

ADA Q&A...Filing a Complaint

By Deborah Leuchovius, PACER ADA Specialist

The third anniversary of the enactment of the ADA passed July 26, 1993. Most of its major provisions have now been in effect for a year or more. As Attorney General Janet Reno wrote in USA TODAY, "As of today, the Americans with Disabilities Act's three year phase-in period is over. It is time to finish the job of turning the Act's promise into reality." We all have a role to play in this process.

By now, most employers, state and local governments and businesses should be aware of their responsibilities under the ADA and be in compliance with the law—or engaged in good faith efforts to reach compliance soon. Many are. Many of us are aware, however, of situations where no effort is being made to comply with the law. While some employers, small public entities and businesses may be genuinely ignorant of their responsibilities, some are intentionally choosing to remain out of compliance until they are forced to comply by the court. As we advocate for our rights, and for the rights of our family members, it is important to know how the complaint process works and the crucial role we play in ensuring that it does.

Q. Who is responsible for enforcing the ADA?

A. ADA enforcement is a "complaint driven" process. Therefore, the most important person in this process is the person who files the complaint. If there are no complaints, there is no way to require enforcement from covered entities that are out of compliance. Some people are surprised to learn there are no government officials paying surprise visits to employers, state and local government agencies or businesses to see if they are in compliance. So consider yourself a member of the "ADA enforcement team."

Once someone has filed a formal complaint, various government agencies are responsible for investigating complaints, and for pursuing

court action.

You should be aware, however, that once you file a formal complaint, your responsibility does not end. You need to cooperate in any investigation pursued by the federal government on your behalf, and you usually cannot remain anonymous. You need to be willing to accept the responsibility of making a public complaint against your school district, local business community or employer.

Q. How can I be sure if there has been a violation of the ADA?

A. Educate yourself about the law. Be as sure as you can that the situation is covered by the ADA. For example, if it is an employment situation, be sure that your employer has 25 or more employees (15 or more after July 26, 1994) and is therefore covered by Title I. Understand what key terms like "readily achievable barrier removal" and "undue burden" mean. You need to know that churches are exempted from Title III.

The government is distributing much free information to the public to help individuals understand the law. This includes easy-to-understand brochures in a question-answer format and summaries highlighting key provisions, as well as the actual regulations themselves. This free information is available through PACER, and other ADA technical assistance projects such as the ten regional Disability and Business Technical Assistance Centers. Call 1 (800) 949-4232 to reach the one nearest you. PACER has also published a concise overview of the law. The ADA: A Guide for People with Disabilities, Their Families and Advocates is available through PACER for \$8.00.

Q. Once I am confident that there has been an ADA violation, what are the options for how to pursue a complaint?

A. First, try to resolve it informally. Or use

the existing internal grievance procedures of your company or school district. If these methods are not successful, you can use an outside mediator and an alternative dispute resolution process. You also have the option of filing a private action in federal court. Or you can file a complaint with the federal government. In her article, Attorney General Reno urged voluntary compliance, but also said “Let me make clear that...we will take people to court when they thumb their nose at us.”

Q. Where should I start?

A. Try and resolve your complaint informally. Let your employer know you need a reasonable accommodation—they can’t provide something they don’t know about. Speak to the manager, business owner, or public program staff about your concern. Many people will want to comply once a violation is brought to their attention. Also, let businesses know the benefits of compliance. For example, employees who are granted reasonable accommodations can be back to work as productive employees rather than collecting workers’ comp. And not only will retailers get your business, but they have greater access to the dollars spent by 43,000,000 other Americans with disabilities and their families and friends.

Many employers have internal grievance procedures you can go through to pursue an ADA complaint. State and local governments are required to have such procedures, and to appoint someone responsible for ADA complaints. Find out who this person is, what this process is, make an appointment and “go for it.” Bring along copies of the regulation so you can explain how the ADA applies to your situation.

Perhaps you can work out a solution, or a plan for compliance together. Everyone is better served if you can resolve your complaint at this point.

