

Chapter 1 : Workers' Compensation Disability Classifications

In addition to the federal laws that protect individuals from disability discrimination in the workplace, there are also state laws that do the same. See a state-by-state guide to employment discrimination laws on blog.quintoapp.com

If you or a loved one has suffered a workplace injury or are suffering from a medical condition that prevents them from performing their job, it is important for your family to consult with an attorney concerning workplace rights and options. It is important to address these life impacting circumstances within the legal landscape. There are a variety of legal rights that can be used to protect your family. Many of them can act in concert. This means that more than one can be pursued at the same time. Among the legal rights to be considered and explored are as follows: This includes payment of medical treatment, payment of temporary disability benefits, payments of permanent disability benefits, the provision of a job retraining voucher, and death benefits for dependents. Also, there are protections from discrimination pursuant to labor code section a. Family Medical Leave Act FMLA is a federal law that guarantees certain employees up to 12 work weeks of unpaid leave each year with no threat of job loss. FMLA also requires that employers covered by the law maintain the health benefits for the eligible workers just as if they were working. Social Security Disability During your lifetime, you may have had employment in which made contributions into Social Security. If you satisfy the contribution requirement of 40 quarters, you may be eligible to receive Social Security Disability payments. There may, however, be some off-set or credit. Social Security pays only for total disability. No benefits are payable for partial disability or for short-term disability. You are disabled under Social Security rules if: For more information, contact a Social Security disability attorney today. Disability Accommodation The Americans With Disabilities Act of requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment unless to do so would cause undue hardship. The ADA applies to both work-related and non-work-related injuries. Workplace Discrimination Employment discrimination in which an employee or job applicant is treated unfavorably because of his or her race, skin color, national origin, gender disability, religion or age. If there is no resolution, there may be a civil lawsuit resulting from it. Third Party Civil Actions Many workplace injuries involve a third party who is also responsible in part for the injury. For example, while on the job, a worker could be rear-ended by a taxi cab. Another example is a product liability suit filed because a worker got injured while using a defective piece of equipment. Why Are We Here? It is important for you to explore all opportunities to seek compensation and protection. How to Make Contact Please call the offices at , or Singer on his cell phone. Call or text to Singer, please use our online form or do so at:

The Americans with Disabilities Act of (ADA) makes it unlawful to discriminate in employment against a qualified individual with a blog.quintoapp.com ADA also outlaws discrimination against individuals with disabilities in State and local government services, public accommodations, transportation and telecommunications.

