

# Are All Migraine Headaches Protected as a 'Disability'?

*Do your employees ever give you a migraine headache? Don't you wish every time they did you could claim protection under the Americans with Disabilities Act (ADA) and rush home? One court recently ruled that not every migraine headache is the same. Therefore, not every case is protected by the ADA. Sit down ... take off your sneakers ... and read this case.*

**Case in Point:** Alethia Allen, a medical assistant for an Oklahoma's physician group, suffered from migraine headaches several times a week. They started when she accepted the job and ended when she resigned. Allen's job involved checking in patients, taking their vital signs, calling in prescriptions, receiving and returning patient phone calls and removing sutures.

Allen requested job-protected time off under the Family and Medical Leave Act (FMLA) for the headaches but was denied. She then resigned. She tried to rescind her resignation but the medical practice refused. Allen eventually sued, saying the company failed to accommodate her as required under the ADA. Allen argued she was protected under the ADA because she was "substantially limited in a major life activity"—the act of caring for herself.

The court rejected her argument, noting that, "A mere assertion that took medication and slept after arriving home for an unspecified period when undergoing a migraine attack rather than caring for herself was insufficient to meet the ADA burden."

The court wasn't sold on Allen's evidence regarding her alleged limitations. It noted that she failed to provide details, such as how much earlier than usual she had to go to bed or exactly what self-care activities she had to forgo because of her sporadic impairment. (*Allen v. SouthCrest Hosp.*, 10th Cir., No. 11-5016, unpublished opinion 12/21/11)

## 3 Lessons Learned ... Without Going to Court

**1. Perform case-by-case reviews.** Employers must look at each employee case separately because the facts can differ greatly even if the chief complaint is a migraine. Under some circumstances, migraines may affect a major life activity while in other cases, like this one, they did not.

**2. Know ADA terms and definitions.** The court relied on terms and definitions to decide this case. "e conclude based on our existing case law, Supreme Court case law, the applicable statute, and the regulations, that to show a disability in the major life activity of working, Allen was required, even after the enactment of the and the modified EEOC regulations, to demonstrate that she was substantially limited in performing a class of jobs or broad range of jobs in various classes as compared to most people with comparable training, skills, and abilities."

**3. Put all heads together.** The ADA is a house of mirrors. To see which way to go, HR and legal professionals must work together.