This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. http://www.leg.state.mn.us/lrl/lrl.asp

# A Consumer's Guide to the

# 1983 Human Rights Amendments: Employment, Public Services and Transportation As They Impact Disabled Minnesotans

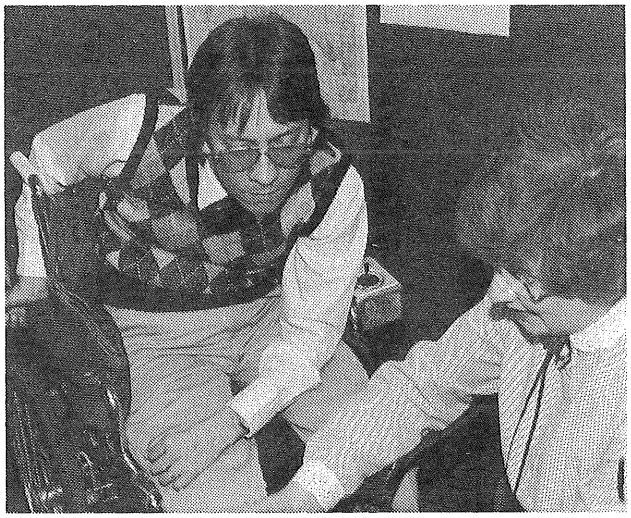
**Provided by: The Minnesota State Council for the Handicapped**
**208 Metro Square Building, St. Paul, MN 55101**
**296-6785 or 800-652-9747 toll-free, statewide (Voice & TDD)**

## Introduction

Crucial amendments to the Minnesota State Human Rights Act passed the 1983 session of the Minnesota State Legislature. These amendments focus on three major issues: *Employment, Public Services and Transportation*. They set into state law the concepts of Section 504 of the Federal Rehabilitation Act of 1973.

This legislation was a major victory in human rights protection for disabled Minnesotans. Its successful passage was a community-wide effort spearheaded by the Minnesota State Council for the Handicapped and endorsed by seventy-eight organizations of and for disabled people.

The Minnesota State Council for the Handicapped, a state agency created to work with issues of concern to people with disabilities, realizes you may have many questions about these new provisions and how they will be enforced. This brochure will assist in answering those questions.



## Employment Provision

The first issue covered by the 1983 Human Rights Amendments is *Employment*. This provision became effective *June 7, 1983* and concerns the following employment issues as they relate to disabled persons:

- Reasonable Accommodation
- Undue Hardship
- Pre-employment Physical Examinations
- Pre-employment Testing

## Reasonable Accommodation

The new law specifically states that any employer having fifty or more full time, permanent employees must provide a requested reasonable accommodation unless it causes undue hardship for that employer. It is hoped, however, that small companies will voluntarily comply in the interest of finding and hiring the best qualified employee for the job to be done.

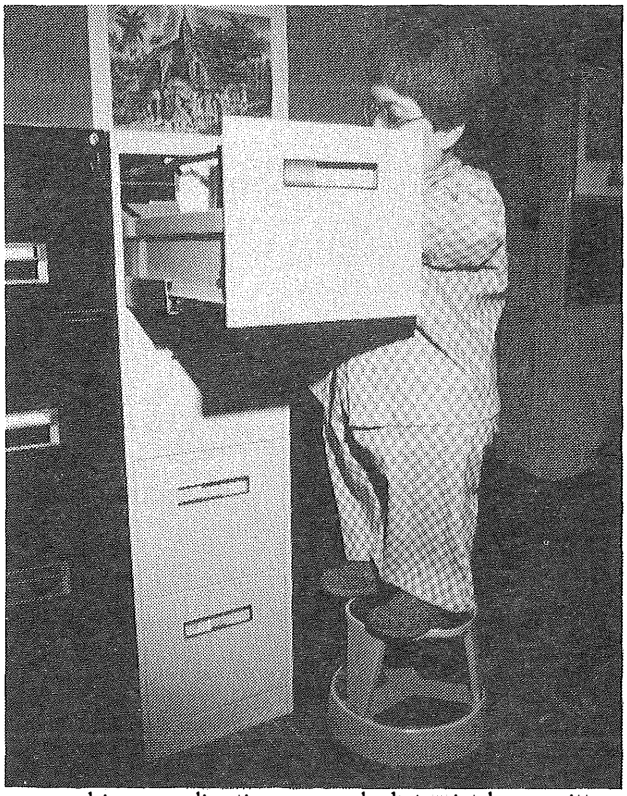
As you know, job accommodation simply means adapting the job site or the job tasks to fit the qualified disabled person. It need not be an expensive process and should be thought of in terms of reasonable and common sense solutions to make the job work for the qualified person.

