How to Identify Disability Discrimination at Work: 10 Questions to Ask Yourself

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Disability Discrimination in the workplace is an important issue for many individuals, impacting their careers and personal well-being. Wigdor has established a reputation of success in fighting for plaintiffs' rights after they have experienced discrimination or harassment related to a disability. Wigdor won the largest single-plaintiff verdict ever under the Americans with Disabilities Act ("ADA") against Walmart in 2005. This landmark case went to trial and resulted in a $7.5 million verdict, and it has been cited more than 500 times by other courts. Technically, you do not have to be "disabled" to experience disability discrimination, many cases involve individuals who are treated negatively because they are simply perceived to be disabled.

Under the ADA, employers are not allowed to discriminate against a qualified individual based on disability. A qualified individual is defined as someone who can perform essential job functions with or without reasonable accommodation. Typical reasonable accommodations include having existing facilities accessible to the employee, adjusting work schedules, modifying equipment, and reducing physical labor. Discrimination could happen at any stage in a career, from hiring to firing and everything in between. Beyond the ADA, there are protections under New York City and New York State and other state and local laws that safeguard employee rights. Understanding these laws and how to identify potential discrimination is essential in protecting yourself legally. Here are 10 questions to ask yourself to better understand your situation and some steps you can take if you or someone you know is experiencing similar discrimination at work.

1. Have you been treated differently than your colleagues due to your disability?

This imbalanced treatment could be related to your responsibilities, pay, bonuses, benefits, among other things. For example, in our case against Walmart, the jury found that Mr. Brady experienced disability discrimination when he was asked prohibited interview questions around his disability and was unfairly transferred from his position in the pharmacy to a position picking up garbage and collecting shopping carts in the parking lot.

2. Are you not even considered for promotions or positive job opportunities?

New job opportunities and promotions are a big moment to see how different employees are treated. If you are often passed over for promotions or other desirable assignments and you think it is because of your disability, keep notice of this potentially discriminatory behavior.

3. Have your coworkers been given more support or opportunities than you?

In addition to you not being considered for opportunities or receiving support, if you see that other coworkers who do not have disabilities are receiving more assistance, training, or development opportunities than you, then this could be another red flag. You should not be left out of helpful work training or development initiatives.

4. Have your disability requests been disregarded?

If you've disclosed a disability to your employer and made requests (like flexible hours or unique equipment), your employer maybe required to provide reasonable accommodations, even if they may not be the exact ones requested.

5. Has your work performance been unfairly scrutinized due to your disability?

When it comes time for performance reviews or regular check-ins, your work should be judged on its merits, without bringing in your disability. Your superiors and peers should not apply unfair standards related to your disability or give you lower performance ratings because of it.

6. Have you heard negative comments or jokes about disability?

Offhanded jokes or negative comments about a person's disability are not ok. Even indirect comments are inappropriate and something to make a note of and report to your HR department as they can transform a workplace into a hostile work environment and be important indicators of discrimination.

7. Are unreasonable work demands increasing?

Employees with disabilities may be entitled to certain reasonable accommodations. If you are assigned excessive tasks beyond your job description and what you are able to do, even after disclosing your disability, or heightened performance standards you could have legal claims regarding disability discrimination.

8. Have you received unfair assignments because of your disability?

If you have received less favorable or unfair or challenging assignments at work that are made more difficult due to your disability, or which appear designed to force you out, that signifies unfair treatment.

9. Are you forced into a hostile workplace after revealing your disability?

What is a supportive and non-hostile work environment? It is a space where equal treatment for all is encouraged, and one where all employees feel safe to disclose their disability. There is a sense of belonging, where everyone has equal opportunity to succeed and are treated on an equal footing under company policies and practices.

10. Have you been excluded from work meetings or work social events?

Employees should be treated consistently under company policies and by their supervisors, without regard to disability status. Team members should be included in team meetings and social gatherings without excluding people based on disability or other discriminatory factors. Disability should play no role in who is invited to work-related functions. Being excluded due to your disability is a form of discrimination, which could hold you back in multiple ways at a company. After our client Maria DiLorenzo, a top lawyer for J.Crew, suffered Sudden Sensorineural Hearing Loss and vertigo, J.Crew's senior executives segregated her during a board meeting so she could not hear what was going on. After she complained about the treatment they terminated her, claiming the company was going "in a different direction."

Next Steps: If You Suspect Disability Discrimination

If your situation resonates with any of the above questions, it may be time to say something. Your ability to support your claims may be served by retaining relevant documentation. You can write down or screenshot comments, jokes or conversations you feel are unfair to you as a person with a disability. Be careful about recording what others say, and check company policies and state laws. Talk to a trusted supervisor/manager or with HR (you can report or confirm the discriminatory conduct in writing, too) to make sure your experience is officially recorded. It is their job to address your concerns. If you are not comfortable speaking with HR, then pursue legal advice and representation from a team with experience in disability discrimination cases. Understanding and addressing disability discrimination in the workplace is important for everyone to feel safe and have an equitable workplace. For more information and to speak with our experienced partners, reach out to Wigdor LLP.