

Evaluating What Makes A Medical Condition An ADA-Qualifying Disability

There is no list spelling out exactly which medical conditions are qualifying disabilities under the Americans with Disabilities Act (ADA). Most medical conditions that you may automatically consider a covered disability are not, in fact, "automatic." Each situation must be evaluated on a case-by-case basis.

The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment, but rather on the effect of that impairment on the life of the individual. The same types of impairments often vary in severity and often restrict different people to different degrees or in different ways. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling, or any number of other factors.

To help employers make the determination of whether or not an individual has a disability, the EEOC released a series of fact sheets on how the ADA applies to medical conditions in the workplace. Here is some guidance adapted from the EEOC's fact sheets on how to determine whether and when some common medical conditions qualify for ADA protection.

Substantial Limitation Of A Major Life Activity

Under the Americans with Disabilities Act, an impairment rises to the level of a disability if it substantially limits a major life activity.

Where the ADA was silent on what constitutes a major life activity, the ADA Amendment Act of 2008 (ADAAA), which becomes effective January 1, 2009, states that major life activities include, but are not limited to:

- caring for oneself,
- performing manual tasks,
- seeing,
- hearing,
- eating,

- sleeping,
- walking,
- standing,
- lifting,
- bending,
- speaking,
- breathing,
- learning,
- reading,
- concentrating,
- thinking,
- communicating, and
- working.

The ADAAA also adds a new major life activity category — major bodily functions, which includes, but is not limited to:

- functions of the immune system,
- cell growth,
- digestive, bladder, and bowel functions,
- neurological and brain functions,
- respiratory and circulatory functions,
- endocrine functions, and
- reproductive functions.

Impairments that are episodic or in remission qualify as covered disabilities if they would substantially limit a major life activity when active.

The ADAAA clarifies that impairments qualify as a disability if they substantially limit one major life activity; an impairment does not need to limit other major life activities to be considered a protected disability.

In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (534 U.S. 184, 2002), the U.S. Supreme Court ruled that in order to qualify as a disability, an impairment must restrict activities that are of "central importance to most people's daily lives." The ADAAA only requires that an impairment substantially limit a single major life activity, regardless of whether it is of "central" importance.

The ADAAA negates the standard also set forth in *Toyota* that a covered impairment "prevent" or "severely restrict" a major life activity. The ADAAA orders the Equal Employment Opportunity Commission (EEOC) to issue interpretative guidance that lowers the definition of "substantially limits" to a level consistent with Congressional intent. Current EEOC guidance on the ADA defines the term to mean "significantly restricted."

Even though the definition of substantially limits is currently in limbo, employers can assess to what degree an impairment impacts a major life activity by looking at:

1. the nature and severity of the impairment;
2. the duration or expected duration of the impairment; and
3. the permanent or long-term impact, or the expected permanent or long-term impact, of or resulting from the impairment.

Although short-term, temporary restrictions generally are not substantially limiting, an impairment does not have to be permanent to rise to the level of a disability. Some conditions may be long-term, or potentially long-term, in that their duration is indefinite and unknowable or is expected to be at least several months. Such conditions, if severe, may constitute disabilities.

Example: A person who has been blinded or paralyzed, but is expected to recover fully "eventually," is an individual with a disability, despite the prognosis for full recovery at some indeterminable time in the future.

Important: Having a covered disability is only one part of the ADA equation. Individuals must also be able to perform essential job functions, with or without a reasonable accommodation. If they cannot perform an essential job function, they are not qualified individuals under the Americans with Disabilities Act.

Diabetes

The first of the EEOC's fact sheets focused on diabetes. When determining whether an individual with diabetes is covered by the ADA, ask:

1. Does the condition substantially limit a major life activity?
2. Does it cause side effects or complications that substantially limit a major life activity?
3. Does the company regard the employee as having a disability?

Example: An employee was fired after experiencing a few hypoglycemic episodes at work. A court ruled that he is substantially limited in major life activities, such as seeing, hearing, speaking, and performing manual tasks, during the periods when he is experiencing a hypoglycemic episode. (McCusker v. Lakeview Rehabilitation Center, Inc., D.C. NH, No. 03-243-JD, 2003)

Epilepsy

The second fact sheet released by the EEOC addressed the workplace rights of individuals with epilepsy. While the basic principles of the fact sheet can be used to analyze other medical conditions, the fact sheet provides helpful examples that are specific to epilepsy.

