



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

Introduction

The first issue in almost all cases arising under Title I of the Americans with Disabilities Act (ADA) is whether the plaintiff has a “disability.” Because the U.S. Congress crafted the definition of disability in Title I of the ADA in order to eliminate discrimination in the workplace, it may differ from the definition of disability used in other federal, state and local statutes. The ADA defines disability as a physical or mental 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 upon a finding that the individual filing suit 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, the issue of whether the individual has an ADA disability is often an important threshold question. At times, the impairment may clearly qualify as an ADA disability. In other situations, variables such as the severity or duration of the impairment may make ADA coverage uncertain. Where it is a close call, 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 without undue cost or disruption, it may choose to do so as a smart employment practice, regardless of whether the ADA applies.

What is an ADA Impairment?

Generally, whether an individual has an ADA impairment is reasonably clear. It will not likely lead to litigation if the impairment is obvious or if there is a documented diagnosis combined with a substantial limitation of 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?

Once it is determined that an individual has an impairment as defined by the ADA, one must determine whether that impairment substantially limits a major life activity. As originally enacted in 1990, the ADA did not elabo-

rate upon the meaning of the term “major life activity.” EEOC regulations implementing the ADA did state, however, that functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working are major life activities. Since the early 1990’s, federal courts have identified additional major life activities, such as sitting, standing, bending, communicating, lifting, reaching, sleeping, eating, reading and mental/emotional processes such as thinking, concentrating and interacting with others. All of the major life activities mentioned above are now specifically included in the ADA definition of major life activities due to the ADA Amendments Act of 2008 (ADAAA). In addition, Congress broadened the definition of major life activities to include the operation of major bodily functions, such as: the functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

The changes in the ADA definition of major life activity are of utmost importance to employers trying to determine whether employees and/or applicants constitute individuals with disabilities entitled to accommodations under the ADA. Since the ADA was first enacted, there has been a great deal of litigation examining what constitutes life’s major activities. Courts have not always agreed with what the EEOC or other courts identified as major life activities, and thus, some jurisdictions may have ruled that activities now specifically identified as major life activities were not classified as such. Employers must evaluate each new case on an individual basis in light of the ADAAA, keeping in mind that the list of activities in the ADA is non-exhaustive.

What Does “Substantially Limits” Mean?

The ADA does not explicitly define the term “substantially limits.” As a result, its meaning has been the subject of debate and litigation since the ADA was first enacted, and individuals need to be familiar with pre-ADAAA interpretations of that term in order to understand how courts may interpret it today.

Prior to the ADAAA, the U.S. Supreme Court ruled that, in order to be “substantially” limiting, an impairment must prevent or severely restrict an individual from doing activities that are of central importance to most people’s daily lives. Similarly, the EEOC regulations stated that an impairment would be considered substantially limiting if an individual could not perform, or was significantly limited in the ability to perform, an activity as compared with an average person in the general population. Both bodies of law adopted the principle that intermittent impairments are not substantially limiting.

When Congress passed the ADAAA, it stated among its findings that these interpretations of “substantially limiting” expressed too high a standard for plaintiffs to prove. It did not, however, adopt a new definition of the term “substantially limits.” Thus, in this ADAAA era, an individual’s impairment must limit one or more major life activities in a substantial manner, but need not limit that major life activity in a severely restrictive fashion, in order for the impairment to qualify as an ADA disability. Some impairments, for example, blindness or deafness, are inherently substantially limiting. Others, however, may or may not be disabling depending on their impact on that particular individual’s functioning, as compared to that of the average person. In determining the extent of one’s limitation, the nature, severity, duration, and impact of the impairment are relevant factors.

Courts may examine the activities the employee or applicant is able to 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.

In terms of duration, the ADA does not specify the exact length of time that an impairment must last in order to be considered substantially limiting. Short-term impairments with no long-term or permanent effects, however, would not likely be considered “substantially limiting.” The trick is in defining short-term. Language in the ADAAA suggests that six months may be an appropriate benchmark for determining whether an impairment is short or long-term. As always, each case should be considered based upon its own unique facts and circumstances.

When the exact duration of a medical condition cannot be predicted, the EEOC suggests that the condition may qualify as a disability if it is severe and has an indefinite and unknowable duration. 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 to rise to the level of disability, but it 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. In a series of three decisions filed in 1999, the Supreme Court ruled to the contrary, holding that impairments that would otherwise qualify as disabilities under the ADA would nevertheless fail to qualify if mitigating measures lessened the impact of that impairment upon the major life activity at issue. 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.

