

# THE RIGHTS OF PERSONS WITH DISABILITIES

## in the United States



### All Persons with Disabilities Have a Right to:

#### **SAFETY AND SECURITY:**

The right to life, liberty, and security of person.<sup>1</sup> The right to live free of abuse inside and outside of the home.<sup>2</sup> The right to equal protection from unlawful interference with privacy, family, home, or correspondence.<sup>3</sup> The right to protection in armed conflict, humanitarian emergencies, and natural disasters.<sup>4</sup>

#### **EQUAL PROTECTION AND DUE PROCESS:**

The right to be treated equally under the law and be protected by the law without discrimination,<sup>5</sup> including the provision of procedural and age-appropriate accommodation.<sup>6</sup>

#### **NON-DISCRIMINATION:**

The right to live free from both personal and institutional discrimination based on disability.<sup>7</sup>

#### **ACCESSIBILITY:**

Equal access to the physical environment, transportation, information, communication, technology, and other services open to the public.<sup>8</sup>

#### **EDUCATION:**

Equal access to free, inclusive, quality education that adapts to the special learning needs of students with disabilities.<sup>9</sup>

#### **HOUSING:**

Equal access to affordable, secure, and stable housing with the provision of reasonable accommodations for disability.<sup>10</sup>

#### **HEALTH:**

The right to the highest attainable standard of physical and mental health. Equal access to health care and services without discrimination including sexual and reproductive health, early identification and intervention, and services designed to minimize further disabilities.<sup>11</sup>

#### **WORK:**

The right to work and free choice of employment without discrimination. The right to equal pay for work of equal value and to safe and healthy working conditions including reasonable accommodations in the workplace.<sup>12</sup>

### **WHO ARE PERSONS WITH DISABILITIES?**

The United Nations (U.N.) Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>13</sup> According to the U.N., “Everyone is likely to experience disability at some point during his/her lifetime because of illness, accident, or aging.”<sup>14</sup>

### **WHAT ARE THE RIGHTS OF PERSONS WITH DISABILITIES?**

International treaties such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and regional bodies such as the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities (CEDPWD), establish the basic rights of all people regardless of disability status. These rights include freedom of speech, equality before the law, the right to marriage and family, respect for privacy, the right to health, the right to education, and many more. In 2006, the UN drafted the CRPD in recognition of the difficult and overlapping barriers faced by persons with disabilities. The CRPD is the first treaty that comprehensively addresses all aspects of discrimination based on disability, including employment, education, privacy, and self-determination. Out of nearly 200 U.N. member states, 142 countries are signatories to the convention. The U.S. became a signatory to the convention on July 30, 2009, but has yet to ratify it.<sup>15</sup>

### **DOES U.S. LAW RECOGNIZE DISABILITY RIGHTS?**

The U.S. Constitution guarantees equal protection to all citizens regardless of characteristics such as gender, race, or disability.<sup>16</sup> Congress also enacted specific statutory protections for persons with disabilities, including the most comprehensive of these, the Americans with Disabilities Act (ADA).<sup>17</sup> These laws prohibit discrimination against persons with disabilities in any public program, private housing, access to polling places, education, and the workplace. The laws require schools, landlords, employers, and governments to make their services accessible to people with disabilities by providing reasonable accommodations or modifications.<sup>18</sup> Furthermore, many states drafted their own laws that address the rights of persons with disabilities. In addition to national law, the U.S. is also legally bound to international treaties, including the ICCPR, which grant basic human rights to all people.

### **IS THE U.S. FULFILLING THE RIGHTS OF PERSONS WITH DISABILITIES?**

Despite legal protections for persons with disabilities, millions of Americans are deprived of their rights due to a lack of awareness and a failure to provide the disabled with reasonable accommodation in many areas of their lives. They still face considerable levels of discrimination in access to services, employment, education, and other areas. Today, more than 50 million people in the U.S., roughly 1 in 6, personally experience some form of disability, a number that is growing rapidly as the population ages.<sup>19</sup>

#### **Safety and Security**

Persons with disabilities face an increased risk of being victims of violent crime. Women with disabilities in particular experience a high rate of domestic violence and sexual assault. Studies suggest that women with developmental disabilities are 4 to 10 times more likely to be sexually assaulted than other women.<sup>20</sup> Children are also at high risk of abuse. Youth with disabilities are between 1.5 and 3.5 times more likely to have experienced abuse and neglect, and to be surrendered into the child welfare system.<sup>21</sup>

Persons with disabilities are also frequently denied their right to protection in situations of risk such as natural disasters. According to a study on emergency management, a majority of Federal Emergency Management Agency (FEMA) emergency managers were not trained in special needs populations, including persons with mobility impairments.<sup>22</sup> This lack of consideration for persons with disabilities proved disastrous during Hurricanes Katrina and Rita in 2005. Estimates show that approximately 73% of the Hurricane Katrina-related fatalities in New Orleans were people over the age of 60, even though those people only made up 15% of the population. Experts suggest that this happened because many of those people had physical, medical, or sensory limitations that made them more vulnerable.<sup>22</sup>



## Equal Protection and Due Process

Social service organizations are often unprepared to address the needs of persons with disabilities. Battered women's shelters frequently lack staff who are trained to deal with their unique needs, and police and other law-enforcement officials receive only minimal training on accommodations needed for them.<sup>23</sup> When interviewing victims with developmental disabilities, investigators frequently fail to extract critical information about the incident and perpetrator, and may make inappropriate assessments regarding the victim's credibility.<sup>24</sup> According to a 2001 survey by the Boston Globe, only 5% of serious crimes against people with disabilities were prosecuted, compared to 70% for similar crimes against people without disabilities.<sup>25</sup>

## Non-Discrimination

Persons with disabilities face both direct and systematic forms of discrimination. Disability harassment may take the form of daily mockery, insults, shunning, and physical abuse, and leads to the isolation and disenfranchisement of persons with disabilities. In schools, instances of teachers or principals leading or encouraging the harassment or intentionally instituting policies to punish students for having a disability have been reported.<sup>26</sup> The U.S. government has recently started prosecuting cases of disability harassment in schools and workplaces, but many courts still refuse to consider disability harassment a serious crime comparable to race or sex harassment, leaving victims without a remedy.

