



Women with Migraine Disease

Addressing
DISCRIMINATION
in Your Workplace

A Migraine Attack Is More Than A “Bad Headache”

Contrary to popular belief, migraine disease is much more than just bad headaches: Migraine disease is a serious medical condition involving an incapacitating collection of neurological symptoms – from intense pain, dizziness, nausea, and vomiting to extreme light, sound, and smell sensitivity; and visual disturbances (auras).¹

Migraine attacks can be triggered by normal, everyday occurrences, such as a co-worker’s perfume, fluorescent lights, or stress,² and the pain can be severe enough to require bed rest in a dark, quiet place.³ When left untreated, more than 90 percent of people experiencing a migraine attack are not able to function and may be forced to miss work.⁴ Compounding the problem, 63 percent of those with migraine disease will have an attack one or more times a month, significantly limiting their ability to lead a normal life, maintain relationships, and sustain a sense of well-being.⁵

Migraine Disease Is More Common in Women

The simple fact is migraine disease is a serious women’s health problem. Today, it is estimated that 38 million Americans experience migraine attacks and 73 percent of them – or 28 million people – are women.⁶ Due to hormonal changes, which can induce migraine attacks, many women experience a greater frequency of attacks, and migraine disease may be more difficult to treat during menstruation and pregnancy.⁷ In fact,

“There is a stigma behind these kind of ‘invisible’ disabilities. If there aren’t consistent tangible, visible signs, if a doctor can’t point to a structure and say ‘that’s the cause, right there!’ then surely it can’t be that bad.”

Jessica McHale, American Association of People with Disabilities, referring to her experience with migraines, December 8, 2016

approximately one in four women will experience a migraine attack during their lifetime.⁸

Challenges Women with Migraine Disease Face in the Workplace

One of the serious challenges for women with migraine disease is discrimination in the workplace. Due to broad lack of awareness about the disabling impact migraine disease has on individuals,⁹ employers may perceive women who suffer from migraine attacks as weak, lazy, lacking self-discipline,¹⁰ and exaggerating their symptoms.¹¹ Contributing to these misperceptions are common beliefs among Americans that their own mild and tolerable headaches are migraine attacks, when they are not, and the fact that the debilitating pain of migraine attacks is unseen and hard to measure.¹²

Working women with migraine disease often feel guilty about struggling to fulfill their obligations¹³ and often experience depression as a result. Women with migraine disease are 41 percent more likely to be depressed than those without a history of migraine disease.¹⁴

However, misperceptions are not an excuse for

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employers to discriminate against working women with migraine disease. That is the reason for this brochure – so you will know your rights and what to do if your employer acts in a discriminatory way.

Understanding Your Rights Under the Americans with Disabilities Act

Under the federal Americans with Disabilities Act (ADA), it is illegal for an employer with 15 or more employees to discriminate against any worker with a disability, which the ADA defines as having a physical or mental impairment that substantially limits one or more of an individual's major life activities.¹⁵ Under the ADA's definition, "major life activities" include being able to care for yourself or experiencing difficulties reading, concentrating, thinking, communicating, performing manual tasks, seeing, or working.

For any person who has a physical or mental disability, the ADA prohibits employers from discriminating in any way in all employment activities, including recruitment, hiring, training, job assignments, promotions, pay, benefits, leave, and firing.¹⁶ The law also requires employers covered under the ADA to provide a "reasonable accommodation" to qualified employees, such as allowing people with migraine disease to take time off from work for treatment and to cope with a migraine attack.

Do I Qualify for Protection Under the ADA?

Not all migraine diseases are classified as a disability. Under the ADA, migraine disorder may be considered a disability if it substantially limits your ability to complete one or more major life activity.¹⁷ This determination is made on a case-by-case basis and requires an individualized assessment.¹⁸

For your migraine disease to qualify as a disability under the ACA, you will need to show that your disease is serious enough to limit your ability to perform your job or specific job tasks given your work environment. For

example, consider whether the lighting, certain smells, or noises in your office trigger a migraine attack.

You will also need to demonstrate to your employer that you are a “qualified individual” with a disability. This means (1) you are qualified for the position (i.e., meet your employer’s requirements for the job, such as education, experience, skills, or licensure); and (2) you are able to perform the essential functions (i.e., the fundamental duties of the position) “with or without reasonable accommodations.”¹⁹ In other words, you are not protected under the ADA if you do not qualify for and cannot complete the basic requirements of your job without accommodations, but your employer cannot fire you because you cannot complete a marginal job task.

How Do I Obtain Workplace Accommodations?

With few exceptions, your employer must provide you with reasonable accommodations if you are a qualified individual with a disability and your employer is covered under the ADA whether you are applying for a job or are currently an employee. A reasonable accommodation is defined as a modification or adjustment to your job or work environment that allows you to perform your job functions and provides you with equal employment opportunities.²⁰

What Are Some Common Accommodations for Individuals with Migraine Disease?

If you have migraine disease, there are a number of ways that your employer can make workplace accommodations for you. These include:

- Allowing you to move to a private area of the office where you can adjust the office lighting;
- Minimizing your exposure to office noise by moving you to a quiet part of the office;
- Providing you with a place to retreat to when you are having a migraine attack;
- Allowing teleworking or flexible schedules;
- Adding filters to fluorescent lights;
- Providing anti-glare filters for computer monitors;
- Providing an environmental sound machine or noise cancelling headsets;
- Providing air purification systems; and
- Encouraging employees to voluntarily refrain from wearing fragrances or implementing a fragrance-free policy at the office.²¹

Is It My Responsibility To Inform an Employer If I Need an Accommodation?