But for Wendy, this little book would not exist. FOREWORD Disability law is an area of law that overlaps with many other areas of law — including employment law, administrative law, elder law, consumer law, construction law, insurance law, school law, health law, social security law, and civil rights law. Individuals with disabilities are a protected class under civil rights laws, and it is the one protected class that anyone can join, usually involuntarily, at any point in their lives. It is my hope that this book, which is a very broad brush look at disability law, will find its way into the hands of both individuals who have disabilities and entities that have obligations under various disability laws. This book is meant to provide basic information about disability rights, as well as resources for finding out more. A graduate of the University of Houston Law Center, her interest in disability law started with her nine children, the youngest five of whom are adopted and have different kinds of disabilities. The Americans with Disabilities Act: What kind of law is the ADA? The ADA is a comprehensive civil rights law. It prohibits discrimination on the basis of disability in employment, state and local government programs, public accommodations, commercial facilities, transportation, and telecommunications. What is the definition of disability under the ADA? The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. What are major life activities? Major life activities also include major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. A man, who is in line for a promotion, has a history of cancer treatment, although he is now free of cancer. He does not, at this point, meet the first part of the definition of disability because he does not have a physical or mental impairment that substantially limits one or more major life activities. Has an impairment that does not substantially limit a major life activity; Has an impairment that substantially limits a major life activity only as a result of the attitudes of others toward them; or Does not have any impairment, but is treated by an entity as having an impairment. A woman applies for a job as a customer service representative at a department store. Her face is badly scarred from an automobile accident. Are all people who have disabilities covered by the ADA? For example, there is a section of the ADA that deals only with employment discrimination. If a person with a disability is not employed and is not seeking employment, then that person would not necessarily be covered by that part of the ADA, although the person would be covered by other parts of the ADA. Are psychiatric disabilities covered, too? Yes, the ADA definition of disability includes mental, as well as physical, impairments. How many people in the United States have a disability? What kinds of things does the ADA cover? Title I covers employment. Title II covers state and local government programs. Title III covers places of public accommodation. Title IV covers telecommunications. Title V has several miscellaneous provisions that cover things like retaliation and attorney fees. I heard there is a new ADA. After the ADA was originally passed in , cases started being filed and ending up in courts. Some were appealed all the way to the U. Rulings by the Supreme Court, as well as lower courts, began to narrow the definition of disability. Whether a person had a disability in order to sue became the focus of most disputes under the ADA. Congress never intended for it to be that way. The focus of the ADA was supposed to be on access and accommodation, not on whether the person really had a disability. Congress had not foreseen the ways in which the courts would narrowly interpret, and ultimately change, the definition. Where can I get more information about the ADA? There is a Resource Section in the back of this book. You can always call your regional ADA Center at Because Title I is about employment, a person must meet the definition of disability and must also be qualified for the job. There are two components to being qualified. First, you need to have the skill, experience, education, and other job-related requirements for the

position. The other component of being qualified, in terms of employment, is that you must be able to perform the essential functions of the job, with or without reasonable accommodation. In other words, getting a reasonable accommodation could make you qualified for the job. Essential functions are the basic job duties. ADA Regulations say that the following things should be taken into consideration when determining whether a job function is essential: Title I of the ADA only applies to private employers with 15 or more employees, all state and local governments, employment agencies, and labor unions. Some state and local laws apply to private employers with fewer than 15 employees. Check whether your state, county, or city has a human rights act or other law that prohibits discrimination against individuals with disabilities. All of them “applying for a job, hiring, firing, promotions, compensation, training, recruitment, advertising, layoffs, leave, employee benefits, company functions, and all other benefits, conditions and privileges of employment are covered. When should I tell an employer that I have a disability? Generally, disclosure is discouraged during the application process, unless you need an accommodation during that process. Once you are hired, you are not legally required to disclose a disability to your employer unless you request a reasonable accommodation. In light of the myths and stereotypes that still exist about people with disabilities, carefully consider the risks and benefits of disclosure before doing so. Can an employer make me have a medical exam or ask questions about my disability? The answer depends on where you are in the employment process. If you are a job applicant, the potential employer may not ask you to take a medical exam or ask any disability-related questions. The employer may ask questions about your ability to perform specific job functions, including asking you to describe or demonstrate how you would perform those functions. If you have gotten a conditional job offer, the employer may require you to take a medical exam or answer disability-related questions if the employer requires the same thing of all employees in the same job category. In fact, the employer can even condition an offer of employment on the results of the medical exam, again, so long as the exam is required for everybody. If you are a current employee, the employer may require you to undergo a medical exam only if it is job-related and consistent with business necessity. The employer may also ask questions about your ability to perform the functions of the job. What is a reasonable accommodation? A reasonable accommodation is any kind of modification or adjustment to a job or to the work environment that makes it possible for a qualified applicant or employee with a disability to either participate in the job application process, enjoy equal benefits and privileges of employment, or to perform essential job functions. Can you give me some examples of reasonable and unreasonable accommodations? Examples of reasonable accommodations include: Reassignment to a vacant position can also be a reasonable accommodation, although it is generally considered to be a last resort to be sought only if an employee cannot perform the essential job functions even with a reasonable accommodation. It is not reasonable for an employer to lower quality or quantity standards as a reasonable accommodations, and employers are not required to provide personal use items needed outside the workplace, such as eyeglasses, wheelchairs, or hearing aids. Is telecommuting a reasonable accommodation? Telecommuting may be a reasonable accommodation depending on the kind of job you have and whether the essential functions of the job can be performed off-site. The Equal Employment Opportunity Commission EEOC lists the following factors to be considered when deciding whether telecommuting is a reasonable accommodation: Whether the employer can adequately supervise the employee; Whether certain equipment or tools that cannot be replicated at home are required; Whether face-to-face interaction with other employees is needed; Whether in-person interaction with outside colleagues, clients, or customers is necessary; and Whether the job requires the employee to have immediate access to documents or other information located only in the workplace. If an employer already allows telecommuting for employees, but requires employees to work for a specific number of months or years before becoming eligible for telecommuting, it might be a reasonable accommodation for the employer to waive its time requirement for employees with disabilities. Under these circumstances, the employer has likely already determined that employees are capable of performing their job duties while working from home. If, however, the nature of the job is such that physical presence at the workplace is necessary, then telecommuting might not be a reasonable accommodation. Are there any limits on providing reasonable accommodations? Keep in mind that the person requesting the accommodation must be otherwise qualified for the job and able to perform the essential

