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Definition of Disability Under the ADA:
A Practical Overview and Update

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Definition of Disability Under the ADA: A Practical Overview and Update

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University. It was written in September, 2001 by Sheila D. Duston, an attorney-mediator practicing in the Washington, DC metropolitan area.

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The full text of this brochure, and others in this series, can be found at: www.ilr.cornell.edu/ped/ada. Research reports relating to employment practices and policies on disability civil rights legislation, are available at: www.ilr.cornell.edu/ped/surveys

For further information, contact the Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; 607/255-2906 (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax).

More information is also available from the ADA Technical Assistance Program and Regional Disability and Business Technical Assistance Centers, (800) 949-4232 (voice/TTY), www.adata.org

Introduction

The first issue in almost all cases arising under Title I of the Americans with Disabilities Act (ADA) is whether the individual has a “disability.” The ADA defines disability as an impairment that substantially limits a major life activity; a record of such an impairment; or being regarded as having such an impairment. Numerous court cases have been dismissed based on a finding that the individual did not have a disability as defined under the ADA.

When an employer is presented with a request for accommodation or other action required by the ADA, whether the individual has an ADA disability is often an important threshold question. At times, the disability may be obvious. In other situations, ADA coverage may not be very clear. Where it is a close call as to whether the impairment is sufficiently severe or of sufficient duration to qualify as an ADA disability, an employer with good human resources management may skip ahead to the issue of reasonable accommodation. If the employer is able to accommodate the individual's request and enable him/her to apply for a job or keep him/her on the job without undue cost or disruption, it may choose to do so as a smart employment practice regardless of whether there is an ADA obligation.

What is an ADA Impairment?

Generally, whether an individual has an ADA impairment is reasonably clear and not likely to be litigated if the impairment is obvious or there is a documented diagnosis combined with a substantial limitation on a major life activity. An “impairment” may be physiological, mental, or psychological. The ADA broadly defines the term “impairment” as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body's multiple systems, including the special sense organs, neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine systems. The ADA further defines “impairment” as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. Neither the statute nor regulations interpreting and implementing the

ADA attempt to list all covered disorders or conditions. A comprehensive listing would be almost impossible given the number and variety of possible impairments.

The definition of impairment does not include physical characteristics (e.g., left-handedness or normal height or weight deviations), common personality traits (e.g., a quick temper), pregnancy, and cultural or economic disadvantages. There are also certain statutory exclusions from the definition of disability, including individuals engaged in the current use of illegal drugs when the employer acts on the basis of such use.

What is a Major Life Activity?

The U.S. Equal Employment Opportunity Commission (EEOC) has stated in its ADA regulations¹ and other guidance documents that major life activities include, but are not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, reaching, sleeping and mental/emotional processes such as thinking, concentrating and interacting with others. In litigation, the EEOC has also argued that eating and elimination are major life activities.²

Overall, there has been a lot of litigation examining what constitutes a major life activity. Courts have generally, but not always agreed with the EEOC's listed activities and have also addressed other major life activities that the EEOC has not previously articulated. At the highest level, in a case involving asymptomatic HIV infection, the Supreme Court found that the individual had a disability, holding that reproduction is a major life activity.³ The Court noted that an activity does not have to have a public, economic, or daily dimension to be a major life

activity. The Supreme Court has also noted in passing that running is a major life activity.⁴

What Does “Substantially Limits” Mean?

An impairment is only a “disability” under the ADA if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity as compared with an average person in the general population. The nature and severity, duration, and impact of the impairment would all be relevant factors to consider.

The EEOC has taken the position that some impairments, for example, blindness or deafness, are inherently substantially limiting. Many other impairments, however, may or may not be disabling depending on their impact on the particular individual's functioning.

There has been a lot of litigation on what “substantially limits” means. A survey of the case law indicates that merely because an impairment affects a major life activity generally does not necessarily mean that it will meet the “substantially limits” standard. The restriction must be significant. Moreover, courts have sometimes looked at the activities the person can perform in determining whether s/he is actually substantially limited. For example, in one case the court found that the plaintiff was not substantially limited in walking, noting that the plaintiff lived an active lifestyle, could hunt, fish and play eighteen holes of golf as well as anyone, march double time and run a mile and a half in 15 minutes.⁵

In terms of duration, short-term impairments with no long-term or permanent effects would not generally be considered “substantially limiting.” The trick is in defining short term. EEOC has stated that while this is always a case-by-case determination, an impairment that lasts a few days or weeks would generally be considered short term. (One EEOC Compliance Manual example found a six week impairment to be short term.) Various courts have held that conditions lasting from two weeks to three and a half months are short term and not considered to

¹ 29 C.F.R. Part 1630 (2001).

