

**Alaska Human Rights Law**  
**AS 18.80.200**



**Sec. 18.80.200 PURPOSE** to eliminate and prevent discrimination in

- **employment,**
- credit and financing practices
- places of public accommodation,
- the sale, lease, or rental of real property

because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood.

It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the **social and economic life of the state** and to engage in remunerative employment.

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**Alaska Human Rights Law**  
**Article 05. GENERAL PROVISIONS**  
**Sec. 18.80.300. Definitions**

**(14) "physical or mental disability" means...**

(A) a physical or mental impairment that substantially limits one or more major life activities;

(B) a history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities;

(C) having

- i. a physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation;
- ii. a physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or
- iii. none of the impairments defined in this paragraph but being treated by others as having such an impairment; or

(D) a condition that may require the use of prosthesis, special equipment for mobility, or service animal;

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**Alaska Human Rights Law**  
**Article 05. GENERAL PROVISIONS**  
**Sec. 18.80.300. Definitions**

**(15) "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, genito-urinary, hemic and lymphatic, skin, and endocrine;

B. mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

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## REASONABLE ACCOMMODATION

- **The Amendments Act did not change the definition of reasonable accommodation.**
- However, the Act does clarify that only individuals who meet the first (actual disability) and second (record of a disability) parts of the definition are entitled to accommodations; individuals who only meet the third part (regarded as) are not entitled to accommodations.

Even though the definition did not change, it is clear that with a broader definition of disability, more focus will be placed on providing reasonable accommodations.

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## Interactive Process Recommended

**Why have a process?**

- Consistency
- Successful Accommodations
- Good Faith Effort





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## One thing to keep in mind regarding a request for reasonable accommodation

- There is a duty to provide reasonable accommodation once you have **knowledge and a request**.
- **Handing over just a form may be a barrier.**
- Take time to understand request (interactive process).
- Thereafter, turn to a professional – ADA Coordinator.
- Consult EEOC, DOJ, DBTAC, and Job Accommodation Network (JAN).
- The accommodation does not have to be tied to the substantially limited major life activity that established that the employee has a disability.

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Another thing to keep in mind is the flexibility built into the reasonable accommodation obligation under the ADA.

For example:

- employers can choose among effective accommodation options and do not always have to provide the requested accommodation,
- employers do not have to provide accommodations that pose an undue hardship,
- employers do not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job,
- employers do not have to make an accommodation for an individual who is not otherwise qualified for a position, and
- employers do not have to remove essential functions, create new jobs, or lower production standards as an accommodation.

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**PRACTICAL TIPS**

1. Review job descriptions, qualification standards, and accommodation procedures.
2. Focus on performance and conduct.
3. Train frontline supervisors and managers.
4. Document actions and decisions.

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**1. Review Job Descriptions, Qualification Standards, and Accommodation Procedures**

- The ADA does not require employers to hire unqualified applicants with disabilities nor does it require employers to retain employees who can no longer perform the essential functions of their jobs because of a disability.
- However, the ADA does prohibit employers from:
  - using unnecessary qualification standards to weed out applicants with disabilities,
  - relying on inaccurate job descriptions to determine that an employee with a disability can no longer perform her job, and
  - failing to provide reasonable accommodations absent undue hardship.

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## 2. Focus on Performance and Conduct

- **Avoid making assumptions or comments about employees' medical conditions**, which could lead employees to believe that decisions were made on the basis of their real or perceived disabilities, even if that's not the case.
- **Focus on any performance or conduct problems that employees have and apply their policies in a uniform manner** rather than assuming that a medical problem or disability is contributing to or causing the problem.
- In general, it is the **employee's responsibility to let the employer know that a conduct or performance problem is disability-related and to request an accommodation** to overcome the problem so there is usually no reason for an employer to bring up medical issues first.

**EEOC's: The ADA: Applying Performance and Conduct Standards to Employees with Disabilities**  
<http://www.eeoc.gov/facts/performance-conduct.html>

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## 3. Train Frontline Supervisors & Managers

- If nothing else, employers should train their frontline to refrain from mentioning medical conditions unless relevant, to recognize accommodation requests, and to remember who to contact for assistance.
- Many employers, as part of their accommodation procedures, appoint a responsible person to handle accommodation requests, keep confidential medical information, and help avoid discriminatory employment decisions.
- Another important reason to train frontline supervisors and managers is to **help reduce retaliation claims**. The frontline needs to understand that making negative or derogatory remarks in response to an accommodation request can be considered retaliation.