Physical accommodations have become familiar to us all. These include such building modifications as ramps, remodeled washrooms and handicapped

parking. Other types of modifications may include lowered workbenches and shelves, step stools or moving a job to a ground floor location. But other types of accommodations may be just as important and require some ingenuity on the part of you and the employer.

*Job task-related* accommodations may be used. One such example might be flexible work hours. Occasionally, a person may require special transportation which cannot always be arranged during the "rush hour" periods, and flexible work hours would provide an accommodation.

*Redesigning job tasks* is another mode of accommodation. It may be that the company to which you



are making application as a clerk typist has written the position description to include relief of the receptionist at the switchboard over the lunch hour — but you are hearing impaired. Since answering the phone is not a major function of the job, a reasonable accommodation would be to assign someone else to answer the phone while assigning another task to you, such as filing.

*Redesigning employee orientation* also constitutes reasonable accommodation. By establishing a routine, teaching one task at a time and teaching by demonstration and repetition, accommodation is made for a person with mental retardation.

And of course, *other assistance* may be requested from time to time. This may include, but is not limited to, such accommodations as readers and/or dictaphones for persons with visual or learning impairments or sign language interpreters or TDD equipment for persons with hearing impairments.

## Cost of Accommodations

You as a consumer can and should suggest to your employer or prospective employer those accommodations you need in order to apply for or

perform a given job. Work with the employer to find the least expensive way in which your needs may be accommodated.

Minnesota law specifies that reasonable accommodation is to be provided for people with disabilities in two situations:

- Job Applicants During the Interview and Screening Process
- Currently Employed Disabled Workers

In the case of the interview and screening process, an accommodation must be provided *if that accommodation costs the employer $50 or less.* However, if the accommodation costs more than $50, and no alternative costing $50 or less exists, an *exemption* may be allowed. Neither the employer nor the prospective employee need pay for an accommodation if an alternative source can be identified without cost to either.

As for the currently employed disabled worker, there is no specified minimum or maximum dollar amount. The requested accommodation must be provided unless it would create an undue hardship for the employer involved.

## Undue Hardship

An occasion may arise where the employer would like to provide your requested accommodation, but he/she feels it would cause a hardship for the company. The following factors must be considered by the employer when determining whether undue hardship is present:

- The overall size of a business or organization with respect to the number of employees or members and the number and type of facilities.
- The type of operation, including the composition of the work force and the number of employees at the location where the employment would occur.
- The nature and cost of the requested accommodation
- Documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with you and/or other knowledgeable disabled persons or organizations of and for disabled people in the employer's search for an accommodation which would not cause undue hardship.

After taking all of these factors into consideration, the employer will advise you whether the requested accommodation can be provided, or if the company will be unable to provide the accommodation because it causes a hardship. If you disagree with the decision, you may file a human rights complaint.

## Pre-employment Physicals

Employers have the right to request or require that you take a pre-employment physical exam, provided the following steps are observed:

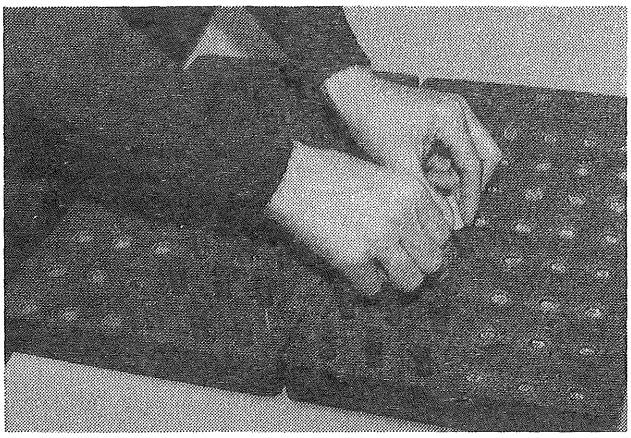
- First of all, you must have been given an offer of employment on the condition that you meet the physical and mental requirements of the job.
- The physical exam must only test for essential job-related abilities. For example, if you were applying for the position of office manager and happened to have a history of back injury, you could not be tested for lifting ability if, indeed, the job required no lifting. The test would not be job-related.
- Everyone who is offered the same position as you must be required to take the physical, whether or not they are disabled.

