

TIPS FOR WORKERS: DISABILITY DISCRIMINATION AND THE USE OF SOFTWARE



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Many businesses use technology to make decisions about hiring, promotions, and firing workers. That technology can make it harder for people with disabilities to get or do well at a job.

The Americans with Disabilities Act (ADA) protects applicants and workers with disabilities from discrimination. Because of the ADA, an employer may have to give applicants or workers with disabilities a reasonable accommodation so they can apply for or do the job.

It is important to know that the ADA has specific definitions of “employer” “employee” “disability” and “reasonable accommodation.” You can learn more about the law at www.EEOC.gov/Disability-Discrimination and from The ADA: Your Employment Rights as an Individual with a Disability (www.EEOC.gov/Publications/ADA-Your-Employment-Rights-Individual-Disability).

THE FORMAT OF THE EMPLOYMENT TEST CAN SCREEN OUT PEOPLE WITH DISABILITIES.

Some employers screen employees and applicants using computer programs. The requirements of the program may screen out people with disabilities. For example:

- A job application requires a timed math test using a keyboard. Angela has severe arthritis and cannot type quickly. Typing quickly is not necessary for the job. Angela will fail the test if she takes it without a reasonable accommodation. The reasonable accommodation could be speaking the answers or having more time for the test.
- Amir is seeking a promotion. The promotion process includes a memory test. The test is a computerized game using visual memory. Amir is blind and cannot score well on the test, which will damage Amir’s chances for the promotion. Amir’s memory is good enough to do the job. If Amir receives a reasonable accommodation, such as a different type of memory test, the promotion process will more accurately judge Amir’s abilities.

If your disability makes it hard or impossible for you to take the computerized test for a job, here are some things you can do:

- Reach out to the employer’s human resources department. Explain that you are trying to take the test. Explain why the format is hard for you to use.
- You may have to describe your disability. The employer may ask for proof or additional information. Learn what the employer can ask and how your privacy is protected at [Your Employment Rights as an Individual With a Disability](#).
- Ask to be evaluated in a way that shows your ability to do the job. You can use the legal words and ask for a “reasonable accommodation,” but you do not have to.
- If the employer says no:
 - You can tell the employer about the EEOC’s [The ADA and AI: Applicants and Employees](#).
 - You can reach out to the EEOC. The EEOC can help you decide on next steps.

THE SCORING OF THE TEST CAN SCREEN OUT PEOPLE WITH DISABILITIES.

Some employers use technology to score applications or tests. The technology relies on algorithms. Algorithms are what the computer is programmed to look for. How the algorithm is set up may screen out people with disabilities. For example:

- An employer uses a chatbot to interview workers for a cashier job. The chatbot asks the applicant, “Can you stand for three hours straight?” The chatbot stops the interview if the answer is, “No.” Omar, who uses a wheelchair, answers, “No.” The chatbot ends the session. Omar could do the cashier job if he could sit at the cash register.
- An employer uses a computer program to test “problem-solving ability” based on speech patterns for a promotion. Sasha meets the requirements for the promotion. Sasha stutters so their speech patterns do not match what the computer program expects. Sasha scores poorly on the test and is not promoted.

If you think you are being screened out of a job because of your disability, here are some things you can do:

- If you can, before you take a test, ask the employer what skills it is testing for.
- If you are qualified for the job and you do not pass the test or hear back from the employer, reach out to the employer’s human resources department. Ask what skills the test was looking for. Explain that your disability may have made you score lower on the test.
- You may have to describe your disability. The employer may ask for proof or additional information. Learn what the employer can ask and how your privacy is protected at [The ADA: Your Employment Rights as an Individual With a Disability](#).
- Ask to be evaluated in a way that shows your ability to do the job. It may help to use the legal words and ask for a “reasonable accommodation,” but you do not have to.
- If the employer says no:
 - You can tell the employer about the EEOC’s [The ADA and AI: Applicants and Employees](#).
 - You can reach out to the EEOC. The EEOC can help you decide on next steps.

The ADA prohibits retaliation.

An employer is not allowed to retaliate against you for complaining about discrimination, asking for a reasonable accommodation, or talking to the EEOC. If you think an employer retaliated against you, you can reach out to the EEOC.

How to reach the EEOC.

You can call the EEOC on our toll-free number at: 1-800-669-4000.

TTY line: (800) 669-6820

ASL Video Phone: (844) 234-5122

Email: info@eeoc.gov

