What is disability discrimination?
Many things happen to people with disabilities that do not seem right. However, not all of these
dependences are actual disability discrimination. Discrimination is actually a legal term, or at
least it is when used in the context of filing a lawsuit or administrative complaint.

**Disability discrimination exists when one of the following elements occurs:**
1) A person with a disability is treated differently solely because of the presence of the disability,
and this treatment is not reasonable.
2) A person with a disability is denied a reasonable modification to a policy or rule and that
denial makes it difficult or impossible for the person with the disability to enjoy the good or
service at hand.
3) The state or a local government is providing services and the services provided are not
provided in the most integrated setting appropriate to the needs of the person with a disability.
4) STATE OR LOCAL GOVERNMENT OPERATES A PROGRAM THAT IS NOT
ACCESSIBLE TO PEOPLE WITH DISABILITIES.
5) A PERSON WITH A DISABILITY IS REQUIRED TO DEMONSTRATE SHE CAN
SAFELY DO SOMETHING IN ORDER TO RECEIVES GOODS OR SERVICES AND NON-
DISABLED PEOPLE ARE NOT SUBJECT TO THE SAME REQUIREMENTS.

**The following, while bad behavior, is not disability discrimination:**
1) Bad customer service for example a store clerk who is rude to all customers, including a
customer with a disability.
2) A mean boss a boss who treats all employees poorly, including any disabled employees.
3) Denial of a reasonable request that is not relevant to the specific disability of the individual
involved:
4) A state or local government providing bad, limited or non-existent services (there may be
other areas of law involved here such as Medicaid law, but this does not entail disability
discrimination unless the entity provides services in a way that excludes individuals with

What do I do if I think I am being discriminated against?
1) Document, document, document to pursue a case one will need to be able to state specifically
what happened, the date, time, place and specific individuals involved. Do not rely on your
memory.
2) Ask yourself the following questions:
   a) What am I being denied or how am I being treated differently?
   B) How is this related to my disability?
   C) Who is making this decision?
   D) What do I want to do about it?

If you want to confront this then you need to begin by speaking to an advocate that understands
disability discrimination. For some types of discrimination, such as employment discrimination,
you must file with a government agency called the Equal Opportunity Commission. For other
types, such as discrimination based on public accommodations you may file with a government
agency (Department of Justice) and this is called an administrative complaint. You may also
choose to go straight to federal court. If your state has an anti-discrimination law, (in Colorado
this is the Colorado Anti Discrimination Act) you might have a right to file in state court. You
can always begin by writing a letter to the responsible entity outlining what happened, why this is
discrimination, and asking for a remedy. If you do this make sure you end your letter with a date
certain that you expect a reply.

The following page provides lists of examples of what is and is not disability discrimination.
This is not intended to be an exhaustive list, but is intended to help you begin to think about what
is and is not discrimination. If your problem is not discrimination, you may still be able to take
action to resolve the problem.