- In order to qualify as a disability, a condition must substantially limit one or more major life activities. Epilepsy may be limiting as a result of seizures or side effects from medication; it may have been limiting in the past; or an employer may regard an individual as being limited.

Example: An employee is substantially limited in the major life activities of walking, seeing, hearing, speaking, and working while having a seizure; she is also limited in caring for herself after having a severe seizure.

- Employers may not ask about an applicant's medical condition or require an applicant to take a medical exam prior to extending a conditional job offer.

Example: You may not ask whether an individual has epilepsy or seizures; uses any prescription drugs; or has ever filed for a Workers' Comp claim or been injured on the job.

- Employers must provide reasonable accommodations to enable individuals with disabilities to enjoy equal employment opportunities.

Example: Employees with epilepsy may need: breaks to take medication; leave to seek treatment or adjust medication; a private area to rest after having a seizure; a rubber mat or carpet to cushion a fall; adjustments to work schedules; to bring a service animal to work; someone to drive to work-related events; to work at home.

- In assessing whether an employee poses a direct safety threat, you must consider: the duration of the risk; the nature and severity of the potential harm; the likelihood the potential harm will occur; the imminence of the potential harm; and whether any reasonable accommodation would reduce or eliminate the risk.

Example: An employee applies for a welder position. He has experienced sudden and unpredictable seizures at work as a result of failing to take prescribed medication. Because of the likelihood that he would experience sudden and unpredictable seizures, and the serious consequences that would result if the employee had a seizure while working as a welder, you may deny him the job.

Intellectual Disabilities

The EEOC released the third in its series of disability-related fact sheets on intellectual disabilities. The fact sheet "aims to break down myths, fears, and misperceptions that stand in the way of employment opportunities and sometimes even lead to harassment on the job" by helping employers understand how the ADA applies to employees with intellectual disabilities.

An individual is considered to have an intellectual disability when: 1) the person's IQ is below 70-75; 2) the person has significant limitations in adaptive skill areas as expressed in conceptual, social, and practical adaptive skills; and 3) the disability originated before the age of 18. "Adaptive skill areas" refer to basic skills needed for everyday life, including communication, self-care, home living, social skills, leisure, health and safety, self-direction, functional academics (reading, writing, basic math), and work.

Here is a look at some examples of individuals who likely qualify for ADA protection.

- An individual may live on his own, but if he needs frequent assistance in such activities as cleaning his apartment, grocery shopping, getting to doctor's appointments, cooking, and paying bills, he is substantially limited in caring for himself.
- A mild intellectual disability and a mild form of ADHD do not rise to the level of a disability on their own, but together, they may substantially limit the ability to concentrate, learn, and work.
- An individual was wrongly diagnosed as having an intellectual disability that substantially limited her ability to learn in high school. Thus, she has a past record or history of disability.
- A facial deformity affects an individual's speech. If an employer believes he has an intellectual disability that renders him unable to communicate with clients effectively, the employer has illegally regarded the individual as being disabled.

Cancer

The fourth in the EEOC's series of fact sheets addressing particular disabilities in the workplace explained how the Americans with Disabilities Act might apply to job applicants or employees who have or have had cancer.

According to the EEOC, cancer is a disability under the ADA when it or its side effects substantially limit(s) one or more of a person's major life activities.

Example: Following a lumpectomy and radiation for aggressive breast cancer, a computer sales representative experienced extreme nausea and constant fatigue for six months. She continued to work during her treatment, although she frequently had to come in later in the morning, work later in the evening to make up the time, and take breaks when she experienced nausea and vomiting. She was too exhausted when she came home to cook, shop, or do household chores and had to rely almost exclusively on her husband and children to do these

tasks. This individual's cancer is a disability because it substantially limits her ability to care for herself.

Even when the cancer itself does not substantially limit any major life activity (such as when it is diagnosed and treated early), it can lead to the occurrence of other impairments that may be disabilities.

Reminder: Impairments that are in remission qualify as protected disabilities if they would substantially limit a major life activity when active.

Cancer also may be a disability because it was substantially limiting some time in the past.

Example: A company president was hospitalized for 30 days immediately following his diagnosis of blood cancer. Because his treatment, which included chemotherapy and a bone marrow transplant, weakened his immune system he was unable to care for himself for six months and had to avoid interactions with almost everyone except his doctors, nurses, and immediate family members. This individual has a record of disability.