functions of the job, with or without reasonable accommodation. Also, employers need to accommodate only individuals with known disabilities. Employers are not required to provide accommodations if doing so would be an undue hardship on the operation of the business. If the employer is part of a larger entity, the overall resources of the larger organization are also considered. For these reasons, cost alone is rarely found to be an undue hardship, except possibly for very small employers. So if the employer can show my accommodation request is an undue hardship, am I out of luck? Even if a particular accommodation would be an undue hardship on the employer, the employer must consider other options to try to find an accommodation that would not pose an undue hardship. In the rare case that the cost of the accommodation poses an undue hardship, the employer should provide the cost up to the point that there is an undue hardship and then allow the employee the option of paying for the other portion of the cost. Likewise, if the employer gets money from an external source, like a state vocational rehabilitation agency, that would pay the entire cost of the accommodation, it cannot claim cost as an undue hardship. As long as my office is accessible, do the other parts of the office, like the kitchen and break room, have to be accessible? Employees with a disability should have access to areas where they work, as well as non-work areas, such as break rooms, lunch rooms, training rooms, kitchens, and restrooms, used by other employees, unless providing access would be an undue hardship. Even events like conferences and parties held out of the office should be accessible. The ADA lets employers establish standards for determining whether an employee poses a direct threat to the health or safety of that individual or others. For example, it would violate the ADA if an employee with bipolar disorder is fired after disclosing his disability because a supervisor believes people with bipolar are dangerous. This reaction is based on myths and stereotypes rather than the best available evidence. When determining whether an employee presents a direct threat, the employer must determine whether any reasonable accommodations would eliminate or reduce the threat. The ADA treats individuals who use illegal drugs differently from individuals who misuse alcohol. However, a person who used illegal drugs in the past but went through a rehabilitation program is considered to be a person with a disability and is protected from discrimination.

Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.

Disability discrimination Word Disability discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in a similar situation because of their disability. The Disability Discrimination Act DDA makes it unlawful to discriminate against a person, in many areas of public life, including: The DDA covers people who have temporary and permanent disabilities; physical, intellectual, sensory, neurological, learning and psychosocial disabilities, diseases or illnesses, physical disfigurement, medical conditions, and work-related injuries. It extends to disabilities that people have had in the past and potential future disabilities, as well as disabilities that people are assumed to have. In addition, the DDA protects people with disabilities who may be discriminated against because they are accompanied by an assistant, interpreter or reader; they are accompanied by a trained animal, such as a guide, hearing or assistance dog; or they use equipment or an aid, such as a wheelchair or a hearing aid. The DDA also makes it against the law to discriminate against someone because of their association with a person with a disability.

