

Understand the North Carolina Persons with Disabilities Protection Act

North Carolina law has long protected disabled North Carolinians from discrimination. The North Carolina Persons with Disabilities Protection Act was originally called the Handicapped Persons Protection Act and became law in 1985.

The act addresses discrimination in public accommodations, public service, public transportation and employment. It also prohibits retaliation against people who oppose disability discrimination or participate in a proceeding under the act.

The act is broad in scope, and many of its protections apply directly to employment matters.

Basic protections

The act is intended to promote equality of opportunity for persons with disabilities and help them achieve economic self-sufficiency. This law applies to employers with 15 or more full-time employees in North Carolina.

The definition of a “person with a disability” is similar to the ADA’s. It includes “any persons who (i) have a physical or mental impairment which substantially limits one or more major life activities; (ii) have a record of such an impairment; or (iii) are regarded as having such an impairment.”

“Physical or mental impairment” is defined very broadly, but excludes sexual preferences, active alcoholism or drug abuse, and temporary disorders, conditions or disfigurement. “Major life activities” include “working.”

Who is protected?

Although the act broadly defines “persons with a disability,” North Carolina courts have been restrictive in determining whether a person is disabled.

Like the ADA, a disabled person gets protection under the act only if he or she is a “qualified” person. That means he or she can satisfactorily perform job duties with or without a reasonable accommodation. Reasonable accommodation is addressed by identifying examples of both reasonable accommodations and accommodations not required.

Reasonable accommodations include making facilities accessible, modifying equipment and making changes to job duties. Accommodations not required include hiring someone to assist the disabled person, reassigning duties to others without adjustment, providing personal accommodations such as prostheses or making changes that impose undue hardship on the employer. The undue hardship test seeks a balance between the cost of accommodations and the employer’s financial resources.

Prohibited discrimination

The act prohibits employers from failing to hire, failing to promote, discharging or otherwise discriminating against qualified persons with a disability due to the disability. The employer cannot require an applicant to identify himself as disabled prior to a conditional offer of employment.

There are numerous exemptions to the general prohibition against discrimination. Employers may not be liable in cases in which they:

- 1. Make employment decisions** based on regulations that impose health-related requirements
- 2. Make employment decisions** concerning a person with a communicable disease that would disqualify the person from the job
- 3. Don't make reasonable accommodations** because the person failed to apprise the employer of the disability, to request accommodation and to provide necessary medical documentation
- 4. Inquire if a person** has the ability to perform the duties of the job
- 5. Require a medical examination** to determine whether a person can do a job or to determine appropriate accommodations
- 6. Obtain medical information** to establish an employee's health record
- 7. Administer certain** pre-employment testing

If an employee with a disability asserts a claim under the act, there are certain affirmative defenses available. They include:

- Failure of the employee to comply with the company's work rules, policies or performance standards
- Excessive tardiness or absences

An aggrieved person with a disability may bring a civil action. The case will be tried by the court without a jury. The possible relief is reinstatement, back pay reduced by interim earnings and attorneys' fees. There is a short statute of limitations—180 days from the date of the discriminatory conduct.

Most employers are aware of the ADA, but you need to be familiar with the North Carolina Persons with Disabilities Protection Act, too.

A history of amendments

Even before 1985, certain protections were given to handicapped persons in Chapter 168 of the North Carolina General Statutes, which is now titled "Persons with Disabilities."

The 1985 act was amended in 1999, to replace the phrase "handicapped persons" with "persons with disabilities" and expand the definition of "major life activities" to include working. The 1999 amendments also bar actions under the act if a plaintiff has commenced a federal judicial or administrative proceeding under the ADA.

The act was amended again, effective Jan. 1, 2003, to expand the statement of purpose, liberalize the definition of "undue hardship" and add provisions related to discrimination in public service.