² For an excellent survey of the case law and EEOC policy, see Resolving ADA Workplace Questions, How Courts and Agencies are Dealing with Employment Issues, David K. Fram (National Employment Law Institute, 10th Edition, April 2001)(referred to as Resolving ADA Workplace Questions). Generalized references to case law trends or court findings throughout this article are credited to this comprehensive resource unless otherwise noted.

³ Bragdon v. Abbot, 524 U.S. 624 (1998).

⁴ Sutton v. United Airlines, Inc., 527 U.S. 471 (1999).

⁵ Lamb v. Bell County Coal Corp., 1999 US APP LEXIS 22201 (6th Cir. 1999)(unpublished).

be a disability. Other courts have found that conditions lasting seven months and ten months (six months of severe restriction followed by four months of moderate restriction) were not disabilities because they were respectively, too short or only of temporary duration.⁶

However, the EEOC and a number of courts have taken the position that if the impairment lasts at least several months, it may be substantially limiting. The common dictionary definition of “several” is more than two or three but not many.⁷ The EEOC’s position is that an impairment does not have to be permanent to qualify as a disability.

Frequently, it may not be possible to predict the exact duration of a medical condition. The EEOC’s position is that if a condition is severe with an indefinite and unknowable duration, it may qualify as a disability. Chronic conditions that are substantially limiting when active may also be disabilities. This would include, for example, episodic conditions such as bi-polar disorder. A temporary impairment that may have permanent or residual long-term effects, such as a concussion resulting in permanent brain damage, may also rise to the level of disability.

In short, an impairment or its resultant effects must be sufficiently severe and sufficiently long term (at least several months) to rise to the level of disability, but need not be permanent.

Example: An individual has a ten-pound lifting restriction because of a back impairment. She would generally be viewed as being substantially limited in the major life activity of lifting because most people are able to lift amounts in this weight range.

Example: An individual has a thirty-five pound lifting restriction because of a back injury. He would generally not be viewed as substantially limited in the major life activity of lifting since this does not constitute a significant restriction on the ability to lift,

work or engage in other major life activities when compared to the average person’s abilities.

What About Mitigating Measures?

The position initially taken in the EEOC regulations, and followed by many courts, was that mitigating measures such as medication or prosthetic devices should not be considered in determining whether an individual’s impairment rises to the level of disability. The Supreme Court, in a series of three decisions in 1999, took a completely different position.

In each of these cases, the primary issue before the Supreme Court was whether the plaintiffs--sister pilots whose uncorrected vision did not meet an airline’s standards,⁸ a mechanic whose high blood pressure precluded him from meeting Department of Transportation (DOT) standards for commercial drivers’ licenses,⁹ and a truck driver with monocular vision who could not meet regular DOT licensing standards¹⁰--qualified as persons with a disability. The Court found that none of them did when mitigating measures, such as glasses, medication and compensating behaviors, were taken into account. The Court held that a disability exists only when an impairment substantially limits a major life activity, not where it “might,” “could,” or “would” be substantially limiting if mitigating measures were not taken.

What Does EEOC Now Look for in Determining Disability?

After the Court issued its decisions, the EEOC sent new instructions to its field investigators regarding impairments and mitigating measures and compensating behaviors. EEOC instructed its investigators to focus on whether the measure or behavior fully or only partially controls the symptoms or limitations of the impairment.

⁶ See Resolving ADA Workplace Questions, Ch. 1.

⁷The American Heritage Dictionary (3rd Ed. 1996).

⁸ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

⁹ *Murphy v. United Parcel Service*, 527 U.S. 516 (1999).

¹⁰ *Kirkingburg v. Albertson’s*, 527 U.S. 555 (1999).

