

## Clerkships and Internships within the Judiciary: Know Your Rights

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We have put together a number of resources about the rights of disabled employees, interns, and externs. However, judicial clerks must be aware of the sources of their protections. For federal clerks in particular, those sources are not traditional sources like the Americans with Disabilities Act or the Rehabilitation Act of 1973.

### **Federal Clerks**

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 do not apply to federal courts.<sup>[1]</sup> The Judicial Conference of the United States, the primary policy-making body of the federal courts, has adopted a policy establishing wrongful workplace conduct, which includes disability discrimination and any act that would be the definition of discrimination under the Americans with Disabilities Act (ADA).<sup>[2]</sup> That would include a requirement to provide reasonable accommodations, given that denying reasonable accommodations is considered prohibited discrimination under the ADA. However, no universal policy has been established for accommodations requests within the federal judiciary, which can leave room for confusion and unmet access needs among disabled law clerks. The Judicial Conference also makes it clear that judges should not engage in harassment, creating a hostile work environment for judicial employees.<sup>[3]</sup>

There are several federal statutes that also provide access for disabled court employees. The Architectural Barriers Act of 1968 provides that any building altered or constructed with federal funds must remove architectural barriers and be constructed in an accessible manner.<sup>[4]</sup>

Next, the Federal Courts Improvement Act of 2000 provides the federal judiciary with authority to hire personal assistants for disabled judges and employees.<sup>[5]</sup> This Act made it possible for funds to be used to employ personal assistants, such as readers or interpreters, to ensure that a federal judiciary employee could carry out their duties.

Finally, the Court Interpreters Act of 1978 states, “The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.”<sup>[6]</sup> This program not only benefits jurors, lawyers, and witnesses participating in proceedings, but it also benefits judges and court staff who are disabled.

There are also rules that prohibit certain misconduct for judges, including “treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner;” intentional discrimination on several bases, including disability; and retaliation against complainants of such misconduct.<sup>[7]</sup> It should be noted that these forms of misconduct are more severe and intentional. Additionally, this process involves judicial review—and, specifically, review of another judge’s conduct.<sup>[8]</sup>

## **Unpaid Interns and Externs**

Although unpaid externs and interns are generally not considered “employees” under civil rights and anti-discrimination laws, the Judicial Conference’s Model Employment Dispute Resolution Plan determines the rights of workers and the processes that must be followed.<sup>[9]</sup> While changes may be made to the model plan by each court, federal courts may not take away any of the rights provided by the model plan.<sup>[10]</sup> The model plan actually covers unpaid externs and interns; the plan defines them as employees.<sup>[11]</sup>

## **State and Local Clerks**

### **Paid Employees**

Section 504 of the Rehabilitation Act of 1973 generally applies to state and local courts. Any paid intern or clerk of a state or local court that receives federal funds may be protected under Section 504 of the Rehabilitation Act of 1973, which states that no qualified individual with a disability shall be discriminated against. These protections are essentially identical to those of the Americans with Disabilities Act (ADA) and require no minimum number of employees to apply.

Any paid employee of a state or local government may be protected under Title II of the ADA, which addresses discrimination by public entities.<sup>[12]</sup> As per Department of Justice regulations enforcing Title II, if the public entity has 15 or more employees and is otherwise subject to Title I, the requirements of Title I also apply.<sup>[13]</sup> However, if the employer has fewer than 15 employees, Section 504 of the Rehabilitation Act of 1973 (this law is described in more detail below) is applied.<sup>[14]</sup> For more information about Title II requirements, you can view the Department of Justice’s [technical assistance](#).

## **Unpaid Interns and Externs**

You can check out our [Internship and Externship Rights and Accommodations Guide](#) for more information about protections for unpaid interns. It is not likely that unpaid clerks

and interns have guaranteed rights. However, certain states and courts may have their own rules and protections for disabled interns and externs.