<table>
<thead>
<tr>
<th>Disability Discrimination</th>
<th>Not disability discrimination</th>
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<tbody>
<tr>
<td>Employer refusing to consider qualified person with disability for promotion due to unsupported belief that new position will be too stressful</td>
<td>Employer refused to hire person with a disability who is unable to do the essential functions of the job due to disability (for example refusing to hire someone with visual impairments to drive a bus)</td>
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<td>State policy that people who need assistance with eating, or people on ventilators can only receive long term care services in nursing facilities.</td>
<td>State policy that sets a limit on the cost of services per individual (as long as this limit applies equally to institutions and community services) If this is a Medicaid service Medicaid law requires that services be sufficient in amount, duration and scope to reasonably achieve the intended purpose of the service.</td>
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<td>Restaurant that refuses to seat someone with cerebral palsy anywhere except the far back table when many other tables are open and not reserved.</td>
<td>Restaurant that is crowded and gets a party of 6 including two people with cerebral palsy telling the party that the wait may be 30 minutes, when it tells a party of two that the wait is 10 minutes. (It usually takes longer to clear a larger space)</td>
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<td>Business refusing to allow service animal because the person does not appear to be blind stating that only seeing eye dogs are allowed.</td>
<td>Business owner asking person with hidden disability and animal, even if animal is identified as service animal, if the person is using that animal for a disability. (In Colorado people training service animals have the right to be in places of public accommodation as long as they have control over the animal)</td>
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<td>Requiring a doctor note or other medical documentation to use seating reserved for people with disabilities in a theater.</td>
<td>Requiring proof of eligibility for a discount offered to people with disabilities. (However, if discounts are offered to other groups such as seniors or students the proof requirements cannot be more onerous for the disability category than for the other categories)</td>
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<td>A medical professional refusing to provide a sign language interpreter for someone who is hearing impaired, who has requested this as the most effective manner for communication. (This would apply in situations where communication is an essential part of the service such as a primary care physician or mental health provider-it may not apply to an ambulance driver)</td>
<td>A medical provider refusing to provide a translator for another language for someone who does not speak English and may have a disability. (If they provide foreign language interpreters for non-disabled patients this would be discrimination) (If they accept public money this may be considered discrimination based on limited English proficiency depending on circumstances)</td>
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<td>Newly constructed store without accessible parking, accessible counters or with aisles too narrow for a wheelchair to get through.</td>
<td>A newly constructed store (not a mall but single store) without automatic doors, but with all other accessible features. (Automatic doors are not required by the regulations unless the building is a certain size such as a mall)</td>
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<td>A local public assistance office that refuses to allow a person with a disability to apply by mail when because of the disability the person is not able to come into the office.</td>
<td>A local public assistance office that has a deadline for applications that is reasonable applies to everyone, and where they could prove that extending the deadline for someone with a disability would fundamentally alter the nature of the program.</td>
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<tr>
<td>An apartment rental company that requires that income be from employment, and refuses to consider unearned income such as social security or private disability insurance.</td>
<td>An apartment rental company that requires income at a certain level due to the cost of the apartments.</td>
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<td>Police arresting someone in a wheelchair for driving the wheelchair on the street where the sidewalks are not accessible.</td>
<td>Police arresting someone in a wheelchair for a traffic infraction such as speeding, not using a turn signal, etc.</td>
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<tr>
<td>Refusing to allow someone in a wheelchair to have more than one companion sit with them at a concert or ball game.</td>
<td>Requiring someone using a wheelchair to use a wheelchair seating area when there is no other reasonable place for the person to sit without blocking an aisle, such as on a public bus.</td>
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<tr>
<td>A homeowners association that refuses to allow a homeowner to install a swamp cooler that the person needs because of a disability, (when the person had explained that this is a disability-related need)</td>
<td>A homeowners association that is extremely picky about not having furniture or trash on the front lawn and more than one car in the driveway. (As long as this is applied fairly)</td>
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<td>An employer that refuses to modify the schedule by allowing employee to come in an</td>
<td>An employer refusing to modify the schedule of an employee who requests a disability</td>
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<tr>
<td>Context</td>
<td>Example</td>
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<td>Employee with disability being laid off, despite having seniority in the company, when others with same seniority and position are not laid off.</td>
<td>Employee with a disability being laid off along with other peers who have same level of seniority or employee with disability in position that was determined to be less essential through a reasonable process being laid off, even with seniority.</td>
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<tr>
<td>State program that provides a generic service such as transportation, that does not provide equivalent services to otherwise qualified persons with disabilities. For example they provide a senior ride program but vans are not wheelchair accessible. An otherwise qualified means that they meet other criteria such as income level and age. Governments must provider program access, which is not always the same as equal access.</td>
<td>State program that provides specific service for a specific group of people with disabilities under federal authority, such as a home and community based services waiver for people with AIDS or a program treating people with breast cancer. (Federal law allows services to be targeted to specific populations)</td>
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<tr>
<td>Family services program that has policy and practice of requiring doctor finding of absence of physical or mental disease before recommending full custody or fitness for adoption.</td>
<td>Family services program that has policy of preferring married couples for adoption, and always supports the woman in child custody disputes. (The latter is sex discrimination but not disability discrimination, the former is a moral judgement, which many may disagree with but if it is a private agency they have the right to make a moral judgement)</td>
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<td>Child protective services agency that requires parents in the system to prove that they have drivers license and full time job prior to returning children to the home.</td>
<td>Child protective services agency that requires 90-day period of abstinence from illegal drugs and alcohol for all parents before returning children to the home. (This would be considered a reasonable requirement for parents already in this system)</td>
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<tr>
<td>Public service agency requiring potential clients to fill out a handwritten application to</td>
<td>Public agency requiring that potential clients provide certain information, such as income</td>
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receive services, with no other options such as internet based or human assistance. (This would discriminate against people unable to write on forms such as those with visual, motor and cognitive disabilities) and assets or any other information required to prove eligibility. (Some requirements may be physically or emotionally difficult for some applicants with certain disabilities)