Finally, cancer is a disability when it does not significantly affect a person's major life activities, but the employer treats the individual as if it does.

Example: After making a job offer, an employer learns that an applicant's mother has breast cancer. Although the applicant does not currently have and may never in fact develop breast cancer, the employer withdraws the job offer solely based on concerns about productivity, insurance costs, and attendance. The employer is treating the applicant as if he has a disability.

Mitigating Measure Do Not Count

In *Sutton v. United Air Lines* (527 U.S. 471, 1999), the U.S. Supreme Court interpreted the ADA to require the consideration of mitigating measures when determining whether an individual has a protected disability. The ADAAA nullifies this, stating that the determination of whether an impairment substantially limits a major life activity shall be made *without* regard to the ameliorative effects of mitigating measures such as:

- medication, medical supplies, equipment, or appliances; low-vision devices; prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen therapy equipment and supplies;
- use of assistive technology;
- reasonable accommodations or auxiliary aids or services; or
- learned behavioral or adaptive neurological modifications.

Simply put, if an employee's condition would qualify as a disability without such aids, consider the person to have a protected disability. There is one exception, however, for ordinary eyeglasses or contact lenses.

Vision Impairments

The fifth in the EEOC's series of fact sheets explained how the ADA might apply to individuals with vision impairments.

Whether a vision impairment actually substantially limits a major life activity depends on how significant the visual loss is. While a person who has no sight at all is obviously substantially limited in seeing, the assessment of most vision impairments requires a more individualized approach. Although ordinary corrective lenses must be taken into account, they do not automatically exclude someone from coverage under the first part of the ADA's definition of "disability."

Example: An individual with a vision impairment wears eyeglasses, but they improve his poor vision only slightly. Even with eyeglasses, he cannot drive and needs strong magnification to read standard-sized print. This individual is substantially limited in seeing.

Individuals with monocular vision also may meet the ADA's definition of disability.

Example: An individual lost all of his sight in one eye as the result of an accident. He has learned some compensatory strategies, but has loss of both peripheral vision and stereopsis. The loss of peripheral vision means that he is limited in seeing people or objects on his blind side and must rely on his hearing to detect that someone is near him and then must turn his head to see the person. The loss of stereopsis means that he has difficulty judging distances within a six-foot range, and thus cannot use his vision to guide him in reaching for objects or putting objects down on a table or other surface. He must rely on memory or the sense of touch rather than vision to guide him in picking up and placing objects such as tools, pots and pans, books and pens. All such tasks are more difficult for him because of his loss of vision and take him longer to perform than they take the average person. This individual still is substantially limited in seeing, despite the use of compensatory strategies such as using hearing, touch, or memory to substitute for his lack of vision in one eye.

The ADA prohibits employers from using qualification standards, employment tests, and other selection criteria based on an individual's uncorrected vision, unless the standard, test, or other selection criteria, as used by the employer, is shown to be job-related for the position in question and consistent with business necessity. In most situations, individuals required to take a vision test must be permitted to use their corrective lenses.

Get Interactive

Not sure whether a medical condition is a covered disability? Get more information. The Americans with Disabilities Act allows — and sometimes requires — you to engage in an interactive process.

Ask for medical certification describing the worker's limitations. Also, talk to the employee. Ask the employee to describe the specific nature of his/her condition and explain how the condition limits his/her performance of major life activities. You can also use your own observations of the employee to supply or confirm information about his/her restrictions.

Example: It is insufficient for an employee merely to state that his/her condition interferes with the ability to walk. The employee should explain the extent of the interference; that is, he/she should provide such information as whether the condition prevents him/her from walking at all, whether he/she can walk under certain conditions, and whether he/she can walk for short or long distances and periods.

These Are Not Impairments

The ADA and its legislative history specifically state that certain conditions are not impairments, including:

- homosexuality and bisexuality;
- transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- compulsive gambling, kleptomania, or pyromania;
- psychoactive substance use disorders resulting from current illegal use of drugs;
- environmental, cultural, and economic disadvantages such as a prison record or a lack of education;
- pregnancy (complications resulting from pregnancy, however, may be);
- physical characteristics (e.g., black hair, blue eyes) and common personality traits (e.g., impatience, a quick temper, arrogance);
- normal deviations in height, weight, or strength that are not the result of a physiological disorder (severe obesity, which has been defined as body weight more than 100% over the norm, is covered).