## Conclusion

If you are a paid employee or an unpaid intern or extern in a federal court, there are rules in place to protect you from disability discrimination and requiring the court to provide reasonable accommodations. However, navigating access may still prove inconsistent across courts. If you are a paid employee in a state or local court, traditional civil rights laws should provide protections. As an unpaid intern or extern in a state or local court, protections may vary by jurisdiction.

Remember that every judge's chamber is different—your experience and the environment in one judge's chambers may be completely different from your experience in another judge's chambers. Before taking on a job, internship, or externship with a judge, it may be helpful to discuss the culture with previous clerks—particularly disabled clerks—or to ask questions about the judge's process, typical workflow, and priorities.

If you have any questions, please feel free to contact the National Disabled Law Students Association at [info@ndlsa.org](mailto:info@ndlsa.org).

<sup>[1]</sup> See 42 U.S.C. § 12111(5)(B)(noting exceptions to who is defined as an “employer,” including “the United States” and “a corporation wholly owned by the government of the United States”)

<sup>[2]</sup> Judicial Conference of the United States Judiciary Policy § 220.10.10(a), *available at* [https://www.uscourts.gov/sites/default/files/guide-vol12-ch02\\_oji-2019-09-17-post-workplaceconduct\\_protections.pdf](https://www.uscourts.gov/sites/default/files/guide-vol12-ch02_oji-2019-09-17-post-workplaceconduct_protections.pdf).

<sup>[3]</sup> Code of Conduct for United States Judges, Canon 3(B)(4), *available at* <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>; Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 4(a)(2)(C), *available at* [https://www.uscourts.gov/sites/default/files/judicial\\_conduct\\_and\\_disability\\_rules\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf).

<sup>[4]</sup> 42 U.S.C. §§ 4151-4157; see Mamadi K. Corra, Fed. Judicial Ctr., Disability and the Federal Courts: A Study of Web Design 7 (2019), *available at*

<https://www.fjc.gov/sites/default/files/materials/24/Disability%20and%20the%20Federal%20Courts.pdf>.

<sup>[5]</sup> 5 U.S.C. § 3102.

<sup>[6]</sup> 28 U.S.C. § 1827 (a).

<sup>[7]</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 4(a)(2)(B), (3), (4), *available at* [https://www.uscourts.gov/sites/default/files/judicial\\_conduct\\_and\\_disability\\_rules\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf).

<sup>[8]</sup> Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 11, *available at* [https://www.uscourts.gov/sites/default/files/judicial\\_conduct\\_and\\_disability\\_rules\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf).

<sup>[9]</sup> Judicial Conference of the United States Judiciary Policy § 220.30, *available at* [https://www.uscourts.gov/sites/default/files/guide-vol12-ch02\\_oji-2019-09-17-post-workplaceconduct\\_protections.pdf](https://www.uscourts.gov/sites/default/files/guide-vol12-ch02_oji-2019-09-17-post-workplaceconduct_protections.pdf).

<sup>[10]</sup> *Id.* at § 220.30(c)(1).

<sup>[11]</sup> Model Employment Resolution Plan §§ 2, 3(B), *available at* <https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2b-model-edr-plan.pdf>; Jud. Conf. of the U.S., Report of the Proceedings of the Judicial Conference of the United States 22 (Sept. 17, 2019), *available at* [https://www.uscourts.gov/sites/default/files/judicial\\_conference\\_report\\_of\\_the\\_proceedings\\_september\\_2019\\_0.pdf](https://www.uscourts.gov/sites/default/files/judicial_conference_report_of_the_proceedings_september_2019_0.pdf).

<sup>[12]</sup> For more information about whether you may be protected under Title II, visit [https://www.ada.gov/ada\\_title\\_ii.htm](https://www.ada.gov/ada_title_ii.htm). You must be a qualified individual with a disability, among other factors.

<sup>[13]</sup> 28 C.F.R. § 35.140(b)(1).

<sup>[14]</sup> **28 C.F.R. § 35.140(b)(2).**