There is sometimes a fine distinction between what someone or some entity is allowed to ask or require regarding disability or regarding accommodations:

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<th>Legal</th>
<th>Not Legal</th>
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<td>Employee is required to specify what the accommodation is and why he or she needs it.</td>
<td>Employer is not allowed to ask for irrelevant medical information.</td>
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<td>Employer is allowed to decide how an accommodation will be provided, regulations encourage employer and employee to negotiate and work together and require that accommodation be effective, but choice is up to employer.</td>
<td>Employer is not allowed to require employee to use accommodation that is not effective or not safe. For example employer cannot schedule staff retreat at an inaccessible location and require that a wheelchair user is carried up stairs or require that a Deaf employee attend a conference with no interpreter.</td>
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<tr>
<td>Government medical assistance program is allowed to get medical history to ensure person meets qualifications when the service is provided based on the presence of a disability.</td>
<td>Employee of government medical assistance program is not allowed to share medical information with those who do not need to know for administration of the program.</td>
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<tr>
<td>Government assistance program allowed to have rules such as deadlines for application, no former convictions of fraud, and reporting requirements.</td>
<td>Government assistance programs must provide reasonable assistance with application, even if this means a referral to another entity that can provide the assistance.</td>
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<tr>
<td>Business owner/employee is allowed to ask if a person using a service animal has a disability and if the animal is a service animal. Person with service animal, regardless of the type of animal or type of disability may be asked to remove the animal if the animal is disruptive or aggressive.</td>
<td>Business owner/employee is not allowed to require any sort of certification of a service animal or to require proof that a person has a disability. Comment regarding the animal or beliefs about who should be allowed to use service animals are never allowed, as long as the person has control over the animal and the behavior of the animal is appropriate.</td>
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<td>Employee in shop that sells fragile items is allowed to politely inquire if someone in a wheelchair needs help reaching anything.</td>
<td>Employee in shop that sells fragile items with extremely narrow aisles is not allowed to ask someone in a wheelchair not to enter the</td>
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<tr>
<td>Store.</td>
<td>Restaurant owner is not allowed to ask parent of older child that needs to be fed, and who drools to remove child from restaurant because child offends others.</td>
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<tr>
<td>Theater owner is allowed to ask parent of disabled child who is loud to leave the theater, unless performance is for children and the loud behavior does not alter the experience for everyone else.</td>
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<tr>
<td>Airline or over the road bus can prohibit someone from traveling who loudly claims while waiting in line that they are disabled, cannot stand to wait and will freak out if things do not get moving.</td>
<td>Airline or over the road bus cannot prohibit someone from traveling if they have involuntary movements such as spasms, that may be mildly annoying to others.</td>
</tr>
<tr>
<td>Outdoor rafting company that does river tours that requires the ability to swim can exclude someone with a disability that cannot swim due to disability related restrictions.</td>
<td>Outdoor rafting company that does river tours that require the ability to swim cannot exclude someone due to disbelief that someone aso disabled could not possibly be safe on a tour.</td>
</tr>
<tr>
<td>Mental health hotline that provides emergency services for people under a certain insurance plan can refuse services for someone who is not covered under the plan (however for licensed professionals refusal of some services may create an ethical problem)</td>
<td>Mental health hotline that provides emergency services for people under a certain insurance program may not refuse services to someone who is difficult to understand because of a speech impairment.</td>
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There are different remedies for different types of discrimination: Also, there are time limits by which the discrimination must be reported if a remedy is to occur.

