

Must we employ someone with allergies?

Q. We recently hired someone we didn't know has a severe allergy to peanuts. If she even smells peanut butter, she has a severe allergic reaction, requiring her to use an EpiPen and head to the emergency room. Could we have refused to hire her if we had known about her allergies?

A. It depends. The first issue is whether an allergy qualifies as an ADA disability. An individual has a disability if she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

The ADA Amendments Act of 2008 requires employers to broadly interpret "disability." The law significantly expanded the scope of individuals who are considered to have a disability.

Someone with severe allergies may qualify as disabled because the allergies would substantially limit a major life activity, such as breathing or eating. Note that mitigating measures (such as an EpiPen) should not be considered in determining whether the allergies substantially limit a major life activity. An impairment that is episodic, such as allergies, is a disability if it would substantially limit a major life activity when active.

You should not institute an outright ban on hiring people with severe allergies. Do not ask questions that would reveal that an applicant has a disability. If, after extending a job offer, you discover that someone has severe allergies, thoroughly consider whether the individual can perform the job duties, whether you can accommodate the individual's allergies and whether she poses a significant risk of substantial harm to herself because of the allergies.

You should work with your recent hire to provide reasonable accommodations. Generally, employers that proactively work with an employee's disability are less likely to have to defend against disability-discrimination or failure-to-accommodate claims.