The law does provide for an EXCEPTION. A physical exam may be requested or required of you, and you alone, if it is limited to determining whether your disability would prevent performance of the job.

## Pre-employment Testing

Pre-employment tests are allowed and follow similar guidelines to those of pre-employment physicals:

- The test can only be used if it accurately measures your aptitude, achievement level or whatever it claims to measure rather than reflecting your disability.



- The test must measure only essential job-related abilities. For example, let's say you have dyslexia and are applying for a job as a dishwasher where all instructions on the job are given orally; a test measuring reading comprehension would not be job-related.
- All persons applying for the same job as you must be required to take the test, whether or not they are disabled.

Once again, as with pre-employment physicals, the EXCEPTION to the law is that testing may be requested or required of you and only you, if it is limited to determining whether your disability would prevent performance of the job.

## Public Services Provision

The second provision of the 1983 Disability Amendments covers *Public Services*. These requirements became effective December 7, 1983 unless architectural modifications were needed, and then the effective date is *June 7, 1985.*

*A public service* is a service offered to the public by governmental agencies or others operating on the government's behalf at the state or local level. Public services are usually supported by tax dollars. Public services must not be confused with public accommodations which are privately-owned businesses and services such as restaurants, theaters, stores or amusement parks and are usually operated "for profit."

The 1983 amendments require a public service to ensure *physical* and *program* access to qualified disabled people unless providing that access would impose an undue hardship on its operation.

### Qualification is Essential

A qualified disabled person is one who, with physical and program access, meets the essential eligibility criteria required of ALL applicants for the program or service in question. For instance, if a specific residency, income range, veteran's status or whatever is required to participate, then you must meet those criteria. Simply being disabled is not necessarily enough.

### Physical and Program Access

Just what do we mean by *physical* and *program access?* Physical access can mean removing physical barriers that limit a qualified disabled person's opportunity for full and equal use of a public service. Obvious examples include constructing ramps, widening doorways or installing elevators. Sometimes such architectural changes are not needed or cannot be made, however. Often a way can be found around a barrier. This, too, is providing physical access. For example, suppose that a food stamp program is located on the second floor of a building. Installing an elevator would certainly provide access to the service, but so would other methods such as meeting with a disabled client in a groundfloor office or in the person's home. Any of these methods would meet the intent and the requirement of the law.

It is possible to have complete physical access to a public service and still not have the opportunity to make full use of it. There must also be program access. For example, suppose that you are hearing impaired and have just been brought into the emergency room of a publicly-funded hospital. You will likely need a sign language interpreter so you can talk with the medical personnel who are treating you. Or let's say you are applying for social service benefits and are blind. If none of the material explaining your benefits and rights under the program are available on tape or in braille, you are at a disadvantage. Providing programs access can mean providing auxiliary aids and services such as material in braille or on tape, readers for visually or learning impaired persons or sign language interpreters for deaf people.

Program access goes still further. It also means getting rid of criteria or methods of administration that directly or indirectly have the effect of discriminating against a qualified disabled person or that interfere with accomplishing the program's objectives. For example, if a program provides a particular service for its clients by contracting with another agency which discriminates against disabled people, that program is in violation of the law.

Or, let's say that a program's eligibility criteria exclude certain classes of disabled people. Assume, for example, that you are attending an educational facility which receives public funding and you happen to be visually or learning impaired. In order to take notes during lectures you need to use a tape recorder. However, the instructor disallows its use because he/she may be intending to publish his/her lecture and is afraid that perhaps you may do the same from the tape. The educational facility, in this case, would be in violation of the program access law. The solution to the problem is for you to sign a release form stating you will not publish the instructor's lecture.

## Undue Hardship

There may be cases where the public service provider feels that providing physical or program access would cause *undue hardship* to its operation. But in determining the possible presence of undue hardship, the following factors must be considered by the provider:

- The type and purpose of the public service's operation.
- The nature and cost of the needed accommodation.
- Documented good faith efforts to explore less restrictive or less expensive alternatives.
- Consultation with knowledgeable disabled persons and organizations.

After having considered these four factors, the public service provider will advise you whether it will provide the necessary physical or program access. As with employment, if you disagree with the provider, you have the option to file a human rights complaint.

