



THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH CAROLINA

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FACT SHEET

My Rights as a Person with a Traumatic Brain Injury (TBI)

What is a TBI?

A TBI is defined as a blow or jolt to the head or a penetrating head injury that disrupts the function of the brain. The severity of such injury may range from "mild," meaning a brief change in mental status or consciousness, to "severe," meaning an extended period of unconsciousness or amnesia after the injury. TBI may impact balance, coordination, attention span, short or long term memory, stamina, ability to speak clearly and the ability to control emotions.

What legal rights might be affected by a TBI?

The Americans with Disabilities Act (ADA) secures equal opportunity for individuals with disabilities in:

- State & local government services
- Places of public accommodation
- Employment
- Education
- Transportation

If your TBI affects a major life activity such as walking, working, interacting with other people, or concentrating, you may be covered by the ADA. The ADA has two major parts: protection from discrimination and a requirement to make reasonable changes to allow a person with a disability to have equal access to goods and services.

State & Local Government Services

Title II of the ADA protects people with disabilities from discrimination by state and

local governments. It applies to all kinds of state or local governments and state agencies such as:

- Police departments
- State and local services, including health care facilities
- Courts
- State agencies, such as the Department of Social Services (DSS) and the Department of Disabilities and Special Needs (DDSN)

Government bodies should have a designated ADA coordinator.

Places of Public Accommodation

Title III of the ADA applies to places of public accommodation, which are private entities that are open to the public. Some examples of places of public accommodation are:

- Restaurants
- Hotels
- Theaters and other places of recreation
- Retail stores and shopping centers
- Hospitals and doctors' offices

What are the basic requirements for state and local government services and places of public accommodation to comply with the ADA?

Each location or organization must be considered individually, but there are some general requirements:

- Exterior building accessibility (ramps, doors, parking)
- Interior building accessibility (restrooms, elevators)
- Access to all of its functions—for example, providing a sign language interpreter if needed for effective communication
- Reasonable changes to services or programs—for example, allowing more missed appointments for someone with a memory problem
- Allowing trained service animals to accompany the individual

Employment

Which employers must follow the ADA employment protections?

All private employers with 15 or more employees, all state and local governments, employment agencies, and labor unions.

Do you have to say anything to a potential employer about your TBI?

You do not need to say anything before you are offered a job unless you need a reasonable accommodation to apply for the job. Once you are offered the job, you still do not need to say anything but you can discuss any reasonable accommodations you need to perform the job.

What types of reasonable accommodations must an employer provide?

An employer must make reasonable accommodations that are necessary to allow you to work successfully despite a disability. Generally, the employer must tailor the job and the work environment to you so that you are able to do the job at no cost to you. This is particularly important with TBIs, where the effects vary widely over time. Some examples of accommodations or adjustments are:

- A tape recorder as a memory aid
- Computer programs that will help prompt the employee to stay on task or make lists for the employee
- Modifications of duties such as not having to answer phones if speaking clearly is a problem, as long as those duties are not basic to the job
- A place to be alone for quiet time away from the job
- Rest breaks to prevent stimulus overload and fatigue
- Job restructuring or part-time or modified work schedules
- Reassignment to a different position
- Buying or changing workplace equipment or devices
- Training materials or policies in Braille or in simplified language
- Provision of readers or interpreters

Equipment that would help you work is referred to assistive technology (AT). The South Carolina Vocational Rehabilitation Department may be able to assist you in finding out what kind of assistive technology can help you work.

Other examples of AT that may help with daily living activities include pill holders and watches with alarms, headphones, wheelchairs, augmentative communication devices, and home modifications. Medicaid, Medicare and other health insurance may cover the cost of some of these.

Education

If you are a student and you have a disability, Titles II and III of the ADA protect you from discrimination based on your disability. Title II protects people with disabilities from discrimination by state-funded schools such as state universities, community colleges and vocational schools. Title III of the ADA protects people with disabilities from discrimination by private and trade schools. These protections prevent

discrimination and require reasonable modifications based on your disability in areas such as:

- Admissions
- Alternative courses
- Modifications of policies and procedures, such as longer time for exams

Students in school through age 21 may be eligible for services under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act.

