

Discrimination by the State or its Political Subdivisions – 1

July 2010

The federal Americans with Disabilities Act of 1990, the Americans with Disabilities Act Amendments Act of 2008, and the Montana Human Rights Act prohibit discrimination against people on the basis of their physical or mental disabilities by the state or its political subdivisions. The state Governmental Code of Fair Practices also prohibits discrimination and further requires the state and its political subdivisions to take affirmative steps to examine all of its procedures and processes including all agreements, arrangements and contracts to ensure that they do not have the effect of discriminating on the basis of disability or other suspect classification.

The state and its political subdivisions provide a broad array of services including the court system, benefits and entitlements, law enforcement, elections, road maintenance, professional and driver licensing and land and resource management.

This discrimination can take various forms. It can occur through the failure to provide reasonable modifications in the way that governmental services are provided to accommodate persons with disabilities, such as failing to allow service animals to be present where animals are otherwise prohibited. It could also occur where access to services is denied because of a failure to provide accessible means to use the services, such as the failure to provide accessible voting machines. It can also occur where services are provided to people with disabilities in an entirely segregated manner.

Discrimination can also occur when people with disabilities are unable to access state or political subdivision services because they are provided in a physically inaccessible place, such as the second floor of a building with no elevator.

What we do –

- Investigate complaints of discrimination by the state or its political subdivisions
- Represent persons with disabilities to file complaints of discrimination by the state or political subdivisions
- Perform assessments of buildings used by the state and its political subdivisions to determine compliance with UFAS and the ADA Accessibility Guidelines

Commonly Asked Questions

1. What is a self evaluation? A self evaluation is a public entity's evaluation of its policies and practices to identify and correct any that are not consistent with the requirements of Title II of the ADA. All public entities are required to do a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self- evaluation on file and make it available for public inspection for three years.
2. What is an auxiliary aid? Auxiliary aids and services include a wide range of services and devices that promote effective communication. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

Examples for individuals with vision impairments include qualified readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.

Examples for individuals with speech impairments include TDD's, computer terminals, speech synthesizers, and communication boards.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

3. What obligation does the state or political subdivision have to provide auxiliary aids to people with disabilities? Title II of the ADA requires public entities to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. To do so, a public entity must furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice shall be given primary consideration by the public entity and it must be honored unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required. The Montana Human Rights Act is usually interpreted to require at least those measures required by Title II of the ADA.

Legal complaints stating a violation of the ADA and ADAAA by the state or its political subdivisions may be filed directly in state or federal court. Although it is not required that an individual be represented by legal counsel to file such a complaint, it is highly recommended.

Violations of the ADA and ADAAA by the state or its political subdivisions may also be reported to the Department of Justice. There is no requirement that a person be represented by legal counsel in these situations.

The Montana Human Rights Act also prohibits discrimination against persons with disabilities by the state or its political subdivisions. If you believe that the state or its political subdivisions has discriminated against you on the basis of your disability in violation of the Montana Human Rights Act or the Governmental Code of Fair Practices, this claim must be filed with the Montana Human Rights Bureau prior to filing the claim in state district court. You do not need an attorney to file a complaint. You must file your complaint within 180 days of when the alleged discrimination occurred. To do this, contact:

The Montana Human Rights Bureau (HRB)

P.O. Box 1728

Helena, MT 59624

406-444-2884 OR 800-542-0807

OR 406-444-0532 Voice/TDD

This is a brief summary of your rights to equal treatment by the state or its political subdivisions. This is not a substitute for legal advice. If you have questions, please contact an attorney or call Disability Rights Montana at 1-800-245-4743 Voice/TDD.