



## **Definition of Disability**

**Note:** This information does not constitute legal advice. The law is constantly changing and application of the ADA depends on the specific circumstances of each case. Consult an attorney when faced with legal issues.

### **Do I Qualify as Disabled under the ADA?**

In order to be protected from employment discrimination under the Americans with Disabilities Act (ADA), one must be considered an individual with disabilities.

- Disability is determined on a case by case basis
- The definition of disability under the ADA includes 3 categories of persons:
  1. Individuals who have physical or mental impairments that substantially limit one or more major life activities (actual disability); or
  2. Individuals who have records or histories of these impairments (record of disability); or
  3. Individuals who are regarded as having these impairments (regarded as disabled).

### **What conditions qualify as physical and mental impairments?**

- Physical impairments include physiological disorders and conditions.
  - Examples include: cancer, cerebral palsy, epilepsy, hearing impairment, HIV infection, muscular dystrophy, multiple sclerosis, and visual impairments.
  - There are many other conditions that may qualify as physical impairments that are not on this list.
- Mental impairments include mental or psychological disorders.
  - Examples include: intellectual disabilities, learning disabilities, and mental illness.
  - There are many other mental conditions that may qualify as mental impairments.

- Individuals who have completed or are participating in drug rehabilitation programs and are no longer using illegal drugs are considered individuals with disabilities.
- Individuals who are currently using illegal drugs are not protected under the ADA.
- The following conditions are specifically excluded from protection under the ADA: bisexuality, compulsive gambling, exhibitionism, homosexuality, kleptomania, pedophilia, pyromania, transsexualism, transvestism, and voyeurism.

**What does it mean for impairments to substantially limit major life activities?**

- Major life activities include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing lifting, bending, speaking, breathing, learning, reading, concentrating, communicating, and working.
- Major life activities also include major bodily functions such as digestive, bowel, bladder, neurological, brain, respiratory, immune, circulatory, endocrine, and reproductive functions.
- These lists are not exhaustive. Other activities may be considered major life activities.
- A major life activity is substantially limited when a person is either
  1. Unable to perform the activity; or
  2. To some degree restricted as to the condition manner or duration in which s/he can perform the activity as compared to the average person.
- Temporary or transit, minor, and non-chronic impairments generally will not be considered to be substantially limiting. For example: a broken leg, the flu, or recovery from surgery that do not result in permanent limitations.

- A person with multiple impairments that combine to substantially limit a major life activity may be determined to have a disability.

### **Examples of predictable disability assessments**

Some conditions almost always qualify as disabilities under the ADA because they significantly impair a major life activities. Examples include:

- Deafness substantially limits the major life activity of hearing
- Cancer substantially limits the major life activity of normal cell growth
- An intellectual disability substantially limits the major life activity of brain function
- Diabetes substantially limits the major life activity of endocrine function
- HIV substantially limits the major life activity of immune function

### **Mitigating Measures**

- Generally, the availability or use of mitigating measures may not be considered when determining whether an impairment substantially limits a major life activity.
  - Examples include hearing aids, medication, prosthetics, mobility devices, and cochlear implants. A person whose HIV viral load is managed with medications is still disabled, even if the virus is no longer detectable, because without the medication as a mitigation measure, the virus would substantially limit the functioning of the immune system
- Ordinary eyeglasses are considered when determining whether an impairment substantially limits. If a person's vision is fully corrected with ordinary eyeglasses or contacts, that person is not disabled under the ADA.

### **Impairments that are Episodic or in Remission**

- When an impairment that is episodic or in remission substantially limits a major life activity when active, that impairment is a disability. For example, epilepsy or cancer that is in remission.
- Temporary or transit, minor, and non-chronic impairments generally will not be considered to be substantially limiting. For example: a broken leg, the flu, or recovery from surgery
- An impairment that is episodic or in remission is considered a disability if it would substantially limit a major life activity when active. For example: epilepsy
- A person with multiple impairments that combine to substantially limit a major life activity may be determined to have a disability.

### **Who qualifies as having a record or history of disability?**

- An individual may be considered a person with a disability and protected by the ADA even if s/he does not have an actual impairment if s/he has a record of impairment.
- In order to have a record of disability under the ADA, a person must have a history of or have been misdiagnosed as having a physical or mental impairment that substantially limited a major life activity.
  - Examples of people who may have a record of disability: former cancer patients, people with histories of mental illness, people who were formerly addicted to illegal drugs but have successfully received treatment, people who were misdiagnosed.

### **Who qualifies as being regarded as having a disability?**

- An individual is regarded as having a disability if s/he was subject to employment discrimination barred by the ADA because of an actual or perceived mental or physical impairment, whether or not the impairment limits or is perceived to limit a major life activity. This protection does not apply to transitory impairments.
  - Example: An employee who was fired because her employer believes her to have cancer even if she does not actually have cancer.