



**WHAT WE KNOW**

## **Legal Rights: Higher Education and the Workplace**

**T**wo federal laws—the Rehabilitation Act of 1973, which is often called by one of its sections: Section 504, and the Americans with Disabilities—make it illegal to discriminate against people with disabilities in colleges and universities and in the workplace.

This What We Know sheet will:

- explain how the Rehabilitation Act of 1973 (called RA) and the Americans with Disabilities Act (called ADA) of 1990 can stop discrimination against people with disabilities
- describe what is needed to protect people from discrimination under RA or ADA
- explain how RA and ADA apply to higher education and the workplace

Some state laws may offer greater protection than these federal laws for someone with a disability. Check with a state government office or a lawyer to see what rights you have under your state law—in addition to your rights under the federal laws.

## RA AND ADA: WHAT ARE THEY?

The RA makes it illegal to discriminate against people with disabilities in three areas:

- Employment by the federal government
- Employment by most federal government contractors
- Activities that receive money from the federal government, which include all public elementary, middle and high schools

The ADA goes beyond the RA, which only protects people working in the public environment or under a government contract, to include state and local government activities such as work and education and privately- run businesses and organizations.

The ADA and the RA cover most private schools and most colleges and universities, which are known as “places of public accommodations.” Schools that are run by religious groups that do not receive government money do not have to follow these laws.

## RA AND ADA: WHO IS ELIGIBLE?

These laws say that the employers and higher education institutions that are mentioned above may not discriminate against qualified persons with disabilities. But having AD/HD does not automatically mean you are entitled to protection or accommodations—adjustments made because of a disability—under the RA or ADA. People must meet certain conditions to be eligible.

Below are the meanings of common terms used in legal issues for adults with AD/HD:

**Disability:** Persons with disabilities are people with impairments that substantially limit a major life activity like learning and work. The definition of a physical or mental impairment includes “any mental or psychological disorder.” AD/HD is a mental impairment.

**Substantially Limit:** To substantially limit means that the person’s disability makes him or her unable to perform a major life activity—like work or learning—that the average person can perform. If an individual with AD/HD has treatment that makes him or her so much better that they no

longer have a substantial limitation, then, they are no longer eligible for accommodations under these laws.

**Major Life Activity:** Major life activities under RA and ADA that are relevant to AD/HD are learning and work. To be “substantially limited” in the major life activity of learning, an impairment must prevent someone from succeeding in many areas of learning and not just one or two subjects, for example. To be substantially limited in the major activity of work, impairment must prevent someone from succeeding at an entire category of work (such as secretarial or construction work), not just a particular job.

**Otherwise Qualified:** Otherwise qualified means that someone would be qualified for a particular job or education program—with or without the disability.

## WHAT DOCUMENTATION IS REQUIRED?

RA and ADA require written reports to prove that someone has AD/HD. Some healthcare professionals write reports that are not complete enough to make the case. A written report from a health professional should:

- clearly state the person’s AD/HD impairment;
- clearly describe how the impairment affects the person’s ability to do one or more of the major life activities (learning, work). It should describe the positive and negative effects of any treatment;
- compare the person’s ability to work or learn to an average person’s ability. The comparison should show that the limitation on working or learning is substantial compared to the average person who has no limiting disability;
- state that the person is able to do job or educational program, with or without the disability; and
- state what accommodations—or adjustments—are needed because of the disability. It should state why these accommodations are needed and reasonable.

## HOW DO RA AND ADA APPLY TO HIGHER EDUCATION?

Under the RA and ADA, most colleges and universities must make necessary changes for students with disabilities who are qualified to go there. Students have to tell the school about their disabilities and show that they are qualified to do the work. The accommodations a student asks for must be both “reasonable and necessary” because of the AD/HD disability. Examples of reasonable accommodations include giving the student help with taking notes, more time to do projects, or a quiet room for taking tests and examinations. The school does not have to change its courses or exams if the changes would alter the school’s basic program or would cause the school “an undue hardship.”

## HOW DO RA AND ADA APPLY IN THE WORKPLACE?

Employees with disabilities who are qualified for their jobs may have the right to reasonable accommodations in the workplace. But it is difficult for an employee to say he or she is limited, but is still qualified for the job. The accommodations the employee asks for must be reasonable, but what is “reasonable” depends on the particular job.

Just wanting an accommodation is not enough to get it. The employee must prove that there is a need for a specific accommodation because of his or her disability. For example, the employee cannot insist on the day shift rather than the night shift simply because the employee wants the day shift.

When employees and employers don’t see eye to eye over making the adjustments the employee asks for, sometimes employees sue the employers. More than 90 percent of these ADA cases are won by employers because it is very hard for an employee to prove he or she is substantially limited, but still qualified for the job. It’s also hard to prove that the accommodations are reasonable.

Many employers, however, will agree to make reasonable accommodations to improve the employee’s work. If an employee *does* sue, it is very important to have written reports and supporting material about the disability and the need for accommodations.

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For further information about AD/HD or CHADD, please contact:

**National Resource Center on AD/HD  
Children and Adults with  
Attention-Deficit/Hyperactivity Disorder**

8181 Professional Place, Suite 150  
Landover, MD 20785  
800-233-4050

[www.help4adhd.org](http://www.help4adhd.org)

Please also visit the CHADD Web site at

[www.chadd.org](http://www.chadd.org).