



Inflammatory Bowel Disease

&

# **The Americans with Disabilities Act**



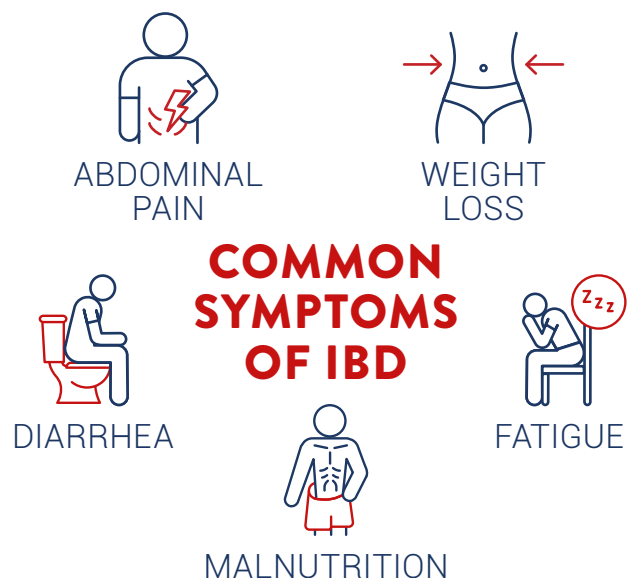
This fact sheet provides an overview of inflammatory bowel disease (IBD); explains the workplace challenges faced by employees with IBD; and describes employees' rights and employers' responsibilities regarding job protections under the federal Americans with Disabilities Act (ADA) that may entitle employees to reasonable accommodations within their employment.

## WHAT IS INFLAMMATORY BOWEL DISEASE?

Inflammatory bowel disease (IBD) is a term used to describe chronic inflammation in the digestive tract. IBD encompasses two similar but distinguishable conditions: Crohn's disease (CD) and ulcerative colitis (UC).<sup>1</sup> While these conditions share similar symptoms, they affect different areas of the gastrointestinal tract.<sup>2</sup> Common symptoms of IBD include abdominal pain, diarrhea, weight loss, malnutrition, and fatigue.<sup>3</sup>

While there is no cure for IBD, there are treatments available to help reduce and relieve IBD symptoms.<sup>4</sup> IBD treatments can include medication, surgery, or a combination of the two. Finding a treatment that works for each individual with IBD is important, as untreated IBD can increase an individual's

risk of developing colon cancer.<sup>5</sup> Additionally, ensuring employees have access to a treatment that works for them helps them stay in remission and reduce flare-ups in which their symptoms can return or worsen.



## How does IBD affect life in the workplace?

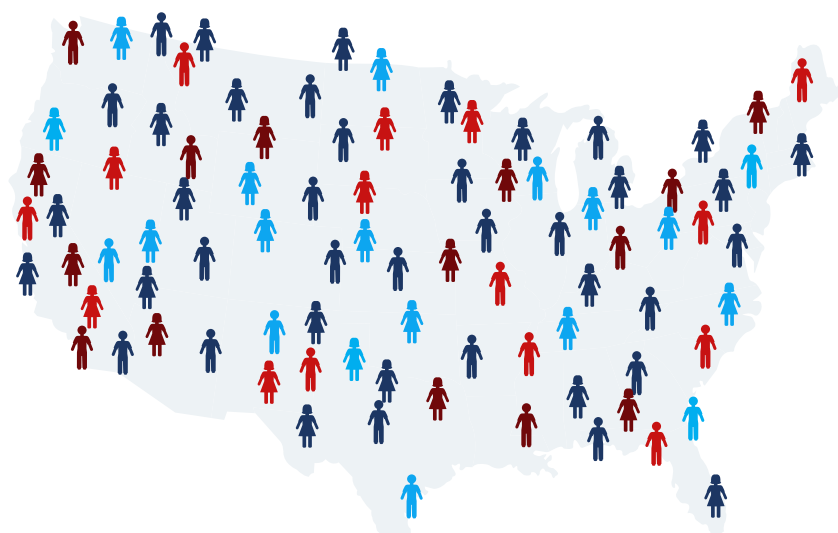
Approximately 1.6 million Americans have IBD, and there are as many as 70,000 new cases of IBD diagnosed each year.<sup>6</sup> Given the prevalence of IBD, both employees and employers should be aware of how IBD can impact individuals in the workplace.

When an employee with IBD is experiencing symptoms, they may have difficulty completing daily activities or concentrating throughout the workday. While many patients with IBD can effectively control their IBD symptoms through treatments or surgery, this does not always prevent flare-ups. Flare-ups can be caused by a variety of factors such as changes in medication, infections, traveling, emotional stress, or tobacco use.<sup>7</sup> Flare-ups can occur at any time, without any warning.

To ensure employees with IBD can properly manage their conditions and workloads, employers should engage employees with IBD to identify what accommodations may be needed. For instance, employees with IBD may frequently need to take a break from work to use the restroom, which can be difficult if there is not a restroom close to their workspace. Additionally, some employees with IBD may require time off for surgical interventions to treat or better manage their condition.

Surgery is considered a common treatment for IBD, with up to 80 percent of patients with Crohn's disease and 20 percent of patients with ulcerative colitis undergoing surgery in their lifetime.<sup>8</sup>

Creating an open dialogue with employers and employees is important for ensuring employees with IBD can maintain a successful and productive career. Without these conversations, some individuals with IBD may refuse job offers or promotions out of concern that they may not meet the demands of the new position due to the constraints of their disease.<sup>9</sup> Others may have concerns that the stress of a new position could lead to flare-ups.<sup>10</sup> Therefore, employers and employees should work together and communicate about the needs of employees with IBD and how federal laws and programs, such as the ADA, can help support employees.



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## WHAT IS THE ADA?

The ADA was signed into law by President George H.W. Bush in 1990.<sup>11</sup> Under the ADA, employers are prohibited from discriminating in the workplace based on an individual's disability. The ADA also requires employers to provide reasonable accommodations in the workplace for employees with disabilities.<sup>12</sup>

### Who does the ADA apply to?

The ADA applies to all employers with 15 or more employees.<sup>13</sup> This includes private employers, state and local governments, employment agencies, labor organizations, and labor-management committees.<sup>14</sup>

### Who does the ADA protect?

The ADA protects qualified individuals with a disability. You are considered a qualified individual if you are:

- Qualified for the position based on the employer's requirements for the job; and
- Able to perform the essential functions of the job with or without reasonable accommodations.<sup>15</sup>

### How does the ADA define a "disability"?

Under the ADA, you are considered to have a disability if you:

- Have a physical or mental impairment that substantially limits one or more major life activities;
- Have a record of having such impairment; or
- Have been regarded as having such impairment.<sup>16</sup>

A major life activity is considered caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, speaking, communicating, or working.<sup>17</sup> A condition does not need to be consistently occurring to be considered a disability under the ADA. A condition that is episodic may also qualify as a disability if it would substantially limit a major life activity when active.<sup>18</sup>



Determining whether a condition is a disability is done on a case-by-case analysis. However, because IBD is a condition that impacts the gastrointestinal tract and can cause abdominal pain, diarrhea, weight loss, malnutrition, and fatigue, these symptoms may impact one or more major life activities for employees with IBD. Therefore, if you have IBD you may be able to establish that you are qualified employee with a disability under the ADA, making you eligible for protections under the law.<sup>19</sup>

### **What is considered a reasonable accommodation?**

A reasonable accommodation is a modification or change to the application or hiring process, the job, the way the job is completed, or work environment that permits a person with a disability who is qualified for the job to experience an equal opportunity in employment.<sup>20</sup> An accommodation is reasonable unless it poses an undue hardship to the employer or poses a direct threat to the health or safety of employees.<sup>21</sup>

For employees with IBD, reasonable accommodations could include placing a desk closer to the restroom, changing job tasks, providing reserved parking, allowing a flexible work schedule, or reassigning the employee to a vacant position.<sup>22</sup> Therefore, you should talk with your employer about what accommodations can be implemented to provide you with an accessible environment for you to work effectively while managing your condition.

If you have IBD but your condition does not qualify as a disability under the ADA, you should nevertheless take the opportunity to speak with your employer about what accommodations your employer is willing to make, even if not mandated by the ADA. For example, if you need a more flexible schedule to manage your condition, you could discuss with your employer the possibility of teleworking, a common practice used during the COVID-19 pandemic.

### **Reasonable Accommodation**

A modification or change to the application or hiring process, the job, the way the job is completed, or work environment that permits a person with a disability who is qualified for the job to experience an equal opportunity in employment.



## Are there exceptions to the reasonable accommodation requirement?

Yes. Employers are not required to provide a workplace accommodation when the accommodation would cause an undue hardship on the employer. Additionally, employers are not required to provide an accommodation if the accommodation would pose a direct threat to the health or safety of an individual with a disability or other employees.<sup>23</sup>

### What is an undue hardship?

An undue hardship occurs when providing the accommodation would be significantly difficult or expensive for the employer.<sup>24</sup> If the accommodation is an undue burden for the employer, then the employer can offer the employee the opportunity to pay for the accommodation themselves.<sup>25</sup>

### What is a direct threat to health or safety?

An accommodation will be considered a direct threat when there is a significant risk of "substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."<sup>26</sup> In determining whether there is a significant risk, employers should consider:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood the harm will occur; and
- The imminence of the potential harm.<sup>27</sup>

The employer must reasonably determine the harm is likely to occur; a speculative harm is an insufficient basis for denying a reasonable accommodation.<sup>28</sup>

## Can I still be fired if I have a disability?

Most employees work on an "at-will" basis, meaning an employer can terminate employment for any reason or no reason at all. However, the ADA makes it illegal to fire an employee solely due to his or her disability. This protection extends to an employee that is on leave under the ADA.

If you qualify for protection under the ADA, your employer may only fire you if one or more of the following conditions apply:

- The termination is unrelated to your disability;
- You do not meet the legitimate requirements of the job with or without a reasonable accommodation; or
- Because of your disability, you pose a direct threat to health or safety in the workplace.<sup>29</sup>

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## How do I file a complaint if I think I have been discriminated against?

If you think you have been discriminated against based on your disability, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) either online or at a local EEOC office.<sup>30</sup> A complaint to the EEOC must be filed within 180 of the alleged discriminatory conduct occurring. Depending on your state's specific laws, you may also have the opportunity to file a state complaint up to 300 days after the discrimination has occurred.<sup>31</sup> State and local governments that process discrimination claims are called Fair Employment Practice Agencies (FEPAs). The EEOC and state and local FEPAs have dual filing agreements that ensure a discrimination claim filed with FEPA or the EEOC is similarly filed with the other agency.<sup>32</sup> This ensures efforts are not duplicated unnecessarily between the EEOC and FEPA offices conducting simultaneous investigations.

For example, in Florida, you can file a discrimination claim with the Florida Commission for Human Relations.<sup>33</sup> Similarly, in the District of Columbia, a discrimination complaint can be filed with the Office of Human Rights.<sup>34</sup>

## Are there other workplace protections under federal law for employees with IBD?

Yes. If you are an employee with IBD, you may also be eligible for certain protections under the Family and Medical Leave Act (FMLA). The FMLA is a federal law that permits eligible employees to take job-protected **unpaid** leave for up to 12 weeks per year.<sup>35</sup> During FMLA leave, your employer must continue any group health insurance coverage under the same terms and conditions as if the employee was not on FMLA leave.<sup>36</sup> To learn more about IBD and FMLA, read Aimed Alliance's Know Your Rights Brochure: Inflammatory Bowel Disease and the Family Medical Leave Act.

## 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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