## Transportation Provision

The third new provision addresses *Public Transportation*. It is important to note that the new law did not mandate mainline transportation, paratransit or a combination thereof. Rather the decision for a type or types of accessible public transportation remains with individual communities. The provision for public transportation services becomes effective *June 7, 1986.*

Basically the law states that public transportation services must provide access to, full utilization of, or benefit from service to disabled persons. As stated before, public transportation services may use any of a variety of methods to provide transportation for disabled people *provided* that disabled persons are offered transportation services that *approximate* those of nondisabled persons.

## Criteria for Public Transportation Providers

Although the local public transit service can use any of several methods for serving disabled people, the law establishes five minimum standards that the chosen method must meet. The criteria are:

- *Transportation offered to disabled people must be in a similar geographic area of operation as transportation provided for nondisabled people.* The law recognizes that in some cases the local transit authority will not be able to provide accessible transportation in the full area served by the public transportation system. For such cases, it provides further guidance. Priority is to be given to those areas that have the largest percentage of disabled *riders.*
  The transit service cannot decide to withhold accessible service from a part of its operating area if doing so will exclude a sizeable portion of the disabled *ridership*. In other words, suppose some neighborhood of your city has a high concentration of disabled *riders* because an accessible apartment building is located there. The transit authority cannot decide that its accessible transportation will service other parts of the city with a lower disabled *ridership* rather than that neighborhood.
- *The transportation must be offered during similar hours of operation.* Consider a city which has a mainline bus system for most of its citizens and a dial-a-ride paratransit service for those disabled people who are unable to use the bus system. If the regular bus system runs on weekends, but the paratransit system does not, the city will very likely have a problem when this standard goes into effect.
- *The transportation service must charge comparable fares.* Although the fare for a special accessible transportation service can be higher than what is charged for the regular transit system, it would not be permissible to charge an unjustified larger amount.
- *The transportation must have similar or no restrictions on trip purpose.* People who use the regular transportation system can generally use it for any purpose. It is discriminatory therefore to tell people who use a special accessible system that they cannot use it for certain purposes or that certain trips will have lower priority than others.
- *A transportation system for disabled people must have a reasonable response time.* It is not reasonable to require a disabled person to request a ride several days in advance. The system must be able to respond more rapidly to requests.

Although compliance with these criteria is not required until *June 7, 1986,* you should begin to work with your local transit authority now to urge the earliest possible compliance. By working together with transit planners, you can inform them of the transportation needs of disabled persons, and you can help assure a practical and fair transportation system for all.

# What Do I Do If Discrimination Appears Present?

If you feel that discrimination has taken place in any of the three areas of *employment, public services* or *public transportation,* you may wish to file a complaint. You may have any one of three options available to you:

- Filing a private action suit with the attorney of your choice.
- Contacting your local Human Rights Commission.
- Contacting the Minnesota Department of Human Rights.

If you should choose to contact your local Commission or the State Department of Human Rights you should become familiar with the procedures.

## Filing a Charge

Your first step is to call your local Human Rights Commission, if one is present in the city where the alleged discrimination took place. The local Human Rights Commission, through an informal process, will review your charge and advise you whether you may have a case. It could be that a misunderstand-

ing has taken place and your local Human Rights Commission representative may be able to speak with the employer or service provider to work out a solution without filing a formal charge. If discrimination appears to be present, however, your local commission will assist you in filing a complaint.

But many communities do not have local Human Rights Commissions and in these cases you should proceed directly to the *Minnesota Department of Human Rights* (DHR) by calling or writing.

If calling, your first contact will be with an investigative aide who will ask you what has happened and advise you whether you may have a discrimination case and refer you to an investigative officer.

The investigative officer will look at your individual case to see if it meets the following criteria:

- Did the alleged discrimination happen within the last 300 days?
- Did it occur in Minnesota?
- Is your particular protected class covered under the category for which you wish to file a charge?

If your situation meets these criteria, the investigative officer will advise you that you have a basis to file a charge.

The next step is to meet in-person with the enforcement officer who will take your charge. If you cannot appear in-person, the charge can be handled by phone or mail.

The forms relating to a charge should be filled out accurately with as much detail as possible. For example, if you are filing a charge based on discrimination in employment, be sure to supply the employer's name, the main executive officer, the number of company employees, an explanation of the alleged discrimination and the name of a contact person other than yourself should you decide to move.

