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EMPLOYMENT DISCRIMINATION

This handout gives a summary of the federal and Texas laws against disability discrimination in the workplace. This handout tries to answer the following questions:

1. Is it against the law for employers to discriminate against an employee because of a disability?
2. What employers are covered by these laws?
3. What kinds of employment discrimination are covered by the law?
4. Who is protected from employment discrimination?
5. What is a “disability?”
6. Am I covered by the discrimination laws if I am getting Social Security disability benefits?
7. If I have a disability but I am taking medicine that helps me, do I still have a disability?
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13. When I am applying for a job, can the employer ask about my disability or make me take a medical exam?
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QUESTIONS & ANSWERS

INTRODUCTION TO THE LAWS

1. Is it against the law for employers to discriminate against an employee because of a disability?

Yes. Federal and state laws both prohibit disability discrimination in employment. Although some state laws are different from federal law, Texas state law is very similar to federal law.

2. What employers are covered by these laws?

The law covers private employers with 15 or more employees. The law also covers state government agencies, local government offices, employment agencies, and labor unions.

Finally, even private employers with fewer than 15 employees may be covered if they receive federal money.

3. What kinds of employment are covered by the law?

The law makes discrimination illegal in all employment practices. This includes job applications, hiring, firing, promotion, pay, training, and other terms, conditions, and privileges of employment. The law also applies to recruitment, advertising, layoff, leave, benefits, and all other employment-related activities.

4. Who is protected from employment discrimination?

The law protects a "qualified person with a disability." A "disability" is defined below in Questions 5 through 10. The term "qualified" is discussed in Questions 11 and 12 below.

People who do not meet these definitions are usually not protected by law. There are exceptions, however. A person does not need to be a "qualified person with a disability" in order to complain about medical questions or exams (discussed in Questions 13 to 18 below). Also, a person does not need to be a "qualified person with a disability" in order to complain about retaliation (discussed in Question 35 below). People without disabilities may also be protected from discrimination because they are "associated with" a person with a disability. (See Question 37 below).

DEFINITION OF DISABILITY

5. What is a "disability?"

The law defines "disability" as:

(1) a physical or mental impairment that substantially limits one or more major life activities; or

(2) a record of a physical or mental impairment that substantially limits one or more major life activities; or

(3) being regarded as having a physical or mental impairment that substantially limits one or more major life activities.

The first part of the definition above (sometimes called "actual disability" or "present disability") makes clear that the law protects people who have impairments that substantially limit major life activities. "Major life activities" are things such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. But the term also includes the operation of a major bodily function, like the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. "Substantially limited" means that a person cannot perform the activity or is restricted in the way the person performs the activity. An individual with epilepsy, paralysis, HIV infection, AIDS, tuberculosis, a substantial hearing or visual impairment, mental retardation, or a specific learning disability may be covered. But a person with a minor condition that only lasts a short time – such as a sprained ankle, broken leg, or seasonal flu – generally would not be covered.

The second part of the definition protects people who have a past record of a disability, or who have a history of a disability, even if they do not have a disability now. This part of the definition might cover, for example, a person who has recovered from cancer or mental illness.

The third part of the definition protects people who may have never had a disability, as long as other people treat them as if they have one. For example, this provision may protect a person who does not have AIDS if an employer wrongly believes that the person has AIDS.

6. Am I covered by the discrimination laws if I am getting Social Security disability benefits?

You may be but it is not automatic, because the definitions are different.

7. If I have a disability but I am taking medicine that helps me, do I still have a disability?

Yes, if you are complaining about discrimination that took place on or after January 1, 2009. If you are complaining about discrimination before that, it depends on the details.

8. My condition is not permanent. Do I still have a disability?

It depends. It used to be that your condition had to be permanent or long term. But that is no longer true. Even temporary conditions may be disabilities now. For example, the EEOC says that conditions lasting less than six months may still be disabilities. So duration may still be a factor, but the final answer to your question depends on a number of other factors, too, including the seriousness of your condition, how well it responds to treatment, and even the type of discrimination you are complaining about. For more information you might look at the EEOC's "Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008." This is online at http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm.

9. Do people who use drugs have a disability as defined by discrimination laws?

The law does not protect a person who is currently abusing drugs. On the other hand, a person with a history of drug addiction, but who is not currently using illegal drugs, may be protected by federal law (but not state law).