## Accessibility

Accessibility is a key component to fighting discrimination against persons with disabilities. According to the Department of Transportation, only 55-60% of public transit buses are equipped with wheelchair lifts. Even for those buses that are equipped, access is still denied because the lifts are often in disrepair and drivers lack the training needed to operate them.<sup>27</sup> People with disabilities are also frequently denied their requests for reasonable modifications or accommodations necessary to make housing fully accessible. Nearly 20% of housing providers with on-site parking refused to make a reasonable accommodation of providing a designated accessible parking space for a wheelchair user.<sup>28</sup> In 2008, 44% of the record 10,552 housing discrimination cases filed were complaints from persons with disabilities.<sup>29</sup> Many disabled persons also face barriers at polling places because the sites are inaccessible or the voting machine is incompatible.<sup>30</sup>

## Education

Educational outcomes for children with disabilities have seen some improvement with the 2004 revisions to the Individuals with Disabilities Education Act (IDEA). However, disabled children are more likely to be subject to corporal punishment in schools.<sup>31</sup> Of the 223,190 public school students nationwide who were paddled during the 2006-7 school year, at least 41,972, or about 19%, were students with disabilities, who make up 14% of all students.<sup>33</sup> Students with disabilities are still less likely to graduate from high school and only 12.5% of working age people with disabilities have a bachelor's degree, compared to the national average of 30.3%.<sup>33</sup> Many colleges lack support services and awareness of disability issues, and are inconsistent in their interpretations of accommodation requirements. Many disabled students are also forced to cover the extra cost of their accommodations and may require additional time to graduate, increasing the final cost of their education.<sup>34</sup>

## Housing

Housing discrimination for people with disabilities is pervasive. There is very little in the way of affordable, accessible housing for people with disabilities nationwide. One study found that over half of persons with disabilities faced discrimination in housing inquiries compared to similar, non-disabled home-seekers.<sup>35</sup> They receive less encouragement to pursue a rental agreement and are less likely to be offered an application than the non-disabled customers.<sup>36</sup> Some states attempt to force disabled adults into institutions rather than provide personal care attendants. Providing this kind of community-based care is essential to allow persons with disabilities to live full and independent lives and often is less expensive than the institutional option.

## Health

Despite ADA regulations a disproportionate number of people with disabilities face barriers to quality health care. These barriers may be structural and/or communicative in nature. Many health care facilities do not provide assisting technologies and people with disabilities often find themselves battling insurance companies to provide needed treatments and accommodations.<sup>37</sup> According to a study in California, 22% of persons with disabilities reported difficulty accessing health care facilities and 12.9% reported unfair treatment by health care providers because of their disability.<sup>38</sup> In a wide-reaching study of disability health care coverage, those with intellectual and developmental disabilities were three times more likely than those without to report unmet health care needs.<sup>39</sup>

## Work

The employment rate for persons with disabilities in 2006 was at least 40 percentage points lower than the employment rate of working-age individuals without disabilities.<sup>40</sup> 70% of disabled people who are unemployed cite discrimination in the workplace and lack of transportation as major factors that prevent them from working. Studies have also shown that people with disabilities who find jobs earn less than their coworkers and are less likely to be promoted.<sup>41</sup> This negatively affects the economic and life conditions of people with disabilities. On average, 24.7% of working-age people with disabilities live in poverty, as compared to 9% of those without.<sup>42</sup> Unemployment is especially high for persons with mental illness, and they face higher levels of employment discrimination than those with other disability labels as well.

## U.S. Government Obligations<sup>43</sup>

To ensure the rights of persons with disabilities, the U.S. has the following obligations:

### RESPECT:

Governments must not deprive any person with disabilities of their rights under domestic and international law and must refrain from taking retrogressive measures that are incompatible with their rights.

### PROTECT:

Governments must take measures to prevent individuals or third parties, such as employers or civil society organizations, from interfering in any way with the realization of the rights of persons with disabilities.

### FULFILL:

Governments must adopt necessary measures and create an enabling environment such that all persons with disabilities can enjoy their full rights.

### MEET MINIMUM STANDARDS:

Governments must ensure the satisfaction of the minimal, but essential, standard laid out in the UDHR and immediately address extreme situations of abuse.

### NON-DISCRIMINATION:

Governments must work to prevent discriminatory outcomes due to class, race, gender, language, ability, or other factors, in order to ensure equity in the fulfillment of the rights of all persons.

### PROTECT MOST VULNERABLE:

Governments must actively reach out to the most marginalized and excluded communities who face the greatest barriers in realizing their rights.

### MONITOR AND REPORT:

Governments must monitor and report on their fulfillment of the rights of persons with disabilities and ensure accountability for their actions and inactions.

For citations and further info:  
[www.discoverhumanrights.org](http://www.discoverhumanrights.org)



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