But in case you can’t . . . be sure to follow up every contact you make in writing. Write a letter summarizing your meeting. Keep copies for yourself. Keep a log of calls you make. This will help you document your complaint if you cannot resolve the situation informally, or through internal grievance procedures, and you do file a formal complaint with the government at a later date.

Q. Can I file a private lawsuit regarding a violation of the ADA?

A. Yes. You have the right to file a private lawsuit in federal court if you have been discriminated against. If you have an employment complaint, and are employed by a private organization, however, you are required to file a complaint with the Equal Employment Opportunity Commission and receive a “right to sue” letter from them before you can pursue a private complaint. If you are successful

in court, you will be entitled to injunctive relief and to recover attorneys’ fees. Injunctive relief means “fixing the problem”: such as reinstating you in your position with back pay, providing a reasonable accommodation, modifying a discriminatory policy, or removing an architectural barrier. When individuals file private actions, ADA does not provide compensatory and punitive damages. However, your attorney can advise you whether compensatory or punitive damage awards may be possible under other civil rights legislation.

Q. How do I file a Title I employment complaint?

A. Within 180 days of the discrimination incident, file a complaint detailing the discrimination with the Equal Employment Opportunity Commission. The EEOC will investigate the charge. If it finds reason to believe that discrimination has occurred, the EEOC will attempt to have the employer voluntarily provide you with full relief. Or, once 180 days have passed since filing a charge, you may request a “right to sue” letter. Once you receive this, you may file a private lawsuit. You can file a complaint through the Minnesota Department of Human Rights or directly with an EEOC office.

Q. How do I file a Title II complaint against a state or local government agency?

A. You may file a private action in court or file a complaint with the Department of Justice. You can also file complaints with other federal agencies designated by the DOJ (for example, the Department of Transportation will investigate transportation-related complaints), or any federal agency that provides funding to the public entity responsible for discrimination. But it may be easiest to know that the DOJ will accept any Title II complaints and see they are directed to the appropriate agency.

Q. How do I file a Title III complaint against a private company or organization?

A. Individuals may bring private lawsuits to obtain court orders to stop discrimination, but money damages cannot be awarded. Individuals can also file complaints with the Department of Justice which may file lawsuits to stop discrimination and obtain money damages and penalties.

Be aware that the DOJ will only bring suit where there is a pattern or practice of discrimination, or a violation that raises an issue of general public importance. You may get quicker action by filing a private lawsuit, filing a complaint under the Minnesota Human Rights Act instead of the ADA (which has similar provisions), or by using an alternative dispute resolution process.

Filing a complaint with the DOJ is a slow and uncertain process. They may decide not to pursue your complaint regardless of its merits. However, although the process may be slow, an investigation by the U.S. Department of Justice carries a lot of clout. And it may be that your complaint does in fact raise an issue of general public importance.

Q. What is alternative dispute resolution?

A. Alternative dispute resolution refers to a broad range of techniques that assist people in resolving differences. These range from informal negotiations to formal arbitration hearings. Mediation is probably the most useful strategy for resolving ADA disputes. Mediation is a private, voluntary process in which an impartial person convenes both parties to work together toward a mutually acceptable agreement.

The advantage of resolving a complaint through alternative dispute resolution is to avoid the long wait and expense of a formal legal battle and the adversarial relationships that often result. The alternative dispute resolution process

fosters a win-win outcome, which most people want.

Disputes over ADA issues are best handled by a person who has three qualifications: (1) considerable training and experience in mediation, (2) knowledge of ADA and other relevant anti-discrimination laws, and (3) understanding and familiarity with the broad range of program modifications or reasonable accommodations that make programs, services, or employment accessible without posing undue burdens.

For more information:

- U.S. Department of Justice
Civil Rights Division
Office on the Americans with Disabilities Act
950 Pennsylvania Ave., NW, Washington, DC 20530
(202) 307-0663 Voice and TDD
- Equal Employment Opportunity Commission
1801 L Street NW, Washington, DC 20507
(800) 669-4000 Voice; (800) 669-6820 TTY