Note, however, that an employer can prohibit drug abuse at work, and an employer can also prohibit their workers from being under the influence of illegal drugs at work.

10. Is alcoholism a disability as defined by these laws?

Alcoholism may be a disability under federal law. (Persons with alcoholism are not covered under state law.)

However, an employer can prohibit alcohol use at work, and can also prohibit employees from being under the influence of alcohol at work.

DEFINITION OF A QUALIFIED INDIVIDUAL

11. What does it mean to be a "qualified" person with a disability?

A "qualified" person is someone who (a) meets the legitimate job requirements (such as skill, experience, education, or other requirements) of a job that the person holds or seeks, and (b) can perform the "essential functions" of the job. A person will not be considered unqualified simply because the person is unable to perform marginal or incidental job functions.

If a person is qualified to perform essential job function except for limitations caused by a disability, the employer must consider whether the person could perform these functions with a reasonable accommodation. That means that if a reasonable accommodation would allow a person with a disability to do the essential functions of the job, then he or she is an otherwise qualified person with a disability. (For a further discussion of reasonable accommodations, see Questions 19 through 32 below.)

12. What are the "essential functions" of a job?

The "essential functions" of the job are the most important functions of the job that could not be transferred to another employee or eliminated from the job description as a reasonable accommodation. A written job

description may show what the essential functions of the job are, but job descriptions are not the only kind of evidence, and sometimes they are not very accurate.

MEDICAL QUESTIONS AND EXAMS

13. **When I am applying for a job, can the employer ask about my disability, or make me take a medical exam?**

    Usually not. An employer may not ask (or require) a job applicant to take a medical examination before making a job offer. Also, an employer cannot ask about a disability, or the nature or severity of a disability, before making a job offer. But an employer may ask questions about the ability to perform specific job functions. The employer may also ask (with certain limitations) a person with a disability to describe or demonstrate how the person would perform these functions.

    Once the employer offers a job, the employer can require that person to answer medical questions or pass a medical exam, as long as the questions or exam are required of all entering employees in the same job category. But if an employer asks about family medical history or conducts genetic tests, the employer may have violated other laws besides the ADA, such as the Genetic Information Nondiscrimination Act (GINA).

    However, if a person with a disability is not hired because of the results of such a medical exam, or as the result of his or her answers to questions about disability, the employer must show that the person (a) would probably not be able to do the job, even if they were given a reasonable accommodation, or (b) would pose a "direct threat" in the workplace (i.e., a significant risk of substantial harm to the health or safety of the individual or others) that cannot be eliminated or reduced below the "direct threat" level by giving a reasonable accommodation.

    For detailed information about the kinds of medical questions and exams that are OK prior to hiring a person with a disability, look at the EEOC handout online at http://www.eeoc.gov/policy/docs/preemp.html.

14. **If I am already working, can my employer ask about my disability, or require me to take a medical exam?**

    After a person starts work, there are only a few reasons that would allow an employer to force an employee to answer medical questions or undergo a medical exam. For example, the employer may require an employee to have a medical exam if there is reason to believe the employee cannot perform his or her job, or cannot do the job safely. The employer may also require an exam if the exam is required by some other Federal laws.

    For more information on medical questions and exams of current employees, see the EEOC handout online at http://www.eeoc.gov/policy/docs/qanda-inquiries.html.

15. **You said that sometimes, it is OK for the employer to ask about my disability. Is there anything to stop my employer from telling others about my disability?**

    An employer must keep all information from medical examinations and questions separate from general personnel files, as a separate, confidential medical record, and those records are available only under limited conditions.

16. **Can an employer give drug tests to detect the illegal use of drugs?**

    Yes.

17. **Can an employer ever ask someone applying for a job to voluntarily disclose that he or she has a disability?**

    Yes, but generally only if the employer is a federal agency, or a federal government contractor and subcontractor, that has a valid affirmative action plan. Even then, employers who request such information must keep the information separate and confidential, apart from regular personnel records.

An employer can also ask about a disability if required by another Federal law or regulation. For example, certain federal laws apply to disabled veterans, and employers may be able to ask about disabilities in order to provide veterans with the special services that those laws require.