Congress rejected the Supreme Court's interpretation of the ADA regarding mitigating measures when it passed the ADAAA, which explicitly requires that impairments be considered in their unmitigated state (except in the case of ordinary eyeglasses or contact lenses) when determining whether such impairment rises to the level of an ADA disability. Thus, a person with a hearing impairment, for ex-

ample, who uses hearing aids will qualify as an individual with an ADA disability under current law, even if he or she can hear as well as the general populace when using hearing aids.

This is an additional circumstance in which employers must exercise great care in deciding whether an employee/applicant is eligible for ADA protections. Indeed, certain mitigated impairments that courts concluded were not ADA disabilities prior to the ADAAA may now constitute ADA disabilities in light of this new law.

Disabled in Working

The major life activity of "working" has been historically one of the more difficult major life activities to identify. Although working was not mentioned as a major life activity in the ADA as originally enacted, the ADAAA specifically includes "working" in its non-exhaustive list of major life activities.

The ADAAA does not provide any further guidance, however, as to the proof required to show that an impairment substantially limits one's ability to work. EEOC regulations and instructions enacted before the ADAAA state that its investigators initially should determine whether an impairment substantially limits a major life activity other than working. It instructs investigators to consider the activity of working only if the impairment does not significantly limit any other major life activity.

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). Proof that an individual cannot perform a single, particular job is not sufficient. In addition, the inability to work for a particular supervisor or in a particular building does not rise to the level of being unable to perform a class of jobs or a broad range of jobs in various classes.

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. 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. 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.

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.

Now that the definition of major life activity includes major bodily functions and mitigating factors are not considered in determining whether an impairment substantially limits a major life activity, one would assume that major life activities other than working will more often be applicable. If that is the case, the struggle to interpret whether the major life activity of working has been substantially limited will occur less often.

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.

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

Note that an individual who has a record of disability under other laws or regulations does not necessarily have a record of disability under the ADA. For example, a finding of disability under workers’ compensation laws does not necessarily equate to an ADA disability.

Regarded as Disabled

Based upon language adopted in the ADAAA, an individual is “regarded as” disabled if s/he establishes that s/he was subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. Before the passage of the ADAAA, many courts applied the “regarded as” prong of the disability definition much more narrowly, requiring that an individual’s impairment limit a major life activity, regardless whether it was perceived or actual. That former interpretation of the law no longer applies.

The ADAAA limits applicability of the “regarded as” prong in two important ways. First, it states that this prong of the disability definition does not apply to impairments that are transitory or minor, meaning an impairment that has an actual or expected duration of six months or less (a broken leg, for example). Second, while the ADA prohibits employers from taking adverse employment action against an employee or applicant that it “regards” as disabled, it does not require the employer to accommodate such individual. Thus, the degree of protection afforded an employee or applicant under this prong of the disability definition is less than that under the other two prongs (i.e., where the individual has a disability or a record thereof).

A person may have a claim under this third prong of the disability definition in a number of different circumstances. First, an employer regards its employee/applicant as disabled if it mistakenly believes that s/he has a disability. Second, a person may have an impairment that is not substantially limiting (and thus not a disability). But, if the employer treats that impairment as though it is substantially limiting, it has regarded the individual as disabled.

Finally, an impairment can be physically limiting only because of the attitudes of others, such as a situation in which an individual has severe facial scars from an accident. If the employer refuses to put this person in a customer service position, despite his/her ability to do the job, because of a concern for public reaction, it has regarded the individual as disabled.

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. 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.

Regarded as Disabled in Working

If an employer regards an employee or applicant as having an impairment that affects “work,” that individual would need to show that the employer perceived him/her as being prevented from, or substantially limited in, working 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.

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 Disability and Business
Technical Assistance Center Hotline
800.949.4232 (voice/TTY)

Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

To be connected to the nearest field office, call 800.669.4000 (voice), 800.669.6820 (TTY). To order publications, call 800.669.3362 (voice), 800.669.3302 (TTY). For online information, including EEOC Compliance Manual Section 902, Definition of the Term “Disability,” go to: <http://www.eeoc.gov>

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The U.S. Equal Employment Opportunity Commission has reviewed it for accuracy. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Commission or the publisher. EEOC interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and Enforcement Guidance.

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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>

About this Brochure

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, Director, Employment and Disability Institute, Cornell University ILR School.

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The full text of this brochure, and others in this series, can be found at www.hrTips.org.

More information on accessibility and accommodation is available from the ADA National Network at 800.949.4232 (voice/ TTY), www.adata.org.

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