Yes. If you are applying for a job or are an existing employee, it is your responsibility to inform your



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employer if you need an accommodation. Begin with an informal discussion with your supervisor or a member of the human resources department, if your office has such a department. It is also important to follow up with a request in writing that documents your functional limitations.²² If you do not provide your employer with this documentation, you may not be entitled to the accommodation.²³

Can My Employment Be Terminated If I Am Protected Under the ADA?

There are three circumstances under which your employer can terminate your employment. These situations are:

- If the termination is unrelated to your disability, such as a reduction in force;
- If you cannot complete the essential functions of your job, with or without an accommodation; or
- If your employer is able to demonstrate that you pose a direct threat to health and safety in the workplace.²⁴

Can My Employer Refuse To Fulfill My Request for an Accommodation?

Under the ADA, your employer is not required to provide you with an accommodation in two situations: 1) if the employer can demonstrate that the accommodation would be an undue hardship for the company (e.g., having to put in expensive equipment); and 2) if the employer can demonstrate that your disability poses a

direct threat to the health and safety of individuals in the workplace.

What Is an Undue Hardship?

The ADA defines an undue hardship for employers as a situation that would be “unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.”²⁵ An employer’s size, financial resources, or the nature of the operations may be factors in determining whether an accommodation represents an undue hardship.

Employers may wrongly believe that workplace accommodations are too expensive, which is often untrue for women with migraine disease. In fact, 57 percent of accommodations for people with migraine disease do not cost anything, and the remaining changes typically cost \$500 or less.²⁶

What Is a Direct Threat?

There are situations when a worker’s disability could result in a direct threat to the health and safety of herself or others in the workplace. For example, if a job requires you to drive a motor vehicle, but your migraine attacks are accompanied by an aura that impairs your vision, making it hard for you to drive safely, your migraine disease may be considered a direct threat to your or others’ safety. In that case, your employer is permitted to refuse your request for accommodation and terminate your employment.

What Can I Do If My Employer Refuses To Provide Me with an Accommodation?

If your accommodation request is denied, you should first ask your employer for the reason it was denied. Perhaps the medical information you provided did not support your need for an accommodation or the employer felt the accommodation you requested was unreasonable.²⁷ You should work with your employer to determine what information is needed and to come up with alternative accommodation options.

If the request is denied for unknown reasons, the next step is to go up the chain of command in your company.²⁸ Be sure to carefully document your interactions. If you are not successful working within your organization's chain of command, there are other steps you can take. The first is to file a complaint, referred to as a "discrimination charge," with the U.S. Equal Employment Opportunity Commission (EEOC) or with your state's enforcement agency.²⁹ If the EEOC dismisses your charge, you then have the option of filing a lawsuit against your employer.

How Do I File an EEOC Charge Against My Employer?

The way to file a discrimination charge with the EEOC is to find the EEOC field office in your area and then contact the local EEOC office in person, by mail, or by calling the office's telephone number.³⁰ If you begin the filing process by phone, an EEOC field officer will follow up with you to file the formal charge. If you file in person, bring any supporting documentation for your case to the EEOC field office. You can also bring anyone you want to the meeting, especially if you need language assistance and know someone who can help.

Once you file a discrimination charge, the EEOC will review your letter and if more information is needed, an agency staffer will contact you to gather that information or you may be sent a follow-up questionnaire. At a later date, the EEOC will contact you and may put all the information you sent on an official EEOC charge form and ask you to sign it. Your signature allows the EEOC to begin its investigation.

What Do I Need To Include in My EEOC Charge?

When you file an EEOC charge by mail, you should include the following information:

- Your name, address, and telephone number;
- The name, address, and telephone number of your employer (or employment agency or union) you want to file your charge against;
- The number of employees employed there (if known);
- A short description of the events you believe were discriminatory (for example, you were fired, demoted, or harassed);
- When the events took place;
- Why you believe you were discriminated against based on your migraine disorder; and
- Your signature

How Long Do I Have To File My EEOC Charge?

The period to file your charge is generally 180 days from the time the discrimination took place.³¹ Therefore, it is imperative that you start the process to file for your charge as soon as possible.

How Soon Will I Hear Back from the EEOC About My Charge?

You should receive a copy of your charge along with a charge number at the time the charge is filed. Your charge number will be sent to you if you mailed the complaint. Within 10 days, the EEOC should also send your employer a notice of the charge.

Are There Other Agencies I Should Contact?

States and local governments also have agencies – called Fair Employment Practices Agencies (FEPAs) – that enforce laws to prohibit employment discrimination. The EEOC and the FEPAs have agreements in place to prevent processing duplicate charges.³² You may wish to contact your local FEPA to determine whether you should file your complaint with the FEPA or with the EEOC.

How Do I File a Lawsuit Against My Employer?

If, after the EEOC conducts its investigation, the agency decides to dismiss your charge, you will receive a notice of the right to sue. Once you receive this document, you can file a lawsuit against your employer for discrimination under the ADA. You will have 90 days from the date you receive the notice to begin the lawsuit process.

Where Can I Learn More About My Rights Under the ADA?



U.S. Department of Labor Office of Disability Employment Policy

<https://www.dol.gov/odep/>
1-866-487-2365



U.S. Equal Employment Opportunity Commission

<https://www.eeoc.gov/employees/charge.cfm>
1-800-669-4000

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- ²⁹ For a list of state enforcing agencies, you can visit <http://askjan.org/links/enforcement.htm>.
- ³⁰ <https://www.eeoc.gov/field/index.cfm>
- ³¹ <https://www.eeoc.gov/employees/timeliness.cfm>
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