

# Know Your Rights and Responsibilities: The Basics

updated May 28, 2020

## The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is the most important federal law protecting the rights of people with disabilities and allowing them to become productive members of society.

The ADA makes it illegal for employers, state and local governments, public accommodations, transportation, and telecommunication agencies to discriminate against people with disabilities.

Title I of the ADA applies to employers and states. It sets down rules on how they must treat you, both as a job applicant and an employee with a disability. The law gives you the right to get [reasonable accommodations](#) for your disability at any stage of the application process, after you are offered a job, and during your employment.

## The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) requires private employers with 50 or more employees, as well as all state, local, and federal government employers, to give employees up to 12 weeks (60 days) of unpaid leave a year. To take the leave, you must have a specific reason, such as becoming a parent, recovering from a serious health condition, or taking care of a family member with a serious health condition.

In these situations, any time you take off from work will be “job-protected,” which means that at the end of your leave, you can return to your original job or you will be given another job that is similar. The FMLA also requires that your employer continue to give you any group health insurance benefits you are entitled to during your leave. However, you will still be responsible for any [premium](#) — or part of a premium — you pay for that coverage.

This article discusses these laws and how you can make sure that your rights are respected.

# Know Your Rights and Responsibilities: The Details

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## Americans with Disabilities Act (ADA)

### What Is the ADA?

The [Americans with Disabilities Act](#) (ADA) is a federal law that makes it illegal for employers, state and local governments, public accommodations, transportation, and telecommunication agencies to discriminate against anyone with a disability. Discrimination means you are treated unfairly or unequally because you have a disability.

### How Does the ADA Define Disability?

The ADA uses the term “substantial impairment” to define which disabilities qualify for protection. To be protected under the law, you must have, have a record of, or be thought to have a physical or mental impairment that substantially limits one of more major life activities, such as hearing, seeing, speaking, [learning](#), performing manual tasks, caring for oneself, learning, or working. Major life activities also

include the operation of major bodily functions. You are covered under the ADA if you have a condition that affects any of the following:

- The immune system
- Special sense organs
- The skin
- Cell growth
- Digestive, genitourinary, bowel, and bladder functions
- Nervous system, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions

The ADA also protects you in the following cases:

- You have a history of a disability (such as cancer that is now in remission) or an employer believes that you have a disability, even if you don't.
- You have a relationship with a person who is disabled, even if you do not have a disability yourself. For example, it is illegal for an employer to discriminate against you because your spouse or child has a disability.

The [Equal Employment Opportunity Commission](#) (EEOC) is the federal agency that enforces the ADA. Later in this article, we'll talk more about what to do if you think your employer is not following the ADA.

### **Does the ADA Apply to All Employers?**

The ADA applies to all public and private employers with 15 or more employees and to all state and local government employers, regardless of how many employees they have. The ADA does not apply to federal agencies. Instead, federal agencies have to follow the [Rehabilitation Act of 1973](#), which is almost identical to the ADA.

### **What Parts of Employment Does the ADA Cover?**

The ADA covers all aspects of employment, including:

- Hiring, firing, and pay
- Job assignment, promotion, layoff, training, and fringe benefits (such as health care coverage, pension, or retirement contributions)
- Any other term or condition of employment

It is also illegal for an employer to retaliate against, or get back at, you for asserting your rights under the ADA. So you are protected when you do things like tell your employer you have a disability, ask for a reasonable accommodation, or file a complaint.

If you have a disability and are employed, or looking for a job, your right to ask for [reasonable accommodations](#) is one of the most important parts of the ADA. In addition to protecting people with disabilities from discrimination, the ADA also requires employers to supply you with accommodations at your workplace or when you apply for a job, unless doing so would be an undue burden or hardship to the employer. An undue burden means it would be very difficult or very expensive for the employer to give you the

To learn more about jobs and how to request reasonable accommodations, see DB101's article on [job accommodations](#).

## Who Is Protected Under the ADA?

You are protected under the ADA, if you have a disability (see the section *How Does the ADA Define Disability?* above) and you are qualified to perform the essential functions or duties of a job. This means two things:

1. You must meet certain conditions that the employer needs job applicants to have, such as education, work experience, skills, or licenses.
2. You must be able to perform the fundamental duties of the job with or without [reasonable accommodations](#). An employer cannot refuse to hire you because your disability prevents you from performing duties that are not essential to the job. At the same time, you cannot ask that an essential function be removed from your job description as a reasonable accommodation.

### Example

You work as a telephone marketer and it is an essential function that you need to be able to speak clearly. However, it is not an essential function that you need to be able to lift heavy objects. Your employer cannot fire you because you cannot lift heavy objects or require all employees to be able to lift a certain amount of weight.

## Where Can You Learn More About the ADA?

The opportunity to participate in the employment process is a right guaranteed by both state and federal law. The federal law is Title I of the Americans with Disabilities Act (ADA) of 1990. The federal agency that enforces the employment discrimination part of the ADA is the [Equal Employment Opportunity Commission \(EEOC\)](#).

The EEOC has numerous publications that can help you learn more about your rights, including:

- [The ADA: Your Employment Rights as an Individual with a Disability](#)
- [Disability Related Inquiries and Medical Exams of Employees \(EEOC Guidance\)](#)
- [Reasonable Accommodation and Undue Hardship \(EEOC Guidance\)](#)

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## Discrimination

The [Americans with Disability Act \(ADA\)](#) makes it illegal to discriminate against people with disabilities. Discrimination happens when you are treated unfairly or unequally because of your disability. There are many ways that an employer can discriminate against you, including:

Intentionally not giving you the same job opportunities or benefits as nondisabled coworkers, such as

- A promotion
- A competitive salary
- Unintentionally denying you job opportunities or benefits
- Retaliating against you (getting back at you) because of your disability, which can include:
  - Coercion, which means forcing you to do something against your will
  - Intimidation, which means frightening or bullying you to follow the employer's demands
  - Harassment, which means bothering you with unwanted actions or demands
- Interfering with you, which means making it impossible for you to enjoy the same rights and benefits at work as your nondisabled coworkers

*Intentional discrimination* happens for many reasons. For example, when an employer does not want to pay for your reasonable accommodations or looks down on you because you are disabled, the employer may do something on purpose to you that is unfair.

*Unintentional discrimination* usually happens because an employer evaluates or promotes employees in a way that puts disabled people at a disadvantage. The employer usually does not mean to discriminate and does not realize that certain actions or practices are discriminatory.

### Example

An employer who is hiring heavy equipment operators requires job applicants to take a written test. If a job applicant with dyslexia takes the test, he could be denied the job because he has difficulty reading. This would be unintentional discrimination, because the ability to perform on a written exam is not an important skill for operating heavy machinery. The practice of requiring the written exam puts an entire group at an unfair disadvantage due to their disability. If an exam is necessary, the employer must offer the test in an alternate format that would best accommodate the applicant.

*Retaliation* by an employer may happen if a person with a disability or someone on their behalf filed a complaint, gave evidence, or otherwise participated in an investigation to enforce the ADA.

## How Do I File a Complaint?

If you believe you have been discriminated against because of your disability, you can [file a complaint with the EEOC](#) or the [California Fair Employment and Housing Commission \(FEHC\)](#).

You have to file your discrimination complaint within a certain amount of time or you lose your right to sue. To file your complaint with the EEOC, you have to do so within 300 days (or 10 months) of the date you were discriminated against. You should not wait for the deadline to get too close; file your complaint as soon as you have decided that it is necessary to do so. Contact information for the EEOC is included later in this article.

If it is proven that you have been discriminated against, you have the right to a solution that will place you in the position you would have been in if the discrimination had never happened. This means you may be entitled to get hired, back pay, or reasonable accommodations. You may also qualify to have the employer pay your lawyer's fees. To find out whether you qualify as having been discriminated against, contact the EEOC or FEHC.

## California, the ADA, and the FEHA

California's definition of disability is broader than the federal standard. California's disability laws and rules direct private businesses and nonprofits, as well as the government, to go beyond the ADA, giving additional protections to employees of businesses in California. The law that addresses the rights of persons with disabilities and the obligations of employers in California is the [Fair Employment and Housing Act \(FEHA\)](#). The Fair Employment and Housing Commission (FEHC) is the office charged with helping you with the FEHA.

## Equal Employment Opportunity Commission (EEOC)

To file a discrimination charge through the EEOC, you can contact any EEOC field office, [located in cities throughout the United States](#) or call them at 1-800-669-4000 (TTY 1-800-669-6820).

The EEOC's website includes good information about [how the actual process of filing a complaint works](#).

## Fair Employment and Housing Commission (FEHC)

To file a discrimination charge through the FEHC, you can contact them

- By mail at 455 Golden Gate Avenue, Suite 10600, San Francisco, CA 94102,
- By phone at 1-800-884-1684

The FEHC website has a page dedicated to explaining the [steps in filing a complaint](#). It includes links to contact them.

### Should I file my complaint with the EEOC or the FEHC?

It may seem confusing that there are two very similar laws and agencies that protect individuals with disabilities. You may wonder which one is the best. The truth is that the laws, the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA), go together. The agencies enforcing these laws, the Equal Employment Opportunity Commission (EEOC) and the Fair Employment and Housing Commission (FEHC), actually work together when you file a claim of discrimination. So, in most cases it doesn't matter which office you choose to file your complaint with.

What you should do when you file a claim with either agency is to tell them to "cross-file" with the other agency. That means that they'll make sure that your complaint is actually filed with both agencies.

However, there is one significant difference between the two laws: the ADA only applies to employers with 15 or more employees. If you work for a smaller employer, you should file your complaint with the FEHC.

The State of California has a full list of links through the [Disability Access Info website](#) that provide more information about filing a claim. Here are some details about the sections on the website:

- [Disability laws regarding employment](#) has the actual text of the Fair Employment and Housing Act. This can be pretty complicated reading, but if you need the Act itself for reference it is available online.
- [Resources for employment issues](#) lists links to several resources, including some EEOC publications. It also includes links to information about reasonable accommodations.

Also on the Disability Access Info website is a list of [disability laws and regulations](#), in case you want to review all of the laws that apply to people with disabilities in California.

### Filing a complaint if you work for the federal government

The ADA does not apply to the federal government. However, the federal government has to follow a very similar law called the [Rehabilitation Act of 1973](#). If you work or are applying for a job with the federal government and think that you have been discriminated against because you have a disability, you cannot file your complaint with the EEOC. Instead, you need to file a complaint with the federal agency the employer is part of. This website — [Overview of Federal Sector EEO Complaint Process](#) — is a brief article explaining this process.

## Protection and Advocacy

You can also contact [Disability Rights California](#) when you have questions or problems with reasonable accommodations at work or when you think you are being treated unfairly because of your disability.

## Additional Resources

In California, the [Department of Rehabilitation](#) (DOR) can give you additional information about the ADA and other laws that protect your rights.

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## Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) requires private employers with 50 or more employees and all state, local, and federal government employers to give employees up to 12 weeks of unpaid leave a year for specific reasons. To take the leave, you must have recently had a child, have a serious health condition, or be taking care of a family member with a serious health condition.

In these situations, the leave must be “job-protected,” which means that after the leave, you must be allowed to return to your original job or be given another job that is similar. The FMLA also requires that these employers keep you on group health care benefits during your leave.

### Which Employers Does the FMLA Cover?

The FMLA applies to all public agencies, including state, local, and federal employers, local education agencies (schools), and private-sector employers who employ 50 or more employees.

### Who Is Eligible?

To be eligible for FMLA benefits, you must:

- Work for an employer to whom the FMLA applies
- Have been employed by the employer for at least 12 months (or 1 year)

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Worked for at least 1,250 hours during the 12-month period right before the start of the leave

- Be employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite

### When Can You Use the FMLA to Take an Unpaid Leave?

The FMLA lets you take up to 12 weeks (or 3 months) of unpaid, job-protected leave in a 12-month period for the following family and medical reasons:

- You recently gave birth to a child and need to take care of your child.
- You have an adopted or foster child.
- You need to care for a spouse, son, daughter, or parent with a serious health condition.
- You have a serious health condition and need to take medical leave from work.
- You have “qualifying exigencies” (things that must be taken care of urgently) because your spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a military operation.

If you are an eligible employee and your spouse, son, daughter, parent, or next of kin is a current member of the Armed Forces (including a member of the National Guard or Reserves) and has a serious injury or illness, a covered employer must give you up to a total of 26 weeks (or 6.5 months) of unpaid leave during a single 12-month period to care for the service member.

If you and your spouse work for the same employer, you will be limited to a combined total of 12 weeks of leave (or 26 weeks if the leave includes care for a covered service member with a serious injury or illness).

If you recently gave birth to a child or have adopted or foster children living with you, you can take your leave only within the 12 months that immediately follow the birth of your child or the placement date of your adopted or foster child.

Sometimes it is possible to arrange to take leave in more than one block of time as long as the leave is for one reason. For example, someone might arrange to take leave over time in order to have regular treatments for cancer. It may also be possible for you to continue working but use FMLA leave to lower your usual weekly or daily work schedule.

Because FMLA leave is unpaid, you may wish to use any paid sick leave or vacation leave that you have available before or at the same time as your FMLA leave.

### Serious Health Condition

The Family and Medical Leave Act (FMLA) defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves one or more of the following reasons for absence:

- You are getting [inpatient care](#).
- Following inpatient care, you have a “period of incapacity,” which means that you are unable to do the basics of your job, attend school, or take care of yourself.
- You get follow-up treatment connected with inpatient care.

#### Example

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Leah goes to the emergency room for a severe cut on her hand. She is hospitalized for 2 days to get a course of antibiotics to make sure that the cut doesn't get infected. She then is unable to perform her work duties as an administrative assistant because she can't use her computer. She has 2 follow-up visits with her doctor to check how she is doing. She can apply to use FMLA leave for all of that time.

You get treatment for a condition that makes you unable to work for longer than 3 consecutive days – whether they are work or nonwork days doesn't matter – and

- You get that treatment 2 or more times within a 30-day period or
- That treatment is “continuing,” involving, for example, a prescription or physical therapy.

### Example

Jackson hurts his knee while playing basketball. He's in so much pain he can't go to his job that requires him to stand for hours at a time. He sees his doctor, who recommends multiple visits to a physical therapist over the next 2 months. Jackson can request FMLA leave until he has recovered and can stand and do his job again.

- You get continuing treatment for pregnancy or prenatal care.

### Example

Greta finds out she is pregnant. She arranges to get regular prenatal care and can request FMLA leave when she becomes unable to work.

- You get continuing treatment for an ongoing, serious health condition that:
  - Lasts for a long time
  - Requires doctor's visits at least twice a year
  - May involve occasional times of incapacity, which means you're unable to do the basics of your job or to perform other life activities

### Example

Uma has severe asthma and sees a doctor every 3 months to see how she is doing. But occasionally, she has such severe shortness of breath that she can't leave the house. Uma can apply to use FMLA leave for her periods of incapacity.

- You get continuing treatment for a period of incapacity that is permanent or long-term because of a condition that doesn't have an effective treatment.

### Example

Sean's mother recently had a severe stroke and he wants to take some time off to help care for her. He can apply for FMLA leave because he is caring for a family member with a serious health condition.

- You get multiple treatments for restorative surgery.

### Example

Eli is in a car accident and breaks his jaw when his face smashes against the steering wheel. His time off to have his jaw reconstructed could be covered by FMLA.

- You get treatment for a condition that, if not treated for more than 3 days, would probably leave you incapacitated.

### Example

Nicole has kidney damage related to her high blood pressure. She goes to a hemodialysis center every other day for dialysis treatments. If she did not, she would get very sick and have to be admitted to the hospital, so she would be unable to work. She can apply to have any time she is away from work covered as FMLA leave.

## Continuation of Health Care Benefits

If you had group health insurance through your employer prior to taking FMLA leave, your employer must continue to give you health care coverage during your leave. If you pay part of the cost, you must continue to do so during your leave.

## Returning to Your Job

When you return from your FMLA leave, you must be given your job back. If you are not given the same job, you must be given another one with the same pay and benefits. Taking FMLA leave should not cause you to lose any benefits that you earned before you took the leave.

## Giving Notice that You Need FMLA Leave

If you know ahead of time that you will need to use FMLA leave, you must tell your employer 30 days (1 month) in advance. If you know you will need to take leave in less than 30 days, you should tell your employer right away. If you have to take leave for something you did not know about ahead of time, you should tell your employer as soon as possible. If possible, you should also try to follow your employer's usual policy about asking for leave.

When you ask for FMLA leave, you need to give your employer enough information so your employer can find out if the FMLA applies to your leave request. Depending on the situation, such information may include that you are unable to come to work because you are pregnant, you have been hospitalized overnight, or you or your qualifying family member is getting continuing care from a health care provider.

## Documenting Your Reason for Leave

When you ask for leave because you or your family member has a serious health condition, your employer may ask for certification of the condition from a health care provider. The employer may also seek a second opinion about the condition from another health care provider as long as the employer pays for it.

## Protections Provided by the FMLA

The FMLA makes it illegal for an employer to stop you, fire you, or discriminate against you (treat you unfairly or unequally) when you exercise your rights under the FMLA.

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## California Family Rights Act (CFRA)

The California Family Rights Act (CFRA) authorizes eligible employees to take up a total of 12 weeks of paid or unpaid job-protected leave during a 12-month period. While on leave, employees keep the same employer-paid health benefits they had while working. Eligible employees can take the leave for one or more of the following reasons:

- The birth of a child or adoption or foster care placement of a child.
- To care for an immediate family member (spouse, child or parent) with a serious health condition.
- When the employee is unable to work because of a serious health condition (SHC).

A serious health condition is an illness, injury, impairment, or physical or mental condition that causes or requires:

- Any period of incapacity or treatment in connection with, or after [inpatient care](#)
- Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 consecutive calendar days
- Ongoing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable
- Restorative dental or plastic surgery after an accident or injury

### Note

Voluntary or cosmetic treatments are not "serious health conditions," unless inpatient hospital care is required because of unexpected complications. Routine preventive physical examinations are excluded.

For a full explanation of the CFRA, you can read the [Family and Medical Leave Act and California Family Rights Act Policy and Procedures brochure](#) (PDF).

There are 4 major differences between the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA):

### 1. **Pregnancy as a “Serious Health Condition” (SHC):**

**FMLA:** Covered as a serious health condition under the Family and Medical Leave Act (FMLA).

**CFRA:** Pregnancy itself is not covered as a SHC. Instead, in California, a pregnant employee is entitled to a Pregnancy Disability Leave (PDL) of up to 4 months (16 weeks). Employers need to have only 5 or more employees for them to be subject to this Act, and there is no eligibility period for employees. The eligible CFRA employee can then take a 12-week CFRA baby bonding leave. The first 12 weeks of PDL can run concurrently with FMLA for eligible employees, and for that period, employers need to keep eligible employees health benefits.

### 2. **Registered Domestic Partners Equal to Spouses**

**FMLA:** Not covered.

**CFRA:** Covered under CFRA, registered domestic partners are covered just like spouses. Note that this may give a domestic partner more family leave.

### 3. **“Qualifying Exigency” because of employee’s or family member’s active military duty**

**FMLA:** Eligible FMLA employees are entitled to up to 12 weeks (4 months) of leave for “any qualifying exigency” arising because the employee has a family member (spouse, child, parent) who is on active military duty or who has been notified of an impending call to active duty status, in support of a contingency operation. Health benefits are included. The family member must be a member of the Guard, Reserve or be a retired member of the Armed Services.

**CFRA:** Not covered under CFRA.

### 4. **Care for Ill or Injured Service Member**

**FMLA:** Covered. An employee who is the spouse, child, parent, or next of kin of a covered service member may take a total of 26 weeks (6.5 months) of leave during a 12-month period to care for a covered service member who is ill or injured in the line of duty on active duty. Health benefits are included.

**CFRA:** Covered under CFRA if family member is a spouse, child, or parent.

#### **Note**

Under a 2007 California military spouse leave law, an employee who works 20+ hours per week for an employer with 25+ employees can take an unpaid leave of up to 10 work days while the military spouse is on leave from deployment. Some or all of this may run concurrently with exigency leave.

## **California’s Pregnancy Disability Leave (PDL)**

This law says employers with 5 or more employees must give you up to 12 weeks (4 months) of unpaid disability leave because of pregnancy, childbirth, or a related illness. California Pregnancy Disability Leave (PDL) also requires that employers supply you with a [reasonable accommodation](#) and transfer you to a less hazardous or strenuous job. However, employers can deny any reasonable accommodation request if they can prove it would be an undue burden.

## **California’s Paid Family Leave (PFL)**

This law gives temporary disability insurance to those who take time off of work to care for a seriously ill child, spouse, parent, or registered domestic partner, or to bond with a new child. It is administered by the State Disability Insurance (SDI) program. It provides up to 6 weeks of Paid Family Leave payments to eligible workers who take time off to care for family members. For details of Paid Family Leave, you can read more on

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## Learn More

These organizations can give you additional information about the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), and other laws that protect your rights.

- The [Equal Employment Opportunity Commission](#) (EEOC) is the federal agency that enforces the ADA. To contact the EEOC, call them on the phone at 1-800-669-4000, TTY: 1-800-669-6820.
- The U.S. Department of Labor's [Employment Standards Administration, Wage and Hour Division](#) administers and enforces the Family and Medical Leave Act (FMLA) for all private, state, and local government employees. You can contact them by phone at 1-866-487-9243, TTY: 1-877-889-5627.
- California's [Fair Employment and Housing Commission](#) is the office charged with helping you with the Fair Employment and Housing Act. You can call them at (800) 884-1684 for employment questions or go to their website for more information.
- California's [Employment Development Department](#) has a helpful webpage with [Paid Family Leave information](#) including a list of benefits and any forms you may need.

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## Getting Help with your Benefits

To find an expert who can provide help with your benefits, visit the DB101 [Find an Expert page](#). For questions about work and your Social Security benefits, you can call the [Ticket to Work Help Line](#) at 1-866-968-7842 / 1-866-833-2967 (TTY/TDD).

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## Community Based Organizations

Various community-based organizations provide staff to work with people concerning a range of options on state, federal, public, and private health and income programs. Counseling about benefits, as a community service, is an emerging field of expertise with different levels of services available. Some organizations may work with specific populations while others work with individuals with any type of disability.

[Goodwill Industries](#) services range from personal evaluation and office skills training to career counseling, childcare, and transportation. Some of these centers conduct Benefits Planning Assistance and Outreach for Social Security and Medicare beneficiaries related to work activity.



Find locations at [www.Goodwill.org](http://www.Goodwill.org), or by calling (voice) 1-800-466-3945.

The [California Foundation for Independent Living Centers](#) lists centers serving individuals with all disabilities. Many of these centers conduct Benefits Planning Assistance and Outreach for Social Security and Medicare beneficiaries related to work activity. Most independent living centers can refer callers to local benefit program Jump to menu if they do not have these services.

Find the list of independent living centers at [www.CFILC.org](http://www.CFILC.org), or by calling (voice) 1-916-325-1690 or (TTY) 1-916-325-1695.



The [California Department of Public Health's Office of AIDS](#) lists 1,300 organizations providing HIV/AIDS services throughout California. Some of these organizations offer case management, benefits planning, and benefits counseling services that can include assistance with public and private benefits programs. You can search the list [online](#), or call (voice) 1-800-367-AIDS (2437) or (TTY) 1-888-225-AIDS (2437).

[Disability Rights California](#) provides representation for consumers of public programs who are disabled. Website publications include topics on health care, benefit programs, and In-Home Supportive Services.