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## 4. Document Actions and Decisions

- Because the focus of the ADA will shift away from the definition of disability and toward whether employers complied with their obligations, documentation of actions and decisions can be very important if an employee alleges discrimination.
- In the past, many such allegations were never looked at because the employee could not meet the narrow definition of disability. Now, especially with the broad coverage under the regarded as part of the definition, most cases will hinge on whether an employer discriminated.
- Therefore, employers should keep accurate records because it can be difficult to remember what happened without good recordkeeping and written records are generally considered more reliable than memory alone.

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**Documentation continued...** 

- Another important aspect of documentation is **effective communication** with employees. Many problems occur because employers do not let employees know, for example,
  - how their performance needs to improve,...
  - the status of their accommodation requests, or...
  - why an accommodation request was denied.
- Employees need to be informed so they can have the opportunity to address performance problems or suggest alternative accommodation options.




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**Typical Pitfalls** 

- Inappropriate reasonable accommodations
- No documentation
- Reactive from myths & stereotypes
- Favoritism
- Ethos of the workplace
- Inability to engage in the interactive process & effective communication




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**2010 ADA Standards for Accessible Design**  
*MARCH 15, 2012*



**2010 ADA Standards replace the 1991 Standards (and UFAS) and must be followed.**

**Revised ADA Regulations  
 Implementing Title II and Title III**

[www.ada.gov/regs2010/ADAREgs2010.htm](http://www.ada.gov/regs2010/ADAREgs2010.htm)

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## Safe Harbor - Existing Facilities

Elements that comply with the 1991 ADA Standards do not need to be modified to meet the 2010 ADA Standards ***unless they are altered on or after March 15th, 2012.***

- (Section 35.150(b)(2)(i))
- Section 36.304.(d)(2)(i))




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Safe Harbor does not apply to elements in existing facilities that were not subject to specific requirements in the 1991 Standards.




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## Elements in 2010 Standards Not Subject to Safe Harbor Sections 36.304(d)(2)(iii) and 35.150(b)(2)(ii)

(A) Residential facilities and dwelling units	(I) Saunas and steam rooms
(B) Amusement rides	(J) Swimming pools, wading pools, and spas,
(C) Recreational boating facilities	(K) Shooting facilities with firing positions,
(D) Exercise machines and equipment	(L) Miscellaneous.
(E) Fishing piers and platforms	1. Team or player seating
(F) Golf facilities	2. Accessible route to bowling lanes
(G) Miniature golf facilities	3. Accessible route in court sports facilities
(H) Play areas	

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## DBTAC Business Tool Kit

Featuring Resources on the following:

- Application Process
- Complaint Process
- Definition of Disability
- Interview Process
- Medical Exams & Information
- Performance Management
- Post Offer/Pre-Offer
- Reasonable Accommodations
- Research
- Service Animals in the Workplace
- The Americans with Disabilities Act Amendments Act of 2008
- What is disability discrimination?

<http://nwadacenter.org/>

Local resource for assistive technology/environmental controls:  
Assisted Technology for Alaskans (ATLA)  
(907)563-2599 or [www.atla.biz](http://www.atla.biz)

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## National DBTAC Resources

[www.adacourse.org/index.php](http://www.adacourse.org/index.php)

Your Training Resource on the  
Americans with Disabilities Act

<ul style="list-style-type: none"> <li>• Audio Conferences</li> <li>• Case Law &amp; Briefs</li> <li>• Fact Sheets &amp; FAQs</li> <li>• National ADA Initiatives</li> <li>• Podcasts</li> </ul>	<ul style="list-style-type: none"> <li>• PowerPoint Presentations</li> <li>• Resource Lists</li> <li>• Toolkits/Training Packages</li> <li>• Webcasts</li> <li>• Video/Multimedia</li> </ul>
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Questions, Help or Training on the ADA?  
1-800-949-4232

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## Resource Information

- **Job Accommodation Network (JAN)**  
(800)526-7234 (v/tty) or [www.jan.wvu.edu](http://www.jan.wvu.edu)
- **ADA Homepage** - [www.ada.gov](http://www.ada.gov)
- **Equal Employment Opportunity Commission** - 1-800-669-4000 or [www.eeoc.gov](http://www.eeoc.gov)  
[http://www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm)
- **Federal Access Board** - [www.access-board.gov](http://www.access-board.gov)  
(800)872-2253/TTY(800)872-5449

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**Thanks for your attention!**

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