The instructions noted that the following major life activities may be significantly impacted by certain mitigating measures:

- Thinking, concentrating, and other cognitive functions may be impacted by side effects of certain medications;
- Walking, standing and lifting may be substantially limited even with the use of prosthetic legs, feet or hands;
- Eating – severe nausea may be caused by certain medications, or a very rigid eating schedule may be required;
- Caring for oneself – e.g., the changes/disruptions to daily activities that are required to control diabetes;
- Sleeping – certain medications may cause drowsiness or sleep may be disrupted by certain medications;
- Performing manual tasks – fine motor skills may be impacted by certain medications;
- Reproduction – certain drugs for controlling seizures or psychiatric illnesses may cause birth defects thus substantially limiting procreation; and
- Working

EEOC noted that mitigating measures may not be as effective in all circumstances (e.g., during times of stress or in certain weather conditions) or may sometimes lose effectiveness over time. The EEOC field instructions also direct investigators to focus on whether a mitigating measure has any side effects, either alone or in combination with another mitigating measure, that may substantially limit a major life activity.

Note that mitigating measures must be considered under all three prongs of the definition of disability.

Example: An individual has insulin dependent diabetes and uses insulin to attempt to control his condition. Nonetheless, he must eat certain types and quantities of food in order to minimize blood sugar fluctuations. In addition, when his blood sugar level drops, he must stop whatever he is doing and find the kinds of food that will bring his sugar levels back to normal. If he does not do this, he will experience disabling

episodes of dizziness, weakness, and loss of concentration. This individual could be viewed as being substantially limited in the major life activity of eating.

EEOC has stated that some conditions, such as severe back problems and most forms of heart disease and cancer, may require a substantial limitation of a major life activity to prevent or lessen the likelihood or severity of recurrence. For example, some people with severe back problems may be physically able to perform an activity, but cannot do so because performing it could make their condition more severe. Most courts have also found that cancer is a covered disability, either because the cancer limits a major life activity or because there is a record of such a limitation.¹¹ EEOC has also stated that pregnancy would not be considered a disability, although complications associated with pregnancy, such as high blood pressure resulting in extended bed rest, may substantially limit major life activities.

Disabled in Working

Working is probably the most difficult major life activity to analyze and the EEOC instructions state that its investigators initially should determine whether an impairment substantially limits a major life activity other than working. If no other major life activities are significantly limited, the last step of the analysis is to determine whether the individual is substantially limited in the major life activity of working.

A person is substantially limited in the major life activity of working if s/he is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared with the average person having comparable training, skills and abilities. The geographical area to which the person has reasonable access is considered, as is the number of jobs requiring similar skills and abilities (class) and dissimilar skills and abilities (broad range). The inability to perform a single,

¹¹ See Resolving ADA Workplace Questions, Ch. I. But see *Ellison v. Software Spectrum, Inc.*, 85 F.3d 187 (5th Cir. 1996)(woman who was treated for breast cancer with daily radiation did not have a disability under the ADA, because she was not limited in the major life activity of working, which was the only major life activity raised at the lower court level).

particular job does not constitute a substantial limitation in the major life activity of working.

EEOC has stated that a class of jobs could include a category like heavy labor jobs (e.g., a laborer with a back condition that precludes heavy lifting), jobs requiring the use of a computer (e.g., a person with a visual impairment that precludes them from reading off a computer screen), or clerical jobs.

EEOC has also given examples of when a person is restricted in performing a “broad range of jobs.” These include someone precluded by allergy from working in all high-rise buildings and someone precluded because of a hearing impairment from working in all noisy environments like carpentry, auto repair, demolitions and airport grounds work.

There has been a lot of litigation on this issue.¹² For example, one court analyzed whether an employee’s tendonitis, which precluded her from working in jobs involving repetitive hand motions, substantially limited a class or broad range of jobs. The court found that the restrictions precluded the employee from a wide group of jobs in the metropolitan area, including virtually any assembly line job that required repetitive movement.¹³ In another case, the court considered whether a “roof bolter” with a shoulder injury was substantially limited in working when he could not perform overhead work, heavy lifting, or pulling and pushing out from his body. The court stated that this injury could pose a substantial limitation in working because it might apply to a broad range of jobs, including any position in at the coal mine or in related work such as construction.¹⁴

Another court found that a person’s non-insulin dependent diabetes caused him to become so irritable that he could not get along with co-workers and others substantially limited him in working. The court opined

that the ability to get along with coworkers and customers is necessary for all but the most solitary of occupations.¹⁵

Courts have found that the inability to work for a particular supervisor¹⁶ or in a particular building¹⁷ does not rise to the level of being unable to perform a class of jobs or a broad range of jobs in various classes.