Direct and indirect discrimination Direct disability discrimination happens when a person with a disability is treated less favourably than a person without that disability in the same or similar circumstances. For example, it could be direct discrimination if a person who is the best person for the job is not employed because of their disability. Indirect discrimination can be less obvious. It can happen when employers or service providers put in place conditions, requirements or practices that appear to treat everyone the same but which actually disadvantage some people because of their disability. It will be discriminatory if a requirement or condition: For example, requiring a Deaf employee to attend meetings where no Auslan interpreter is provided to enable them to understand what is being said could be indirect discrimination. Although they could attend the meeting without an interpreter, they would suffer a serious disadvantage as they would have difficulty participating.

Employees and potential employees The DDA makes it unlawful to discriminate against people with disabilities in employment, including: Complaint of disability discrimination resolved by the Commission The complainant advised that she has depression. The complainant claimed that the respondent supermarket withdrew an offer of employment after she disclosed her disability at a pre-employment medical assessment. On being advised of the complaint, the respondent company indicated a willingness to try to resolve the matter through conciliation. All types of employers and employment relationships are covered under the DDA, including: Commonwealth Government employees, state government employees and private sector employees; full-time, part-time and casual employees, as well as apprentices, trainees and those on probation. It also extends to contract work and membership of partnerships of three or more people, as well as discrimination by federally registered trade unions and bodies with control over professional, trade or occupational qualifications. In addition, the DDA covers recruitment processes organised through labour hire, recruitment and employment agencies. For example, it may be unlawful for an employment agency not to refer a person with a disability for a position if he or she could do the job. This is known as an exception or exemption. For example, the DDA says it may not be against the law to refuse to employ a person with a disability if because of their disability they cannot perform the inherent requirements of a job. However, the DDA also says that employers must consider how the person with a disability could be provided with reasonable adjustments to help them do the job. Exemptions under the DDA The DDA permits discriminatory acts done under statutory authority; acts which are justified on public health grounds; and reasonable differences in the provision of insurance and superannuation. There is also an exemption under the DDA in relation to employment in combat duties or peacekeeping services in the Australian Defence Force or the Australian Federal Police, or when selecting a person to undertake domestic duties at the residence of an employer. In certain cases it may also be allowable for an employer to employ a person with a disability on a modified wage, based on his or her productive capacity. Special measures Special measures have the goal of

fostering greater equality by supporting groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community. The DDA provides for special measures that improve equality of opportunity for people with disabilities. Employers are not required to make adjustments to their workplace if they can prove that an adjustment would be far too expensive, difficult, time consuming or cause some other hardship. Before claiming that workplace adjustments will create unjustifiable hardship, employers need to: Unjustifiable hardship also applies to other situations. The DDA says it may not be against the law to discriminate in the provision of access to goods, services or facilities if it can be demonstrated that making the adjustments required to accommodate the person would place an unjustifiable hardship on the organisation. For example, it may not be against the law to only provide entry to a building by a set of stairs if the owner of the building can show that it would cause unjustifiable hardship to modify the building to provide wheelchair access. Making changes to the workplace In most cases the person with a disability will be able to tell the employer what reasonable adjustments are needed. If necessary, employers should also seek advice from government agencies or organisations which represent or provide services to people with disabilities. Examples of adjustments that may be reasonable for an employer to make include: Changing recruitment and selection procedures. For example, making ramps, modifying toilets or providing flashing lights to alert people with a hearing loss. Changes to job design, work schedules or other work practices. For example, swapping some duties among staff or providing regular meal breaks for a person with diabetes. For example, lowering a workbench or providing an enlarged computer screen. Providing training or other assistance. For example, running induction programs for staff with a disability and their co-workers, providing a mentor or support person for a person with an intellectual disability, and including staff with a disability in all mainstream training. The Federal Government can provide financial assistance for workplace modifications for employees with disabilities. For more information go to <http://www.dda.gov.au>