American=s with Disabilities Act

1) Employment: Complaint: must go through the EEOC and must be reported within 180 days. EEOC will investigate and often offers mediation. EEOC will either determine that there was no discrimination, that there was discrimination but that EEOC is not going to pursue it (in which case they issue a right to sue letter to the person making the complaint) or that there was discrimination and that they will pursue it (in which case they will represent the person making the complaint)

2) State and local government: No requirement to go through administrative agency, however very few attorneys take these cases privately. Each large federal agency has an office of civil rights. These offices investigate these allegations. They generally have forms and require consent forms to be signed. First they determine if they have jurisdiction. This means do they have authority over the agency accused of discrimination. If not, they will send the case to the proper agency or advise the person complaining to send the case to that agency. Then they determine if they believe there was actual discrimination. If they determine that there was discrimination then they may offer mediation, or they may speak to the agency accused of
discrimination. They can choose whether or not to pursue this as a full fledged discrimination complaint or simply to send the agency an educational letter or provide technical assistance. The person complaining may not have input into the agency response. One does not have to go through this process and one can go directly to court.

3) Public Accommodations: Again, one can file either an administrative complaint with the Department of Justice or file a discrimination lawsuit in court. This must happen within a year of the alleged discrimination.

Air Carriers Access Act: This has to do with airlines and complaints go to the federal department of transportation. Complaints may also go to the airline, and they are supposed to report complaints to the Department of Transportation, however we advise filing complaints with both entities. It is possible to file a lawsuit, but few attorneys take these cases. THE TENTH CIRCUIT NO LONGER SAYS THERE IS A PRIVATE RIGHT OF ACTION (MUST DO ADMINISTRATIVE COMPLAINT)

Mental Health: Most states have laws detailing under what circumstances can someone be forced into treatment or locked up against his or will. There are some federal protections as well. Generally more than one professional must determine that someone is in danger to themself, to another or Agravely disabled@. People have a right to an attorney, and a right to appear in court for commitment hearings. There are other rights such as the right to receive and send mail, the right to a second opinion, etc. If someone is in this situation we advise that they make as many calls as possible to alert others to the situation and to make it known to everyone that you want to personally appear in court.

Colorado Laws:

Colorado Anti Discrimination Act-prohibits discrimination and allows damages of between $50-$500 per instance of discrimination.

Colorado Assistance Animal Law-similar to ADA but also provides equal status to those training service animals, even if that person does not have a disability.

Colorado Consumer Protection Act-requires truth in advertising and that consumers actually receive what they purchase, or what was represented as a purchase.

Wheelchair and assistive technology lemon laws-requires refund or replacement to payer if defect is not fixed after three tries. Various time limits depending upon type of technology. Requirement to provide equivalent loaner for first year for power wheelchairs but does not require this for features that are considered highly customized.

Benefits Laws:
For any government benefit people have some rights under due process. When one has a benefit before the government can take the benefit away, change it or reduce it they must

1) Provide written notice at least 10 days before intended action
2) Provide a reason, including the specific regulations that they are using to take the action
3) Provide instructions on how to appeal the decision
4) Provide an opportunity to appeal the decision
5) Provide a way for retention of services during the appeal process (however if the client
loses they are allowed to later charge for services provided during this time)

They must allow anyone to apply for services, however they are allowed to do >pre-screening= as long as it is uniform and reasonable.

Government services must provide program access, which may be different from full access. They must find a way to make the program or service available and must provide the program or service in the most integrated setting appropriate to the needs of the individual.

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<tr>
<th>Program Access</th>
<th>Equal Access</th>
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<tr>
<td>Food stamp office not accessible so they meet people outside, and offer to do mail application—there may be requirement to do home visits for someone that requires assistance with the application due to a disability</td>
<td>Everyone who applies for a service has the exact same options regarding how to apply (e.g. in an office or via the mail)</td>
</tr>
<tr>
<td>City recreation department offers free swimming for adults from 12:00-1:00 weekdays at all five city pools but only one pool has a lift so that facility is reserved for wheelchair users</td>
<td>Any program offered at five locations would be fully accessible and anyone with any kind of disability who was otherwise qualified could use any facility</td>
</tr>
<tr>
<td>State provides funding for personal care attendants for people with disabilities under a specified income level</td>
<td>This service is not useful to people with out disabilities, therefore this does not apply</td>
</tr>
<tr>
<td>Unemployment office provides a resume writing service but the computers are not adapted for people who need speech computers, however, any person on unemployment who needs adapted computers is referred to vocational rehabilitation in the next building.</td>
<td>The office providing the service would have computers available for people with varying abilities or would provide assistance to use the computers in the same facility.</td>
</tr>
<tr>
<td>The state mental institute does not have accessible bathrooms, so contracts with a private psychiatric facility for patients that need accessible bathrooms.</td>
<td>Any patient would be able to use the same facility with appropriate access.</td>
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</table>