Transportation

The ADA entitles you to the same right to use and enjoy public transportation as people without disabilities. The local transit provider has the duty to make public transportation accessible by providing things like:

- Public buses that are accessible to those in wheelchairs
- Stops and other information clearly announced
- Accessible telephones, drinking fountains, seating and restrooms inside a terminal or bus shelter

What if the local transit authority cannot adequately serve its clients with disabilities in its regular system?

The authority is required to create a parallel transportation system for people with disabilities. This system is referred to as a paratransit system. Paratransit systems are curb-to-curb demand responsive systems. What this means is that you should be able to schedule a trip, be picked up at your door and then be taken to your destination and returned home. You should be able to schedule your ride just twenty-four hours in advance. Your pick-up time should be within one hour before or after your desired departure time. You should not be asked to schedule your trip during off peak hours. The transit authority should put additional vans and buses on the road during peak hours to keep up with the demand. Some of South Carolina's paratransit systems include:

- Central Midlands Transit (COMET): Dial-A-Ride Transit (DART)
- Charleston Area Regional Transportation Authority (CARTA): Tel-A-Ride
- Greenlink (Greenville): Greenville Area Paratransit (GAP)
- Spartanburg Area Regional Transit Agency (SPARTA): SPARTA Paratransit

Other regional transit authorities also must provide paratransit services.

Housing

The federal Fair Housing Act Amendments (FHAA) prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of a family member. Courts have applied the FHAA to landlords, property managers, realtors, homeowner associations, and condominium associations in addition to others. Public and government-subsidized housing may also be covered by the ADA or the Rehabilitation Act.

Two important rights granted by the FHAA are:

- **Reasonable accommodation**: People with disabilities have the right to reasonable accommodations to rules, policies, practices, and services when needed to prevent discrimination. An example is an apartment complex that has a “no pets” policy. The landlord should make a reasonable accommodation to this policy to allow a service animal or an emotional support animal that is needed because of the tenant’s disability. Also, the landlord may need to provide a reserved parking place near the tenant’s apartment.
- **Reasonable modification**: People with disabilities also have the right to make reasonable modifications needed to make their home accessible for them. The modifications are at the expense of the person with the disability. An example is a tenant with limited use of her hands who replaces doorknobs in her apartment with levers. Reasonable modifications are not limited to the inside of the home. For example, a tenant who uses a wheelchair may install a ramp needed to travel from the parking lot to the apartment entrance. Apartments on the first floor of buildings opened since March 1991 should already be accessible.

The SC Fair Housing Act is a state law similar to the federal Fair Housing Act.

Other Important Information

Where can you complain if you believe you have been discriminated against or denied an accommodation?

- File a complaint with the company or governmental body using its internal grievance process.
- For employment cases, you have the right to file a complaint with the South Carolina Human Rights Commission within 180 days of the discrimination. Contact the commission at (803) 737-7800 or <http://www.schac.sc.gov/ed/Pages/default2.aspx>. Complaints can also be filed with the U.S. Equal Employment Opportunity Commission (EEOC) (800) 669-4000. The Greenville, SC field office has authority over most of South Carolina;

the Savannah, GA field office has authority over southern coastal areas in SC. Use your zip code to check coverage: <http://www.eeoc.gov/field/index.cfm>

- For housing cases, check the website of the US Department of Housing and Urban Development: http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination. You may also file housing complaints with the SC Human Affairs Commission under the SC Fair Housing Act: (803) 737-7800 and <http://www.schac.sc.gov/hd/Pages/default.aspx>
- For ADA complaints about private businesses and state and local governments, you have the right to file with the United States Department of Justice. See <https://www.ada.gov/>
- The federal government is covered by the Rehabilitation Act, which is very similar to the ADA. You can file a complaint with the agency or organization's Office for Civil Rights.
- P&A may be able to provide you with more information about your rights or represent you.

Information about TBI resources in South Carolina is available at P&A's TBI Resource Guide: <http://pandasc.org/wp-content/uploads/2013/08/TBI-Resource-Guide.pdf>.

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates.

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