Workplace injuries If an employee develops a disability either through an injury in the workplace, an unrelated accident or an illness and he or she is still able to perform the essential duties of the job, the employee should be given any assistance needed to do the job unless it would cause the employer unjustifiable hardship. If an employee has a work-related injury, there may be an overlap between work health and safety legislation and workers compensation schemes and the DDA. The employer should ensure that an employee with a work-related injury is given appropriate duties and assistance while he or she recovers from the injury. The employer will also need to determine whether the employee can still perform the essential duties of the job with assistance or adjustments, if required before considering dismissal. For example, Frank had been employed for many years as a driver with a large transport company. He then had a work-related injury which restricted him to lifting weights of no more than 30kg. Frank said he was able to carry out his pre-injury duties with minor adjustments but was denied the option of returning to work because of his injury. This may be disability discrimination.

Disability harassment It is against the law to harass a person because of their disability or because he or she is a relative or associate of a person with a disability. Examples of disability harassment include:

Chapter 4 : The ADA National Network Disability Law Handbook | ADA National Network

Employment Laws: Disability & Discrimination. There are five important federal laws that protect individuals with disabilities from discrimination in employment and the job application process.

Download in Word What is disability discrimination? Disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances. It is also disability discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability. For example, it may be indirect disability discrimination if the only way to enter a public building is by a set of stairs because people with disabilities who use wheelchairs would be unable to enter the building. How can I be protected from disability discrimination? The Disability Discrimination Act makes it against the law to treat you unfairly because of your disability. You are also covered if you had a disability in the past, may develop a disability in the future or if people think you have a disability. People who are relatives, friends and carers of people with a disability are also protected by the Disability Discrimination Act. What does the Disability Discrimination Act do? If you have a disability, the Act protects you against discrimination in many areas of public life, including: The Act also protects you if you are harassed, because of your disability, in employment, education or in getting or using services. It includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities. It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus. The Act covers disabilities that people have now, had in the past, may have in the future or which they are believed to have. Harassment occurs when someone makes you feel intimidated, insulted, humiliated or places you in a hostile environment. Harassment because of a disability, such as insults or humiliating jokes, is against the law if it happens in a place of employment or education, or from people providing goods and services. Kimberley was employed as a part-time receptionist in a busy medical practice. The employer became aware that Kimberley had previously claimed workers compensation for occupational overuse syndrome and she was dismissed from the medical centre a few weeks later. She claimed that she was told that the reason for her dismissal was her previous compensation claim. The complaint was resolved with the employer providing Kimberley with financial compensation. The man needed to use the website regularly for his work. As a result, the government department agreed to upgrade its website in line with web content accessibility guidelines. What about discrimination and harassment at work? A person with a disability has a right to the same employment opportunities as a person without a disability. In some cases, an employer may need to make some workplace changes so that the employee can best perform the job, such as providing an enlarged computer screen or installing ramps. Employers are not required to make workplace changes if it would cause major difficulties or unreasonable costs. However, employers would need to show how making those changes would cause such hardship. Employers should also have policies and programs in place to prevent discrimination and harassment in the workplace. Two friends complained that they had been forced to leave a bar because one of them was accompanied by a guide dog. The complaint was resolved and the bar owner provided an apology, financial compensation and a donation to a charity. When is disability discrimination not against the law? This is known as an exception or exemption. For example, the Disability Discrimination Act says it may not be against the law to refuse to employ a person with a disability if, because of their disability, they cannot perform the inherent requirements of a job. However, the Act also says that employers must consider how the person with a disability could be provided with reasonable adjustments to help them do the job. As mentioned earlier, unjustifiable hardship also applies to other situations. For example, it may not be against the law to only provide entrance to a cinema or theatre by a set of stairs if the owner can show that it would cause unjustifiable hardship to modify the building to provide wheelchair access. In other words, you must be able to carry out the essential duties of the job. What can I do if I experience discrimination? Making a complaint to the Commission If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint to the Australian Human Rights Commission. You can also have someone such as a solicitor, advocate or trade union make a complaint on your behalf. It does not cost anything to make a

