



Hearing Loss Discrimination—Your Rights

What Does NJ Law Say about Discrimination Due to Hearing Loss?

The New Jersey Law Against Discrimination (LAD) makes it unlawful for employers, housing providers, or the owner, operator or employee of a place of public accommodation to discriminate against people with disabilities. If you are treated differently or harassed because of your hearing loss, you have the legal right to do something about it.

Except as described below, the LAD protects you from:

- Being denied a job or promotion because of your hearing loss.
- Being treated differently or harassed by an employer, a housing provider, or a provider of a public accommodation because of your hearing loss.
- Being refused a reasonable accommodation in employment, housing, or place of public accommodation.

What Does This Mean To You?

In Employment

Employers are required to give every applicant an equal chance at being hired for a job regardless of any disabilities he or she may have, provided that the applicant is capable of performing the essential functions of the job with reasonable accommodation. Once a person with a disability is employed, an employer must make reasonable accommodations to allow the person to perform the functions of the job. An accommodation is deemed reasonable if it does not cause the employer *undue hardship*. Whether a requested accommodation causes undue hardship is a fact-sensitive inquiry, but generally speaking, an employer is not required to provide an

accommodation that is very costly or changes the nature of its business or way of doing business.

Examples of reasonable accommodations are:

- acquiring or modifying equipment, or
- providing sign language interpreters, or
- providing assistive listening devices, or
- job restructuring, modified work schedules, or job reassignment.

In Housing

Individuals selling, renting, leasing or showing real property (e.g., a house, apartment, condo, co-op, etc.) may not discriminate against any person because they are deaf or hard of hearing. This means that they cannot change the price, or terms or conditions of sale, rental or lease because a person has hearing loss.

Moreover, if reasonable modifications to the living quarters are necessary to allow the person with hearing loss to fully enjoy the premises, then such modifications must be permitted. However, the cost of these modifications is the responsibility of the person with the hearing loss.

In Public Accommodations

Public accommodations are places, individuals, or entities that offer goods and services to the general public. Some examples of public accommodations are public schools, movie theaters, stores, restaurants, camps, child care facilities, doctors' and lawyers' offices, and hospitals.

Generally speaking, places such as these that are open to the public may not treat a person with a disability less favorably than others. For instance, it is unlawful for a school to deny a student admission to a school or after-school program because he or she has hearing loss, or for a shop proprietor to charge a person with hearing loss a

higher price than he or she charges everyone else for the same service.

Additionally, the LAD requires places of public accommodation to take reasonable steps to make sure that a person with hearing loss can enjoy the goods, services and facilities that are available to everyone else. Such accommodations, so long as they are “reasonable” are required. As in the employment context, a reasonable accommodation is defined as one that would not cause the provider undue hardship.

What Is the Difference between the NJ LAD and the Federal Americans with Disabilities Act for People with a Hearing Loss?

Hearing loss is protected as a disability under the LAD, and in most instances, it is protected as a disability under the federal Americans with Disabilities Act (ADA) as well. Generally speaking, however, the LAD covers more people than the ADA.

The ADA protects people with a permanent or long-term disability, which substantially limits one or more major life activities. The LAD, on the other hand, also protects people with certain temporary disabilities. Moreover, the LAD covers those who have had a disability in the past, people who are expected to develop a disability in the future, as well as those who are perceived to have a disability. In other words, if someone does not have a certain disability but they are subjected to discrimination by people who mistakenly believe that they do have a disability, the LAD also protects them.

Exceptions to the LAD

- The LAD does not apply to the terms or conditions of a pension or insurance plan, or other employee benefit programs.
- The LAD does not apply to educational facilities operated or maintained by bona fide religious or sectarian institutions. However, a child-care or after-school program that accepts state or federal funding is required to comply with anti-discrimination laws even if the program is operated or maintained by a bona fide religious or sectarian institution.
- The LAD does not apply to private clubs where membership is not open to the general public.

Are Schools Required to Provide Assistive Listening Devices, Sign Language Interpreters or Other Accommodations?

According to New Jersey law, schools are considered public accommodations, and therefore must fulfill reasonable requests to help students with hearing loss to learn. There is, however, no clear-cut answer for what is reasonable for a school to provide for a student with hearing loss. The Division on Civil Rights recommends that you consult with the school directly and also speak with the NJ Division of the Deaf and Hard of Hearing. It is the position of the Division on Civil Rights that generally, public schools should provide assistive technology to students with hearing loss.

