
- Do you currently use illegal drugs?
- Do you have the required licenses to perform this job?

The following examples are unlawful inquiries:

- Do you have AIDS? Do you have asthma?
- Do you have a disability which would interfere with your ability to perform the job?
- Do you ever get ill from stress?
- How many sick days did you take last year?
- Why do you need a wheelchair?
- Have you ever filed for workers' compensation? Have you ever been injured on the job?
- Have you ever been treated for drug or alcohol problems?
- What prescription drugs are you currently taking?

After a conditional offer is made, an employer may require medical examinations and may make disability-related inquiries if it does so for all entering employees in the job category. If an examination or inquiry screens out an individual because of disability, the exclusionary criterion must be job-related and consistent with business necessity. The employer must also show that the criterion cannot be satisfied and the essential functions cannot be performed with reasonable accommodation.

The employer must keep any medical information obtained confidential. This means that the employer must collect and maintain the information on separate forms and in separate medical files. The employer may disclose the information only to persons and entities specified in the ADA.

If the individual is screened out because of a belief that the applicant or employee may pose a threat of harm, the employer must demonstrate that the decision was based on objective, factual evidence that the threat is one of demonstrable and serious harm to the individual or that the individual would pose a demonstrable threat of harm to the health and safety of others.

Reasonable Accommodation

Accommodations for the hiring process

An employer may inform applicants on an application form or job advertisement that the hiring process includes a specific selection procedure (i.e., an interview, written test or job demonstration). Applicants may be asked to inform the employer of any reasonable accommodation needed to take such a pre-offer examination, interview or job demonstration within a reasonable time period prior to the exam, interview or job demonstration.

Accommodations for the job

An employer may ask an applicant whether they can perform specified job-related functions with or without reasonable accommodation. An employer may also ask an applicant to describe or demonstrate how they would perform job-related functions, with or without reasonable accommodation, because these inquiries elicit information about an applicant's ability, not information about an applicant's disability.

However, an employer may not ask whether the applicant needs reasonable accommodation for the job.

For example, an employer may not ask: "Would you need reasonable accommodation in this job to perform this specific function?"

Third Party Inquiries

At the pre-offer stage, an employer may ask a third party or a reference anything that it could ask the applicant directly. An employer is prohibited from asking a third party anything that the employer is prohibited from asking the applicant directly.

Sample Illustrations

The following case examples are just a few of the types of cases involving the issue of disability and reasonable accommodation the Commission has seen over the years. They are not inclusive, only a sampling of some of the recurring issues.



“I had triple by-pass surgery last year and was applying for a position with a new company. During the interview I was asked questions like ‘How many sick days did you take last year’? ‘What prescription drugs are you taking’? ‘What disability do you take it for’? and ‘Do you have a disability which would interfere with your ability to perform the job’? I answered all of the questions truthfully. When they called to tell me that I didn’t get the job, they told me I was too much of a risk to hire. Are they allowed to ask me questions about my medical condition?”

It is unlawful under the PHRAAct for an employer, prior to an offer of employment, to ask whether an applicant has a disability or about the severity of the disability. An employer may ask about the applicant’s ability to perform the essential functions of the job. An employer may not refuse to hire an otherwise qualified applicant with a disability unless there are no reasonable accommodations available to allow the applicant to perform the job. In addition, it is unlawful under the PHRAAct for an employer to refuse to hire someone because of a risk that they may develop a disability in the future. A complaint may be filed with the PHRC.



“I use a wheelchair for mobility. Last night, my husband and I tried to go to a township meeting. When we tried to get into the building, there were seven steps to get in. After my husband carried me and then my wheelchair in, I couldn’t use the bathrooms because they were inaccessible. Can I file a complaint with you about this?”

Under the PHRAAct, a municipality must normally provide accessible meeting locations in accessible facilities. A complaint may be filed with the PHRC.



“I was hired as a bus driver for the school district. When they hired me, they knew I had to drive buses with an automatic transmission because of my disability. After driving for several weeks, I asked to be scheduled for student field trips in order to earn overtime pay. The school district said no to my request because they said that if I were permitted to drive a bus with automatic transmission for field trips, then all of the drivers would make the same request. This isn’t legal, is it?”

It is unlawful under the PHRAAct for an employer to refuse to make reasonable accommodations to an employee’s disability, unless doing so would amount to an undue hardship.



