

# Michigan disabilities act and the ADA: important differences

Michigan employers must comply with Michigan's Persons with Disabilities Civil Rights Act (PWDCRA) and the federal ADA. Both laws prohibit employers from discharging or otherwise discriminating against an individual because of a disability that is unrelated to the individual's ability to perform the duties of a particular job.

Although the laws are similar, there are differences employers need to understand.

The PWDCRA applies to all Michigan employers with at least one employee and includes the agent of such a person. This definition is broader than the ADA's definition of a covered entity, which applies to organizations with 15 or more employees.

## Disability definitions

The two laws carry slightly different definitions of disability.

*Under the PWDCRA, an employee is disabled if he or she:*

- A.** Has a "determinable physical or mental characteristic ... which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic ... substantially limits one or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion."
- B.** Has a history of a determinable physical or mental characteristic described in paragraph A.
- C.** Is regarded as having a determinable physical or mental characteristic described in paragraph A.

*In contrast, the ADA defines a person as disabled if he or she:*

- A.** Has a physical or mental impairment that substantially limits one or more of the major life activities.
- B.** Has a record of such impairment.
- C.** Is regarded as impaired.

## Reasonable accommodation

The PWDCRA limits how much money an employer must spend to reasonably accommodate an employee's disability (see box below).

Michigan employers with 15-24 employees can use 2.5 times the state average weekly wage to defend against PWDCRA accommodation requests, but also must meet the more nebulous federal standard as well. (Employers with 15 or more employees must comply with both the PWDCRA and the ADA.)

Under the ADA, the employer can avoid having to provide reasonable accommodations only if it can show that the accommodation would create an undue hardship. Although the definition of “undue hardship” is murky, employers can use the vagueness to create some wiggle room.

ADA accommodation costs can be calculated rather broadly to include the cost of workplace disruption, pay to other workers to perform essential functions normally required of the disabled person and other miscellaneous costs—in other words, the total difference between the employer’s cost without accommodating the worker and the costs with accommodation.

**Other key differences**

**Procedures:** Under the ADA, an employee must file a charge with the federal EEOC and receive a notice of right to sue before he or she can file a lawsuit. Once the commission issues a notice of right to sue, an employee has 90 days to file a lawsuit in federal court.

Under the PWDCRA, an employee can directly file a lawsuit in a Michigan court or can proceed by filing a claim with the Michigan Department of Civil Rights. An employee has three years to initiate a claim under the PWDCRA.

**Written notice:** Unlike the ADA, the PWDCRA requires an employee to give written notice of his or her need for a reasonable accommodation.

**Genetic testing:** Unlike the ADA, the PWDCRA prohibits an employer from refusing to hire, recruit, promote or discharging an individual because of genetic information that is unrelated to the individual’s ability to perform the duties of a particular job. The PWDCRA also prohibits an employer from requiring an individual to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

**Penalties:** Under the PWDCRA, an individual may bring a claim for injunctive relief and monetary damages, including reasonable attorneys’ fees. The ADA permits an individual to recover compensatory damages, injunctive relief, reinstatement, back pay and other equitable relief the court deems appropriate. The prevailing party, except for the EEOC and the United States, may be entitled to reasonable attorneys’ fees. Unlike the PWDCRA, the ADA caps compensatory and punitive damages. Punitive damages cannot be recovered under the PWDCRA, but there is no cap on compensatory damages.

**Prudent employer practices**

To comply with both the PWDCRA and the ADA, employers should:

- Update job descriptions to reflect the essential functions of each position.
- Engage in an interactive communications process with employees who request reasonable accommodations to perform essential job functions. When feasible, an employee’s suggestion for a possible accommodation should be used.
- Document all requests for accommodation and provide the employee with a written response to the requested accommodation.

**PWDCRA accommodation cost caps**

No. of employees	Maximum required accommodation cost
0-3	The state average weekly wage (\$803.17 in 2007)

4-14	1.5 times the state average weekly wage
15-24	2.5 times the state average weekly wage
25 or more	On a case-by-case basis