complaint to the Commission. Your complaint needs to be put in writing. The Commission has a complaint form that you can fill in and post or fax to us or you can lodge a complaint online at our website. If you are not able to put your complaint in writing, we can help you with this. The complaint should say what happened, when and where it happened and who was involved. A complaint can be made in any language. If you need a translator or interpreter, the Commission can arrange this for you. What will happen with my complaint? When the Commission receives a complaint about something that is covered by the Disability Discrimination Act, the President of the Commission can investigate the complaint and try to resolve it by conciliation. The Commission is not a court and cannot determine that discrimination has happened. Commission staff may contact you to get further information about your complaint. Generally, the Commission will tell the person or organisation the complaint is against the respondent about your complaint and give them a copy of the complaint. The Commission may ask the respondent for specific information or a detailed response to your complaint. Where appropriate, the Commission will invite you to participate in conciliation. Conciliation is an informal process that allows you and the respondent to talk about the issues and try to find a way to resolve the complaint. If your complaint is not resolved or it is discontinued for another reason, you can take your complaint to the Federal Court of Australia or the Federal Magistrates Court. What can I do to prevent discrimination? You, and other people from the community, can help ensure that people with disability have the same opportunities as other Australians to participate in the political, economic and social life of our communities by letting us know what is happening. The Commission looks at the many different areas of life that can be improved for people with a disability, such as public transport, employment, e-commerce, going to the cinema and using the Web. The Commission collects the views of everyone involved through public inquiries, round tables and other processes. We then make practical suggestions to government, business and other organisations about how things can be changed for the better. What about employers and other organisations? The Commission provides advice and assistance to employers and other organisations about how they can prevent discrimination and meet their responsibilities under the Disability Discrimination Act. We do this directly and through information and resources on our website. We also run community education programs and support organisations to develop Disability Action Plans. Action plans are a way for an organisation to plan the elimination, as far as possible, of disability discrimination from the provision of its goods, services and facilities. The complainants, who have hearing impairments, said they were unable to enjoy performances at their local entertainment venue because the venue does not have adjustments to accommodate the needs of people with hearing impairments. The complaints were resolved through conciliation, with an agreement that the venue operator would install a hearing support system and invite the complainants to trial the system. Where can I get more information?

Chapter 5 : Employment discrimination law in the United States - Wikipedia

A True Life Example. Adam is no longer able to work after being injured in an auto accident several years ago. After receiving a formal determination of disability by the Social Security Administration, Adam started receiving disability payments in the form of Supplemental Security Income (SSI).

Protections Against Discrimination and Other Prohibited Practices Protections Against Discrimination and Other Prohibited Practices Equal Employment Opportunity Commission The laws enforced by EEOC makes it unlawful for Federal agencies to discriminate against employees and job applicants on the bases of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the laws that EEOC enforces is protected from retaliation. Title VII of the Civil Rights Act, as amended, protects employees and job applicants from employment discrimination based on race, color, religion, sex and national origin. Title VII protection covers the full spectrum of employment decisions, including recruitment, selections, terminations, and other decisions concerning terms and conditions of employment. Equal Pay Act of The Equal Pay Act of protects men and women from sex-based wage discrimination in the payment of wages or benefits, who perform substantially equal work in the same establishment. Age Discrimination in Employment Act of Rehabilitation Act of Sections and of the Rehabilitation Act, as amended, protects employees and job applicants from employment discrimination based on disability. This law covers qualified employees and job applicants with disabilities. It also requires Federal agencies to make reasonable accommodation of any known disabilities unless such accommodation would cause an undue hardship. The Civil Rights Act of The Civil Rights Act of amends several sections of Title VII to strengthen and improve Federal civil rights laws and provide for the recovery of compensatory damages in Federal sector cases of intentional employment discrimination. According to Section b of Title 5 of the United States Code, any employee who has authority to take, direct others to take, recommend or approve personnel actions may not: Discriminate on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Solicit or consider employment recommendations based on factors other than personal knowledge or records of job related abilities or characteristics. Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person. Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant. Retaliate against an employee or applicant for exercising an appeal, complaint or grievance right; testifying or assisting another in exercising such a right, cooperating with an Inspector General or the Special Counsel, or refusing to obey an order that would break a law. Discriminate against an employee based on conduct which is not adverse to on-the-job performance of the employee, applicant, or others. The Office of Personnel Management OPM has interpreted the prohibition of discrimination based on "conduct" to include discrimination based on sexual orientation. Violate any law, rule, or regulation which implements or directly concerns the merit principles.