“My mother lives with me because she has a visual impairment and Alzheimer’s. When she becomes ill, I need to take my available sick family leave time to take her to her doctor’s appointments. My boss is getting on my case because it’s my Mom who is sick — not me. I had to provide proof that she is my Mom, plus certification of her illnesses. Now they are trying to make me say in writing the exact days and times of my Mom’s appointments. I can’t do that because I never know when she is going to be sick. I just put in for sick family leave this week and the request was denied. Doesn’t my employer need to give me this time because my Mom is sick?”

It is unlawful under the PHRAAct for an employer to discriminate against an employee because of the employee’s association or relationship to a person with a disability, such as your mother.



“I need daycare for my two-year old son. Last week, I went to a local center where there is an opening. I inspected the facility and was very pleased with what they had to offer. I asked to enroll my son immediately. When we were completing the forms, the center director asked me if my son required any medication to be administered to him. I told her that he did because he is HIV positive. When I told the director this information, she became very upset and expressed many common concerns. I answered all of the common concern questions that the lady had and that my son had no special needs. I also pointed out that all childcare centers are required to adopt Universal Precautions. The director then told me that she had to check with the corporate office before she could admit my son. I just got off the phone with the woman. They denied my application for enrollment. They can’t do this, can they?”

It is unlawful under the PHRAAct for a public accommodation, such as a daycare center, to refuse service just because of a patron’s HIV status.



“I have a visual impairment and I’m a wheelchair user. I just had a doctor’s appointment at the hospital and I called for a taxi to take me home. The taxicab company told me a taxi would be there to pick me up in 20 minutes and I told the dispatcher I would be waiting in the lobby in my wheelchair. I waited for an hour before a cab driver approached me and asked if I was the one who had called for a taxi. I said ‘yes’ and the cab driver asked me to wait a while longer and said he would be right back. The cab driver then picked up another passenger and left me waiting and never returned. Besides being rude, isn’t it illegal?”

It is unlawful under the PHRAAct for a public accommodation, such as a taxi service, to refuse to serve someone because of his or her disability. While there may be an issue of how accessible an accommodation must be, that does not seem to be the case in your situation, since the taxi service knew you were in a wheelchair and agreed to provide a taxi for you.



“A few months ago, my doctor diagnosed my allergies that give me breathing problems when I work in the cold. The food company that I work for has me assigned to work both in and out of a freezer. For the first couple of months they gave me work to do outside of the freezer. Three days ago the company held a meeting with only the employees with medical restrictions. We were all told that our jobs were being abolished. I was told that if I could not work in the freezer, I was no longer needed. In order to keep my job, I agreed to work in the freezer. I was in there for only four hours before I had to leave for an emergency treatment at the hospital because I had aggravated my allergies. Today, the personnel director called and said I was fired. I tried to do the work, but I just couldn't. Doesn't the company have to try and help me out?”

It is unlawful under the PHRAAct for an employer to refuse to make reasonable accommodations for an employee's disability, unless doing so would amount to an undue hardship. The fact the employer abolished the positions of only the employees with medical restrictions may be additional evidence of possible unlawful discrimination.



“I have a guide dog because of my blindness. I went to rent an apartment and the landlord said 'no' because no pets are allowed. Can he do that?”

It is unlawful under the PHRAAct for a landlord to refuse to rent to a person with a guide or support animal, even if there is a no pet policy. It is also unlawful to charge a pet fee for a guide or support animal.



“I have lived in the same apartment complex for the last four years. I was recently injured in an accident and must use a wheelchair to get around, but I can still drive. I asked the apartment complex to give me a parking space near the entrance to my building. They said no because they won't designate a space for anyone else. Why can't they make a space for me?”

It is unlawful under the PHRAAct for a landlord to refuse to make reasonable accommodations for a tenant's disability. The provision of a disability parking space is normally reasonable.



“As I've gotten older, I've become more infirm and not as steady as I used to be. I want to use my money to put a grab bar in my bath tub, but my landlord said 'no.' Can he refuse to allow me to do this?”

It is unlawful under the PHRAAct for a landlord to refuse to let a person with a disability make reasonable modifications of existing premises which are necessary to allow the person full enjoyment of the premises, if that person is willing to pay for the modifications and to restore the premises to its prior condition when the lease is up, wear and tear excepted. Under certain circumstances, the modifications may be left as they are when the lease is up.

How and Where to File a Complaint

If you believe that you have been the victim of unlawful discrimination in employment or housing because of your disability, you may discuss your concerns with a Commission staff member who will answer your questions and help you decide whether you should file a complaint with the Commission.