Are Hearing Aids considered an Assistive Technology Device that must be provided by the school?

There is no clear answer to this question under state law. Hearing aids are most definitely an assistive technology device. However, the question remains as to whose responsibility is it to supply the device, since the student needs it for more than school purposes. The federal government issued a policy letter, which says that a school must supply hearing aids as an assistive technology device if it is in the Individualized Education Program and is necessary for a child to receive a Free Appropriate Public Education. New Jersey has not challenged that position; however, school districts have answered the question on a case by case basis.

Examples of possible reasonable accommodation under the LAD

- FM system,
- eye-communication speech recognition software,
- CART (Computerized Assistive Real Time captioning) services,
- C-print (speech to text software), and
- interpreters.

What Should I Do Next?

When the parties are unable to resolve a dispute themselves, the law provides two basic ways to seek relief under the Law Against Discrimination.

Administrative remedy:

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the Law Against Discrimination (LAD). If you believe that you have been the victim of unlawful discrimination, please visit or phone us at the Division on Civil Rights office closest to where you live or where the discrimination occurred. Our addresses and phone numbers are at the end of this fact sheet, or visit us on the web at www.NJCivilRights.gov.

A complaint must be filed with the New Jersey Division on Civil Rights within 180 days of the act of discrimination. An initial evaluation will be conducted to determine if you state a claim for relief under the LAD. If so, the Division will prepare a complaint for you to sign and then the Division will conduct an investigation into your allegations. If the investigation shows enough evidence to support your complaint (known as probable cause), and your complaint cannot be settled, a hearing will be held in the Office of Administrative Law. You may choose to retain a private attorney to represent you at the hearing, or a lawyer will be provided to prosecute the case on behalf of the New Jersey Division on Civil Rights. At the conclusion of the hearing, the Director of the Division on Civil Rights will make a final decision as to whether unlawful discrimination has been proven and, if so, what remedies should be awarded to the complainant. Other than fees for a private attorney, if applicable, there is no cost to the individual for these services.

Judicial remedy:

In the alternative, an individual who believes he or she has been discriminated against in violation of the LAD may file a complaint and try his or her case in New Jersey Superior Court. Individuals usually hire an attorney to represent them in a Superior Court action. A party cannot file with the Division on Civil Rights and in Superior Court at the same time. A Superior Court action must be filed within two years from the act of discrimination.

What Remedies Are Available?

In employment cases, a prevailing complainant may be entitled to be placed into the job he or she was unfairly denied, with back pay and interest; restoration of employee benefits that the complainant would have received but for the unlawful discrimination; damages for pain, humiliation, and emotional distress caused by the

unlawful discrimination; reasonable attorney's fees if the complainant was represented by counsel; and out-of-pocket expenses associated with pursuing the complaint.

In housing cases, a prevailing complainant may be entitled to the house or apartment that was unfairly denied, plus costs associated with finding another place to live; damages for pain, humiliation and emotional distress caused by the unlawful discrimination; and reasonable attorney's fees if the complainant was represented by counsel.

In addition, the Division may impose penalties on the party who violated the LAD of up to \$10,000 for the first violation, up to \$25,000 for a second violation within 5 years, and up to \$50,000 for third and subsequent offenses within 7 years. These penalties are payable to the State, not the complainant. Punitive damages are only available in Superior Court actions.

Remember, it's against the law for anyone to retaliate against you because you have exercised your rights under the New Jersey Law Against Discrimination.



NJ Office of the Attorney General

CIVIL RIGHTS

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the law. To file a complaint, contact or visit the office nearest you:

Atlantic City Regional Office:

1325 Boardwalk, Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401
Phone: (609) 441-3100 • Fax: (609) 441-3578

Camden Regional Office:

One Port Center, 4th Floor, Suite 402
2 Riverside Drive, Camden, NJ 08103
Phone: (856) 614-2550 • Fax: (856) 614-2568

Newark Regional Office:

31 Clinton Street, Newark, NJ 07102
Phone: (973) 648-2700 • Fax: (973) 648-4405

Trenton Regional Office:

140 East Front Street / P.O. Box 090
Trenton, NJ 08625-0090
Phone: (609) 292-4605 • Fax: (609) 984-3812

Visit our web site at www.NJCivilRights.gov