Chapter 6 : Protecting Your Rights After a Work Injury | Law Offices of Edward J Singer

When you are hurt or otherwise too injured to perform the duties of your job, you may be entitled to a few different types of financial support, such as workers' compensation, state disability benefits, and Social Security disability insurance (SSDI).

Eligibility for SSDI is an earned benefit. It is based on having a disability and paying into the Social Security system through payroll deductions for a sufficient number of quarters. In other words, SSDI eligibility is not based on asset and income limits. It is based on having a disability and meeting very strict asset and income limits. Some exceptions apply, but gifts, inheritances, and personal injury settlements can all cause someone to lose SSI. Worse still, SSI also imposes transfer penalties, which means that giving away assets to friends or family members will not protect SSI eligibility. In fact, giving away assets can actually create penalty periods. However, one of the easiest and most beneficial ways to protect SSI eligibility is to establish a Special Needs Trust. Call if you know about Special Needs Trusts but want to speak with someone about your unanswered questions. [Click here](#) if you want to read more information about Special Needs Trusts. A True Life Example Adam is no longer able to work after being injured in an auto accident several years ago. This is the type of disability payment that imposes strict income and asset limits. Adam was not eligible for the other type of earned Social Security disability payment, which is Social Security Disability Income SSDI , because he did not have enough work quarters to qualify. For Adam, this means that he has many unmet needs and so is in the same position as all other SSI recipients. This is because a portion of those direct payments will still count as income to Adam and reduce his already small SSI check. Shortly after his accident happened, Adam hired an attorney to recover damages from the responsible driver. His case will soon be settling after several years of litigation, and Adam expects to receive what most people would consider a sizable settlement. His attorney recommends that Adam establish a Special Needs Trust so he can receive his settlement proceeds in a way that will preserve his eligibility for SSI and Medicaid. After speaking with a proposed Trustee and learning more about how a Special Needs Trust works, Adam decides to establish a Trust. Adam made the right choice when he decided to maximize his resources. His Special Needs Trust will preserve his eligibility for SSI and Medicaid while stretching the life of his settlement as long as possible. Ask us a question Complete the form below to ask us a question.

A qualified worker with a disability is someone capable of performing the essential duties of the job, with or without a reasonable accommodation by the employer. The essential duties of the job are those tasks that are fundamental to the position.