Another important point is that courts sometimes seem to focus on what jobs the person can still do in determining whether the person is disabled in working, which is not part of the EEOC’s analysis. For example, in one case, the Supreme Court held that the plaintiff was not substantially limited in working, noting that there were many other jobs the plaintiff could perform, including mechanic jobs not requiring DOT certification.¹⁸

Record of Disability

The second prong of the definition of disability covers persons who have a history of, or have been classified or misclassified as having, a physical or mental impairment that substantially limited one or more major life activities. Note that an individual who has a record of disability under other laws or regulations does not necessarily have a record or disability under the ADA. For example, a finding of disability under workers’ compensation laws does not necessarily equate to an ADA disability.

EEOC has also noted that since mitigating measures must now be considered, some people who do not have a current disability will come under this second prong based on their condition prior to taking medication or beginning use of another mitigating measure.

Example: Several years ago, an individual experienced a severe form of depression that made it impossible to function in day-to-day life. Her condition necessitated a month of hospitalization and a year of outpatient treatment, including

¹² See Resolving ADA Workplace Questions, Ch. I.

¹³ Depaoli v. Abbott Laboratories, 140 F.3d 668 (7th Cir. 1998).

¹⁴ Cochrum v. Old Ben Coal Co., 102 F.3d 908 (7th Cir. 1996).

¹⁵ Gilday v. Mecosta County, 124 F.3d 760 (6th Cir.), amended, 7 AD Cases 1268 (6th Cir. 1997).

¹⁶ See, e.g., Weiler v. Household Finance Corp., 101 F.3d 519 (7th Cir. 1996).

¹⁷ See, e.g., Mobley v. Board of Regents of University System of Georgia, 924 F. Supp. 1179 (S.D. Ga. 1996).

¹⁸ Murphy v. United Parcel Service, 527 U.S. 516 (1999)

psychotherapy and medication. She has now made a full recovery. This person has a record of disability under the ADA.

Regarded as Disabled

An individual is covered under this prong if s/he can show that the employer made an employment decision based on myths, fears or stereotypes about disability. The third prong of the definition of disability can arise in any of three ways.

A person may have an impairment that is not substantially limiting, but is treated by the employer as though it is substantially limiting. For example, an individual with controlled high blood pressure may have no physical restrictions. If the employer refuses to assign him/her physical work of any kind in light of his condition, the employer is regarding him/her as being disabled.

A person may have an impairment that is only physically limiting because of the attitudes of others. For example, an employee has severe facial scars from an accident. The employer refuses to put this person in a customer service position, although s/he is able to do the job, because it is concerned about the public's reaction. This impairment is only substantially limiting because of the negative attitudes of others.

An employer incorrectly believes that a lifeguard has a serious heart condition and removes him/her from the job. In fact, the lifeguard does not have a heart condition. The employer is regarding him/her as having a substantially limiting impairment.

The EEOC has stated that an employer's knowledge of an impairment (or perceived impairment) is critical in "regarded as" cases. Courts have also adopted this position. For example, one court rejected the employee's "regarded as" claim because the employee produced no evidence that supervisors and management were aware that she had a mental impairment diagnosis.¹⁹

On the other hand, an employer's awareness of an employee's impairment is not enough by itself to demonstrate that the employer regarded the employee as

disabled or that the perception caused the adverse employment action.²⁰

Regarded as Disabled in Working

Many "regarded as" cases involve the major life activity of working. To be covered under this prong, an individual would need to show that the employer perceived him/her as having an impairment that prevented or substantially limited work in a class of jobs or a broad range of jobs in various classes (not just one job or a narrow class of jobs). The EEOC has taken the position that it will analyze these cases by looking at the criterion that the employer has used to disqualify the individual and determine whether the criteria applies to one particular job or to a class or broad range of jobs. Such criteria might include:

- vision or hearing standards
- ability to lift certain weights
- working at certain heights
- working with certain tools, equipment or substances
- ability to work under high stress situations.