The Commission is available to help you draft the wording of the complaint and prepare it in legal form for your verified signature. Before you sign the complaint, make sure that it is an accurate account of what happened to you, to the best of your knowledge and belief. This is important, because Pennsylvania law provides penalties for persons who knowingly file false complaints. If federal law also covers your complaint, Commission staff will dual-file your complaint for you with the appropriate federal agency, if you wish. PHRC is a state agency. There is no charge for its services.

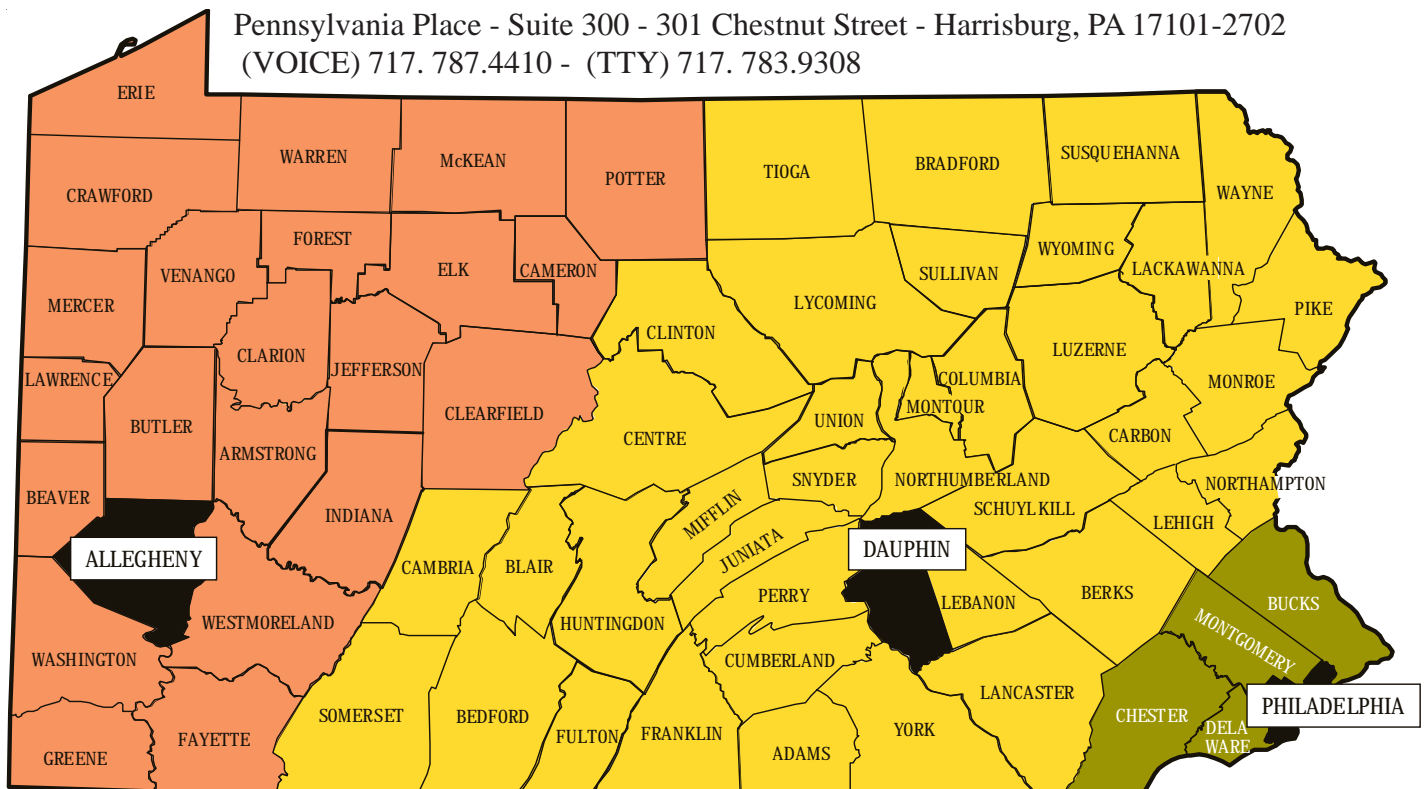
You must file your complaint within **180 days of the alleged act of discrimination**. You have the right to be represented before the Commission by a private attorney, if you so desire, but you may proceed without an attorney.

PA Human Relations Commission

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