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The United States Constitution does not directly address employment discrimination, but its prohibitions on discrimination by the federal government have been held to protect federal government employees. The Fifth and Fourteenth Amendments to the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the federal government does not deprive individuals of "life, liberty, or property", without due process of the law. In the employment context, these Constitutional provisions would limit the right of the state and federal governments to discriminate in their employment practices by treating employees, former employees, or job applicants unequally because of membership in a group such as a race or sex. Due process protection requires that government employees have a fair procedural process before they are terminated if the termination is related to a "liberty" such as the right to free speech or property interest. As both Due Process and Equal Protection Clauses are passive, the clause that empowers Congress to pass anti-discrimination bills so they are not unconstitutional under Tenth Amendment is Section 5 of Fourteenth Amendment. Employment discrimination or harassment in the private sector is not unconstitutional because Federal and most State Constitutions do not expressly give their respective government the power to enact civil rights laws that apply to the private sector. Some State Constitutions do expressly afford some protection from public and private employment discrimination, such as Article I of the California Constitution. However, most State Constitutions only address discriminatory treatment by the government, including a public employer. Absent of a provision in a State Constitution, State civil rights laws that regulate the private sector are generally Constitutional under the " police powers " doctrine or the power of a State to enact laws designed to protect public health, safety and morals. All States must adhere to the Federal Civil Rights laws, but States may enact civil rights laws that offer additional employment protection. For example, some State civil rights laws offer protection from employment discrimination on the basis of sexual orientation, gender identity or political affiliation, even though such forms of discrimination are not yet covered in federal civil rights laws. History of federal laws[edit] Federal law governing employment discrimination has developed over time. It does not prohibit other discriminatory practices in hiring. It provides that where workers perform equal work in the corner requiring "equal skill, effort, and responsibility and performed under similar working conditions," they should be provided equal pay. Title VII prohibits discrimination based on race, color, religion , sex or national origin. It makes it illegal for employers to discriminate based upon protected characteristics regarding terms, conditions, and privileges of employment. Employment agencies may not discriminate when hiring or referring applicants, and labor organizations are also prohibited from basing membership or union classifications on race, color, religion, sex, or national origin. The prohibited practices are nearly identical to those outlined in Title VII, except that the ADEA protects workers in firms with 20 or more workers rather than 15 or more. An employee is protected from discrimination based on age if he or she is over Since , the ADEA has phased out and prohibited mandatory retirement, except for high-powered decision-making positions that also provide large pensions. The ADEA contains explicit guidelines for benefit, pension and retirement plans. Then in , Executive Order "established a policy against age discrimination among federal contractors". It prohibits discrimination based on real or perceived physical or mental disabilities. It also requires employers to provide reasonable accommodations to employees who need them because of a disability to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment, unless the employer can show that undue hardship will result. There are strict limitations on when an employer can ask disability-related questions or require medical examinations, and all medical

information must be treated as confidential. A disability is defined under the ADA as a mental or physical health condition that "substantially limits one or more major life activities. Fewer extend those protections to cover sexual identity. Protections at the national level are limited. There is no federal statute addressing employment discrimination based on sexual orientation or gender identity. In March , lawmakers, House members, and 47 Senators, all Democrats, signed an appeal to President Obama, encouraging him to enact protections for LGBT workers in an executive order. Federal courts have generally agreed that Title VII of the Civil Rights Act of , which prohibits sex discrimination in the workplace, does not prohibit discrimination on the basis of sexual orientation although some courts following *Pricewaterhouse v. Hopkins* support protecting transgender employees from discrimination as a form of sex stereotyping. In early two federal appellate courts Second Circuit and Seventh Circuit reversed circuit precedent on sexual orientation discrimination to hold Title VII prohibits sexual orientation discrimination. Moreover, a staggering 90 percent of transgender workers report some form of harassment or mistreatment on the job. A few more states ban LGBT discrimination in only public workplaces. Courts have also identified that these laws do not infringe free speech or religious liberty. Some laws extend similar protection as provided by the federal acts to employers who are not covered by those statutes. Other statutes provide protection to groups not covered by the federal acts. Some state laws provide greater protection to employees of the state or of state contractors. The following table lists protected categories not included in federal law. Age is included as well, since federal law only covers workers over

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Though DOL's Office of Disability Employment Policy (ODEP) does not enforce either of these laws, it does provide outreach and education to help people with disabilities and employers understand how the ADA and Rehabilitation Act protect the rights of both employees and job seekers with disabilities.

Chapter 9 : Know your rights: Disability discrimination | Australian Human Rights Commission

An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.