18. Should I tell my employer that I have a disability?

If you think you will need a reasonable accommodation (as described below in Questions 19 through 30), you should tell the employer about your disability, and should also tell the employer that you need an accommodation. Otherwise, many people suggest not telling your employer about any disability, because some employers may discriminate against you if they know you have a disability.

REASONABLE ACCOMMODATION

19. What is a "reasonable accommodation?"

A "reasonable accommodation" is any modification or adjustment to a job, or to the work environment, that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodations may also include adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

20. What are some of the accommodations that job applicants and employees may need?

Some of the most common types of accommodations include:

- physical changes, such as installing a ramp or modifying a workspace or restroom;
- sign language interpreters for people who are deaf, or readers for people who are blind;
- providing a quieter workspace or making other changes to reduce noisy distractions for someone with a mental disability;
- training and other written materials in an accessible format (such as in Braille, on audio tape, or on computer disk);
- video relay, video conferencing, or TTYs for use by people who are deaf, and hardware and software that make computers accessible to people with vision impairments or who have difficulty using their hands; and
- time off for someone who needs treatment for a disability.

Other examples of reasonable accommodation include restructuring a job; modifying work schedules; acquiring or modifying equipment; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the person is qualified, if the person is unable to do the original job because of a disability.

Employers are usually not required to lower quality or quantity standards as an accommodation; nor are they obligated to provide "personal use" items such as glasses or hearing aids.

In order to decide which accommodation is the appropriate one, the employer must base its decision on the particular facts of each case. Any reasonable accommodation must be effective, that is, it must give the person with a disability the chance to achieve the same level of performance, and to enjoy similar benefits, as the average person without a disability in the same situation.

21. Are there limits on reasonable accommodations?

Yes. Generally, the person with a disability who is asking for an accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer does not have to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business.

22. What is an "undue hardship?"

"Undue hardship" means something that requires "significant difficulty or expense," when compared to a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Undue hardship is determined on a case-by-

case basis. If the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.

If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that would not be an undue hardship. Also, if the cost of an accommodation would impose an undue hardship on the employer, the individual with a disability should be given the option of paying some of the costs or getting the accommodation from another source.

23. Does an employer have to renovate a building or office to make it accessible?

Maybe. An employer must make sure that a person with a disability can participate in the application process. An employer must also make sure an employee with a disability can do the job. That may mean making changes so that people with disabilities can get into a building or work site. It may also mean making sure that employees with disabilities can get to the equipment they need, and to the other facilities used by employees. For example, if an employee lounge is located in a place that an employee using a wheelchair cannot get to, the lounge might need to be modified or relocated. The employer must provide such access unless it would cause an undue hardship.

Other laws may require general accessibility, but under the laws against employment discrimination, an employer does not have to make its facilities accessible until a particular applicant or employee with a particular disability needs an accommodation. In that case, and modifications should meet that individual's work needs. However, employers should consider making changes that will provide general accessibility, particularly for job applicants, because it is likely that people with disabilities will be applying for jobs.

24. Does the law require an employer to reassign some "essential job functions" to another employee as a reasonable accommodation?

Generally, the employer does not have to reassign any "essential job function" (as defined in Question 12 above). But the employer may have to reassign non-essential (or less important) job functions to other employees.

25. Can I take off work as a reasonable accommodation?

Maybe. Reasonable accommodations may include getting flexible leave, or getting additional unpaid leave even if you have used up all of your paid leave time. However, an employer does not have to give an employee unlimited or indefinite leave, so it is important to tell your employer when you expect to return to work.

26. Do I have to ask for an accommodation?

Yes, usually you have to ask for one. There are exceptions, however. For example, an employer may have a duty to ask about the need for accommodations if the employer knows you have a mental disability that makes it hard for you to ask for an accommodation yourself.

If a person with a disability requests an accommodation, the employer and the individual should work together to identify the accommodation. This is sometimes referred to as the "flexible, interactive process," and it is described briefly in Question 28 below. There are also many public and private resources that can give free help. (See Question 32 below.)

27. How do I ask for an accommodation?

Although there are no magic words that have to be used in the request, using the term “reasonable accommodation” can help. A request may be oral, but it is usually a good idea to put it in writing. You do not need to complete any special forms, although you may want to use your employer’s form (if there is one), so there is no misunderstanding. A sample written request is also included at the end of this handout.

Also, a family member, friend, health professional, or other representative may request a reasonable accommodation for you if you can’t do it yourself.

The request should be made to your supervisor or to your company’s personnel or human resources department.

In requesting an accommodation, it is a good idea to give examples of what you want. For example, if you want to be reassigned to a different job, say so, and point out the job opening that you want. The main thing is to let your employer know that you need an adjustment or change because of your disability. For example, if you use a wheelchair and it does not fit under your desk at work, you should tell your supervisor. This is a request for a reasonable accommodation. A doctor’s note requesting time off due to a disability, or stating that you can work with certain restrictions, is also a request for a reasonable accommodation.

28. If I ask for an accommodation, how does my employer decide what accommodation I should get?

Once you have asked for a reasonable accommodation, your employer should talk to you about available options with you. If possible, you should give examples of what you want. It can sometimes help to bring in an appropriate professional (such as a physician or a rehabilitation counselor).

Your attitude in these discussions can be very important. The worker must cooperate in the process of determining an appropriate accommodation. You may lose your legal rights if you fail to act in a reasonable way, or if you do not give the employer a fair chance to work out any problems.

29. If I ask for an accommodation, can my employer make me provide medical documentation?

Sometimes, yes. Your employer may require you to go to a doctor unless both your disability and the need for reasonable accommodation are obvious, or unless you have already given enough information. Sometimes, your employer may ask that your own doctor give certain information, and you may have to pay your doctor for that evaluation. Sometimes, your employer may ask that you go to a doctor that they have chosen.

Medical information is usually enough if it says what your disability is, and explains the need for a reasonable accommodation. Any medical exam should be limited to figuring out what you need in order to do the job.

30. Do I have to pay for a reasonable accommodation if I need one?

No.

31. Can an employer lower my salary or pay me less than other employees doing the same job because I need a reasonable accommodation?

No.

32. Where can I get more information about reasonable accommodations?

There is a detailed explanation of the reasonable accommodation requirement in the EEOC handout online at http://www.eeoc.gov/policy/docs/accommodation.html.

If you are trying to get help on figuring out what accommodation might be appropriate, you or your employer might contact:

- the Job Accommodation Network (JAN) at 1-800-526-7234(Voice), 1-877-781-9403(TTY);
- the ILRU (Independent Living Resource Utilization Program), which is the federally-funded disability and business technical assistance center for Texas and its surrounding states, at 1-713-520-0232(Voice/TTY), http://www.ilru.org;

Other resources for locating reasonable accommodations are:

- the U.S. Equal Employment Opportunity Commission, 1-800-669-4000(Voice), 1-800-669-6820(TTY), http://www.eeoc.gov;
- for sign language interpreters, the Registry of Interpreters for the Deaf 1-703-838-0030(Voice), 1-703-838-0459(TTY), http://www.rid.org;
- for ideas on technology-related services for people with disabilities, you might also contact RESNA, 1-703-524-6686(Voice), 1-703-524-6639(Text)
- for accommodations for people with mental illness, Boston University's Center for Psychiatric Rehabilitation, 1-617-353-3549(Voice), 1-617-353-7700(Fax), or their web page on accommodations at http://www.bu.edu/cpr/reasaccom/whatareras.html.

PARTICULAR KINDS OF DISCRIMINATION

33. Does an employer have to give preference to a person with a disability over other job applicants?

No. An employer is free to select the most qualified applicant available and to make decisions based on reasons that are not related to a disability. For example, suppose two people apply for a job as a typist. The first person, who has a disability, types 50 words per minute. The second person, who has no disability, types 75 words per minute. The employer can hire the applicant with the higher typing speed, if typing speed is needed for the job.

34. Can an employer refuse to hire me because the employer thinks that it would be unsafe for me to work with certain machinery?

The law allows an employer to refuse to hire a person who poses a "direct threat" to the health or safety of the person or others. A "direct threat" means a significant risk of substantial harm. The determination that there is a direct threat must be based on objective, factual evidence regarding an individual's present ability to perform essential functions of a job. An employer cannot refuse to hire you because of a slightly increased risk, or because of fears that there might be a significant risk sometime in the future. For example, an employer may violate the law by assuming that a person who is hard of hearing cannot drive a bus safely.

35. Does the law protect me from retaliation?

Yes. Employers cannot retaliate against employees (or former employees) for trying to protect their rights. That means that an employer cannot do something bad to a person just because that person files a discrimination complaint, or tries to report or stop disability discrimination, or asks for a reasonable accommodation. Employers also cannot retaliate against an employee for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing. Also, an employer cannot try to coerce, intimidate, threaten, or otherwise interfere with any person regarding their legal rights discussed in this handout.

Sometimes it may be hard to prove that the employer took action against you to retaliate. One way to show that retaliation was the reason is based on the timing. If you employer takes an action against you shortly after the employer learned that you were complaining about discrimination, or shortly after you asked for an accommodation, that may be good evidence of retaliation.

The law does not protect you from minor acts of retaliation, but it does protect you from retaliation that costs you money, or costs you your job, and other kinds of serious retaliation.

You do not need to be a "qualified individual with a disability" in order to complain about retaliation.

36. Does the law protect me from being harassed because of my disability?

Yes. The law prohibits disability-based harassment if it is bad enough. For more detailed information on harassment claims, see the EEOC's handout online at http://www.eeoc.gov/policy/docs/harrassment-facts.html

37. What is discrimination based on "relationship or association?"

The law prohibits an employer from discriminating against an employee just because that person is related to a person with a disability. The law also protects employees who are discriminated against just because they are friends with (or are otherwise associated with) a person with a disability.

For example, this provision would protect a person if his or her employer fired her because the employer was afraid that the employee's child with a disability would have costly medical bills, which could make the cost of the employer's health insurance go up. This provision also prevents an employer from refusing to hire a person just because the employee's spouse has a disability.

It is important to remember, though, that are not entitled to a reasonable accommodation if you only need one because of a family member's disability rather than because of your own disability. However, you may be entitled to take time off to take care of a family member with a disability based on other laws, such as the Family and Medical Leave Act (if it applies to you).

MORE INFORMATION ABOUT THE LAW

38. Where can I go if I want more information about these laws against employment discrimination?

The Equal Employment Opportunity Commission (EEOC) is the main federal agency that is supposed to enforce the laws against employment discrimination. The EEOC has developed several resources to help employers and people with disabilities understand and comply with the employment provisions of the ADA. Those resources include:

- The EEOC's Technical Assistance Manual that provides "how-to" guidance on the employment provisions of the ADA as well as a resource directory to help individuals find specific information. The Technical Assistance Manual is online at http://askjan.org/links/ADAtam1.html;
- A handout with more information on the reasonable accommodation process, online at http://www.eeoc.gov/facts/accommodation.html;
- A summary of your rights under the American with Disabilities Act (ADA), which is online at http://www.eeoc.gov/facts/ada18.html.

For information on contacting the EEOC directly, see Question 40 below.

FILING A COMPLAINT OR A LAWSUIT

39. What should I do if I think my employer has discriminated against me?

If you think that you have been discriminated against, you have not been able to work it out with the employer, you can file a written complaint with any of the agencies listed below. This kind of complaint is called a "charge of discrimination." You must start by filing this kind of charge before you have the right to file a lawsuit in court.

40. Where do I file my charge?

You can write, call, or visit one of the following agencies:

- The U.S. Equal Employment Opportunity Commission (EEOC). There are currently four EEOC offices in Texas, in Dallas, El Paso, Houston, and San Antonio. For information on how to contact the Equal Employment Opportunity Commission, you may call the EEOC at 1-800-669-4000. You can also get the information from the EEOC's website at http://www.eeoc.gov/field/index.cfm.
- The Texas Commission on Human Rights; mailing address: 1117 Trinity St., Room 144T, Austin, Texas 78701; Phone: 1-512-463-2642 or 1-888-452-4778.
- Local fair employment agencies, but only if the local agency is recognized by the EEOC, and only if the discrimination took place in the same city as the local agency. To find out if there is a local commission in your city, look in your phone book or call the Texas Commission on Human Rights at the number shown above. Currently there are at least three local agencies in Texas:

1. City of Austin Equal Employment/Fair Housing Office
   505 Barton Springs Rd., Ste. 720
   Austin, Texas 78704
   P.O. Box 1088
   Austin, Texas 78767-1088
   (512) 974-3251
   (if you are complaining about a private, non-government employer in Austin)
2. Corpus Christi Human Relations Department
   1201 Leopard Street (city Hall – 1st Floor)
   P.O. Box 9277
   Corpus Christi, Texas 78469-9277
   (361) 880-3190
   (for Corpus Christi and the surrounding area)
3. Fort Worth Civil Rights Enforcement Division
   818 Missouri St.
   Fort Worth, Texas 76104
   1000 Throckmorton – Mailing Address
   Fort Worth, Texas 76102
   (817) 392-7525 Phone; (817) 392-7529 Fax
   (for those residing or working in Fort Worth)

41. What exactly is a charge of discrimination?

A "charge" is a written complaint about discrimination that you sign under oath, and file with one of the agencies above. Someone at one of those agencies will prepare a statement for you to sign describing your complaint.

You should make sure that the office files your complaint under both state and federal law, and you should also make sure that the complaint is filed with both the EEOC and the state or local agency. If there is a box on the complaint form asking if you want the charge to be filed with both the EEOC and the state or local agency, make sure you check the box saying that you do want to file with both.

It may also be better to file two identical charges, one with the EEOC, and a separate (duplicate) charge with the state or local agency. Filing duplicate charges may not be required, but it can sometimes avoid problems later on. You should also keep proof that you filed a charge, for example, by mailing the charge by certified mail and keeping the green card receipt.

42. Is there a deadline to file a complaint of discrimination?

Yes. Generally, you have 180 days from the date of the alleged discrimination to file your charge. The deadline may be longer under federal law, but you should never miss the state law deadline unless advised to do so by an attorney.

If you are complaining about any job with the United States government, you must make a complaint within your agency within 45 days of the discrimination; so you should immediately consult with your EEO counselor. For more information on the complaint process for employees of the federal government, see the EEOC handout at www.eeoc.gov/federal/fed_employees/complaint_overview.cfm.

43. Is there any cost to file a charge?

No.

44. Do I need a lawyer to file a charge?

No. You may file a charge on your own without a lawyer, although some people do choose to get a lawyer, and a lawyer may be very helpful.

45. What happens after I file my charge of discrimination?

An investigator is usually assigned to your case. He or she will send your charge of discrimination to your employer or former employer. He or she is also supposed to take statements from you, the employer, and

possibly your co-workers. Usually, an investigation takes several months, as each investigator handles a number of cases at once. Waiting for the agency to finish its investigation can be frustrating, but the information that the agency gets in the investigation can be very important to your case. You must usually wait until the investigation is over before filing any lawsuit in court, although it may be possible to file suit before the investigation is done. You should discuss this with an attorney.

Sometimes, the agency may suggest that you go to mediation to try to settle your case. Mediation is a meeting with an impartial third party who tries to help you settle your complaint with your employer. Mediation is voluntary, usually free, and confidential.

At the end of the investigation, the agency usually issues a determination letter in which the investigator says whether he or she thinks that you were discriminated against. Although this determination is important, you may sue your employer even if the agency does not think there was discrimination.

If the agency believes that your employer did not break the law, your charge will be dismissed, and you will be sent a letter telling you that you may file your own lawsuit. This is called the right-to-sue letter.

If the agency decides that your employer discriminated against you, it may attempt to settle the claim for you informally. If the agency cannot settle the case, the agency may either file a lawsuit for you, or send you a right-to-sue letter giving you the right to file a lawsuit on your own.

Sometimes, the agency will not do an investigation, and will just issue the right-to-sue letter. Whatever happens, it is very important to follow the deadlines described in the right-to-sue letter if you want to file a lawsuit.

46. What do I do if I want to file a lawsuit in court?

Before you can file suit, you may have to get a “right-to-sue” letter from the human rights agency. For more information about this, see Question 48 below. You can request the right-to-sue letter at any time after 180 days have passed from the date you filed your charge. There may be some exceptions that would allow you to request the notice even sooner.

47. Is there a deadline for filing a lawsuit in court?

Yes. Your deadline to file suit under state law is two (2) years from the date you file your charge of discrimination, or sixty (60) days from the date you receive your right-to-sue letter, whichever comes first. Under state law, you do not have to wait until you actually receive the right-to-sue notice before you file suit. In fact, under state law, you must file any lawsuit before the two-year deadline regardless of whether you have received the right-to-sue letter.

