

# When does ADHD count as a protected 'disability'?

Do you have employees who are easily distracted, restless, disorganized and forgetful? Maybe that's just who they are—or maybe they've been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).

It's pretty common. About 8 million adults in the United States suffer from it. It's an "invisible" disability, but one court recently said employers shouldn't be so fast to discount it. A disability is a disability ... whether you can see it or not.

**Case In Point:** Dr. Robert Lewis worked in the University of Pittsburgh Medical Center emergency room. He told the ER chief that he thought he had ADHD and asked to be accommodated by seeing only one patient at a time.

The chief denied his request and formally put Lewis on probation because he was "impaired and distractible." Lewis was also required to undergo a psychological evaluation. Subsequently, Lewis was diagnosed with ADHD.

The hospital asked his treating doctor to provide "as much information as possible." Lewis' doctor said confidentiality requirements prohibited him from proving all info, but he offered to respond to specific questions. The hospital never followed up.

Soon after, Lewis was terminated for allegedly failing to provide a letter from his psychologist about his ADHD diagnosis, failing to park in the doctors' parking lot and having unsigned paperwork for more than 30 days.

Lewis sued under the Americans with Disabilities Act (ADA), saying the hospital had a duty to accommodate his ADHD behavior.

**The result:** The court sided with Lewis and sent the case to a jury, saying Lewis showed enough evidence that the hospital regarded him as disabled and fired him because of his ADHD.

The court also rejected the hospital's defense that it fired Lewis because he didn't provide enough medical info, saying, "Disabled employees, especially those with psychiatric disabilities, may have good reasons for not wanting to reveal every detail." (*Lewis v. UPMC Bedford*, W.D. Pa., 3/30/09).

## 3 lessons learned

**1. Drop the microscope.** Never put an employee under the performance microscope after he or she exercises a legal right, such as requesting a disability accommodation.

**2. Don't play doctor.** The chief doctor of the emergency room was trying to second-guess the doctor's diagnosis of ADHD, so he followed Lewis around on patient rounds looking for symptoms. Even if you are a doctor, don't play doctor. Just request a doctor's note.

**3. Say, “Ah!”** Or, better yet, say “thank you” when an employee gives you a doctor’s note about his or her disability. Then engage in the interactive process with the employee and consider reasonable accommodations. Otherwise, you just might need a painkiller when the jury comes back with a verdict against you.

## **Sound off: Your thoughts on this case**

*Here are a couple of comments from HR professionals about the above case that were posted on the [Case in Point](#) blog:*

### **Don’t overlook ADHD applicants**

“We make certain we research references thoroughly when we hire someone. If they have ADHD or an undiagnosed attention problem and we decide to hire them, we make certain the job given is appropriate, e.g., something like programming where they can work on a variety of things at one time and still be highly productive.

“A number of good attention training/cognitive programs exist for adults with attention problems. We’ve used Play Attention ([www.playattention.com](http://www.playattention.com)) with our staff with great success.

“Bottom line: Check references, do a good interview and if they are qualified, find the right place for them. Don’t expect someone to do something they are not wired to do.” — Glenn

### **Go online for help**

“The Job Accommodation Network provides a wealth of information on reasonable accommodations and does have guidelines relative to Attention Deficit Disorder ([www.jan.wvu.edu/media/adhd.html](http://www.jan.wvu.edu/media/adhd.html)). This is a great resource that I’ve used for years. Good luck!” — Dawn