Your charge will subsequently be drafted from your questionnaire or in-person or over-the-phone interview. The charge is typed immediately, read by you, signed and notarized. If you handle this process by mail *make sure the date of your signature and that of the notary are the same.*

After you return your signed charge, the DHR will forward a copy to the respondent (the person or persons against whom you have filed the charge) and the DHR will begin an impartial investigation of your charge.

## Mediation

If you happen to live in the seven county metropolitan area, you and the respondent are offered the opportunity to participate in a process called *mediation.* This is an alternative method of resolving your dispute and the decision to opt for mediation is made at the time the charge is filed. This process can be useful in speeding up the process of resolution. However, if the problem cannot be resolved, the case returns to the DHR to begin the investigation process.

## The Investigation

The DHR is a *neutral investigative source* and will carefully review each party's position using such factors as comparative data. For example, if you were laid off and felt it was due to your disability, the DHR would compare such data as:

- How many people were laid off at the same time?
- How many people are in the work force?
- How many of those laid off were disabled and how many disabled persons are still employed?

Remember — just because *you* were laid off does not necessarily mean that discrimination took place.

## The Determination

After all the facts are presented a DHR enforcement officer will summarize the case and it will enter the review process. Two other individuals in the DHR will also review the case to determined the outcome. The two possible determinations that may result are:

- *Probable Cause* — Yes, it appears discrimination has taken place.
- *No Probable Cause* — No, it appears discrimination has not taken place.

At this point you are notified of the decision by certified mail.

The entire filing, investigation and decision process should be completed in 90 — 120 days.

## The Appeal Process

If you should disagree with the determination of your charge, you may *appeal* your case. Enclosed with your letter of determination you will receive two forms to complete should you decide to appeal. Fill out these forms carefully outlining your reason for appeal with an accompanying letter stating that you are appealing the determination. You must return one form to the DHR and one to the respondent, and each one must be postmarked within ten days of the receipt of your determination. Return of these forms is YOUR responsibility.

The appeal process will obviously extend the overall resolution of your case. The DHR Commissioner's Office will review the case and present its statement. Based on the information you provide, it may call for new information or state that information was improperly considered, or perhaps new information has come to light. However, the appeal may be denied if nothing new has been introduced into evidence.

Assuming the appeal is accepted, an appeals committee will review the case once again. Usually the committee will call for further investigation, and you and the respondent are so notified. Then the investigator has 60 days in which to perform further investigation and turn over the information to the appeals committee for a recommendation. All determinations are made by the Commissioner of the DHR.

## Private Action Suit

As stated earlier, you may file a private action suit with a private attorney rather than filing a charge with DHR. However, if you have chosen to pursue your case with DHR and if the original determination was "no probable cause" and you decide NOT to appeal through the DHR, you have 45 days in which to start a private action suit. The same applies if you have appealed to the DHR and no probable cause is reaffirmed.

## Damages

If a decision of "probable cause" was made in your case, the investigator calls you to discuss what *damages* you wish to claim — such as reinstatement of a pension, delivery of a public service or public transportation, a chance for an interview, etc. You, along with the investigator, will determine those damages to be awarded.

At this point the respondent will be notified of the damages you are seeking. If negotiations are unsuccessful the case is referred to the Minnesota Attorney General's office and the State of Minnesota becomes the plaintiff on your behalf.

# In Conclusion

This brief overview has been provided to acquaint you with the 1983 Human Rights Amendments which affect you as a disabled Minnesotan. Its intention is not to serve as a legal document, but to inform you of your rights and what course of action you may wish to pursue should you feel your rights have been violated.

By becoming familiar with the law, you can not only better protect your rights, but can act as a responsible citizen in planning your community's equal access goals and serve as a knowledgeable resource for implementation of the 1983 disability amendments to the Minnesota Human Rights Act.

# Resources

If you have further questions regarding the law or any issue which impacts you as a disabled Minnesotan, call:

- Minnesota State Council for the Handicapped
  208 Metro Square Building
  St. Paul, MN 55101
  296-6785 (Metro, Voice & TDD)
  800-652-9747 (Toll-free, statewide, Voice & TDD)

- Minnesota Department of Human Rights
  500 Bremer Tower
  7th Place and Minnesota Street
  St. Paul, MN 55101
  296-5663 (Metro)
  800-652-9747 (Toll-free, statewide)