Your deadline to file suit under federal law is ninety (90) days from the date you receive your right-to-sue notice from the EEOC. Under federal law, you usually have to wait for your right-to-sue letter before you file any lawsuit.

Again, however, you should never miss your state law deadline unless advised to do so by an attorney. You should always consult with an attorney about your deadline to sue.

Sometimes the time limit to file a lawsuit may start running from when the right-to-sue letter is sent, even if it is not yet receive. Therefore, it is important to make sure that the human rights agency has your correct address. It is also important to open any mail that you receive from them right away.

48. How do I find a lawyer to represent me in my case?

The discrimination laws provide that an employer who loses a discrimination suit must pay the employee’s attorney fees. Because of this, you may be able to find a private attorney who will take your employment discrimination case even if you cannot pay for the lawsuit. There are several ways to try to find a lawyer. For example, you might contact:

- The Lawyer Referral Service at 1-800-252-9690; you should ask for a referral to an employment or civil rights attorney;
- Disability Rights Texas at 1-800-252-9108, or other contact information online at http://www.DisabilityRightsTx.org/contact.htm; Disability Rights Texas may represent you in your job discrimination

case in Texas, although they cannot take every case; if they cannot take your case, they also keep a list of private attorneys that take job discrimination cases;

- The National Employment Lawyers Association (NELA); this is a membership group of lawyers who represent employees in various kinds of problems related to their work; some of their members have online listings that you can search using the “Find a Lawyer” box at http://www.nela.org;
- The Texas Employment Lawyers Association (TELA); this is a membership group of lawyers who represent employees in various kinds of problems related to their work; some of their members have online listings that you can search by clicking on “Find a Lawyer” tab on their website at http://www.mytela.org;
- Workplace Fairness; this group advocates for the rights of employees, and they have some suggestions for finding a lawyer on their website at http://www.workplacefairness.org/find-attorney.

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SAMPLE ACCOMMODATION REQUEST

[As stated in Question 27 above, this is a sample of a written request for an accommodation. It is only a sample, and the wording should be changed to fit the particular facts.]

[Date]

Ms. Mary Jones
Human Resources
[Company Name]
[Company Address]

Dear Ms. Jones:

I wanted to put down some of my thoughts about my working in the Quality Improvement position, and I hope that we can work together to come up with some accommodations to my disability that will work for all of us.

Despite my disability, cerebral palsy, I feel that I am qualified for the position, and I have done it successfully for a number of years. On January 5, 2003, I discussed my typing ability with Sue Smith and Sam Supervisor. I was told that they would get with the Human Resources Department to determine if a reasonable accommodation could be made. When I did not hear further, I had another conference with Ms. Smith on January 15, 2003, in which I did some sample typing on a personal computer, and she told me I would hear back that day. I still have not heard anything.

I still want to succeed in the Quality Improvement position, and I think I can do the job with some reasonable accommodations. No one has met with me to try to figure out an appropriate accommodation, and I would like to do so. I did suggest, as possible accommodations, letting me take work home to do typing on my home personal computer, and also to let me try the job for a trial period. Other possibilities are a voice-to-typing software program (like Dragon Dictate), or an adjustment of the "time allowed." Also, I believe my TRC counselor could provide an expert to do a job analysis to see what accommodations are possible, and I know there is a federal toll-free hotline for accommodation information (the Job Accommodation Network: 1-800-526-7234). Finally, the federally funded Client Assistance Project may have people who can try to resolve differences between people with disabilities and their employers.

Please let me know if we can get together to try to work out what accommodations would allow me to be a productive and successful quality monitor.

Thank you very much.

Sincerely,

[Name]

Disability Rights Texas*' goal is to make each handout understandable by and useful to the general public. If you have suggestions on how this handout can be improved, please contact our agency at the address and telephone number shown on www.DisabilityRightsTx.org or e-mail us at [info@DisabilityRightsTx.org]. Thank you for your assistance. This handout is available in Braille and/or on audio tape upon request.* Disability Rights Texas *strives to update its materials on an annual basis, and this handout is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. The handout is not intended to and does not replace an attorney's advice or assistance based on your particular situation.*