Note that the criteria need not be a formal requirement listed in a job description or elsewhere but rather is the reason that the employer thinks the person cannot do the job. The EEOC has stated that an employer can be liable under the "regarded as" section of the ADA only if it believes that the impairment precludes or restricts the person from meeting a qualification standard or criterion. This approach is also reflected in the case law.

For example, in one case the court determined that the employer believed that the employee could not handle the stress or hours of a supervisory position following surgery for a brain tumor and demoted him. The court concluded that this employer regarded the employee as unable to perform a class of supervisory jobs.²¹

¹⁹ Webb v. Mercy Hospital, 102 F.3d 958 (8th Cir. 1996).

²⁰ See, e.g., Reeves v. Johnson Controls World Services, Inc., 140 F.3d 144 (2d. Cir. 1998).

²¹ Cline v. Wal-Mart Stores, Inc., 144 F.3d 294 (4th Cir. 1998).

Genetic Discrimination

The “regarded as” part of the definition of disability may protect an individual against discrimination based on genetic information relating to illness, disease or other disorders. For example, the EEOC has stated that if an employer withdraws a job offer based upon a person’s medical history showing an increased susceptibility to colon cancer, because of the employer’s concerns about matters such as productivity, insurance costs, and attendance, the employer would be regarding the person as having a substantially limiting impairment.

Practical Tips on Determining Disability

Medical documentation is a good starting point for determining disability since it may include information on limitations related to an impairment. Generally, the individual with a disability will be able to describe his/her limitations. Friends, family members, supervisors, rehabilitation counselors and occupational or physical therapists may also have direct knowledge of a person’s restrictions. The employer’s own observations may also supply or confirm relevant information relating to disability.

Resources:

ADA Regional Disability and Business Technical Assistance Center Hotline

(800) 949-4232 (voice/TDD)

U.S. Equal Employment Opportunity Commission

1801 L Street, NW

Washington, DC 20507

To be connected to the nearest field office, call (800) 669-4000 (voice), (800) 669-6820 (TTD). To order publications, call (800) 669-3362 (voice), (800) 800-3302 (TDD). For on-line information, including EEOC Compliance Manual Section 902, Definition of the Term “Disability,” go to: <http://www.eeoc.gov>

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The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at: <http://www.eeoc.gov>

Other Brochures on the ADA Produced by the Program on Employment and Disability

Available on-line at www.ilr.cornell.edu/ped/ada

Human Resource Issues Surrounding Implementation of the ADA

- The ADA and Collective Bargaining
- The ADA and Personnel Training
- The ADA and Total Quality Management
- The Americans with Disabilities Act of 1990 and Injured Workers
- Assistive Technology, Accommodations, and the Americans with Disabilities Act
- Definition of Disability under the ADA: A Practical Overview and Update
- Diversity and the ADA
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- A Human Resource Perspective on Implementing the ADA
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- Performance Management and Employees with Disabilities
- Pre-employment Screening Considerations and the ADA
- Pre-employment Testing and the ADA
- Reasonable Accommodation under the ADA
- The Role of Disability Management Programs in ADA Compliance

Reasonable Accommodation in the Implementation of the ADA

- Accommodating the Allergic Employee in the Workplace
- Assistive Technology, Accommodations, and the Americans with Disabilities Act
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- Employing and Accommodating Individuals with Histories of Alcohol and Drug Abuse
- Employing and Accommodating Individuals with Spinal Cord Injuries
- Employing and Accommodating Workers with Psychiatric Disabilities
- Employment Considerations for People Who Have Diabetes
- Working Effectively with Employees Who Have Epilepsy
- Working Effectively with Employees Who Have Sustained a Brain Injury
- Working Effectively with Individuals Who Are HIV-Positive
- Working Effectively with People Who Are Blind or Visually Impaired
- Working Effectively with People Who Are Deaf or Hard of Hearing
- Working Effectively with People with Attention Deficit Hyperactivity Disorder
- Working Effectively with People with Learning Disabilities
- Working Effectively with Persons Who Have Cognitive Disabilities
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- Workplace Accommodations for People Living with Multiple Sclerosis
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- Your Employees and Cancer –Working Together