Remember: to prove discrimination you must
1) Report the discrimination within the required time frame. The sooner the better, as with
delays witnesses and other proof will be more difficult to find.
2) Make sure that the issue is true disability discrimination, not simply poor customer service, a badly run program, a mean neighbor or a bad boss.
3) Write out the issue clearly to explain to whomever you are reporting this to (such as an advocate, attorney or regulatory agency). Make sure you have dates, times, details, and specifically what happened. Make sure you can explain why it is disability discrimination.
4) If you are not sure if this is discrimination, contact a knowledgeable disability rights organization for consultation. If you do not feel that you received a good answer, get a second opinion from another organization.

Do not:
1) Write a letter to a company or any entity and allege discrimination without details and demand a monetary payment.
2) Threaten to sue if you do not have an attorney backing up this threat and if you do the attorney will make this threat in a demand letter.
3) Tell someone that the ADA said.....@ The ADA is simply a piece of paper there is no ADA office.
4) State that the ADA or any other civil rights law requires something unless you are sure that you are correct, and can provide the citation the law or regulations that backs up your statement.

This document does not constitute legal advice, but is provided as a courtesy by the Colorado Cross-Disability Coalition for individuals with disabilities facing possible discrimination. A disability is a substantial impairment in a major life activity. People with a history or record of impairment, and people presumed to have an impairment are also covered under the Americans with Disabilities Act. Retaliation for filing discrimination complaints is also prohibited.

The CCDC legal program enforces disability rights in Colorado. Due to our small size we cannot take even a fraction of the cases we receive, however we try to respond to all inquiries, even if we are unable to represent every individual. CCDC also provides training for small groups of people with disabilities, and professionals in the field providing more details on the law, on citizen enforcement activities, as well as individual and systemic advocacy.

If you have questions you can fill out the attached form and return by mail, Email or fax or you can call us.

**Discrimination Reporting Form:**

Name________________________________________
Mailing address:___________________________________________________

Daytime telephone number or Email:____________________________________

Major life activity in which you have a substantial impairment: (check all that apply)
___Walking
___Seeing
___Hearing
___Self Care
___Communicating
___Getting along with others/interacting in society (must be due to impairment not choice)
___Breathing
___Working (if adult of working age)
___Reading and writing (must be due to disability)
___Thinking and reasoning
___Other (please describe___________________________

___History or record of impairment
___Perception of impairment
___Associated with person who has impairment (explain)

Nature of incident: Please check one:
___Employment
___Local government
___State government
___Public accommodation
___Other

Name of entity that you believe discriminated:_______________________________________

Date of discrimination:_________________________
Names and titles of individuals involved:_________________________________________________

Describe specifically what happened:_____________________________________________________

How was your treatment different from people without disabilities B or if this is a government agency how was this service not provided in the most integrated setting appropriate to your needs:
Did you react in any way: ____Yes ____No (stating yes does not dismiss your allegation)

If yes, please check all that apply

___ Asked to speak to supervisor (If yes, was request granted?)_______
___ Told individual involved that behavior was discrimination
___ Threatened lawsuit
___ Said I would file complaint
___ Became angry (yelled or argued)
___ Walked out
___ Other

What remedy are you seeking:

___ Reinstatement of job or opportunity for interview
___ Provision of accommodation at job
___ Withdrawal of discipline at work
___ Change of policy in government program
___ Individual modification of policy in government program
___ Removal of access barrier
___ Addition of accessibility feature (e.g. ramp, parking space)
___ Effective communication (please specify)___________________
___ Letter of apology
___ Monetary settlement
___ Refund of money spent
___ Withdrawal of other consequence (e.g. ticket, fine, )
___ Other please specify

Were there any witnesses or do you have any additional proof?  ____Yes ____No If yes please provide detail on next page

Please use this page to provide other relevant information: