

DISABILITY & AGING RIGHTS



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DISCRIMINATION

Overview of the Americans with Disabilities Act

People with disabilities, including older Americans who have a physical, sensory, cognitive or mental impairment, are covered by the Americans with Disabilities Act – also known as the ADA. The ADA prohibits discrimination on the basis of physical or mental disability. By passing the ADA, Congress recognized that many Americans were being excluded from all parts of life, including employment, access to private businesses, state and local government services, transportation and telecommunications. The ADA provides a much-needed national standard for the protection of the civil rights of people with disabilities. This factsheet will help you better understand your legal rights and responsibilities under the ADA.

The ADA is divided into five sections:

- Title I** Employment
- Title II** Public services (includes state and local government services and public transportation)
- Title III** Public accommodations (private businesses open to the public)
- Title IV** Telecommunications
- Title V** Miscellaneous (includes claims for retaliation for exercising your rights under the ADA)

What is a disability under the ADA?

To be covered by the ADA, you must fit into one of the following three categories:

- 1. A person with a physical or mental impairment that substantially limits one or more major life activities.** For example, a person who uses a wheelchair is substantially limited in the major life activity of walking.
- 2. A person with a *record* of a physical or mental impairment.** For example, if a person had cancer in the past, but now, after treatment is cancer free. If the employer refuses to hire the person because of the past impairment, the person is protected by the ADA based on the record of an impairment. This category also would cover people who

have been misclassified as disabled, such as people who have been incorrectly categorized as having learning disabilities and are discriminated against based on that incorrect record.

3. A person who is *regarded* as having an impairment. There are three ways this category will come into play:

- The worker's impairment may not be substantially limiting, but it may be regarded as substantially limiting. For example, an employee with controlled high blood pressure who is inappropriately reassigned to less strenuous work because the employer feels that the employee will suffer a heart attack.
- The person has an impairment that is substantially limiting only because other people regard it that way. For example, an employee has a condition that causes an occasional involuntary jerking of the head. This condition is not necessarily substantially limiting, but an employer violates the ADA if it treats the person differently based on the fear that co-workers or members of the public will incorrectly perceive that it is substantially limiting.
- The person has no impairment at all, but is thought incorrectly by the employer to have one. For example, an employee who is fired because it is falsely rumored that he is HIV-positive.

IMPORTANT: The definition of disability applies for ALL of the Titles of the ADA.



What is an impairment under the ADA?

The ADA covers both physical and mental impairments.

Physical impairment: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems.

Mental impairment: Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities.

The following are not considered impairments under the ADA:

- Physical characteristics such as eye color, hair color or left-handedness
- Characteristic predisposition to an illness or disease
- Pregnancy
- Personality traits such as poor judgment or quick temper, unless they are symptoms of a mental disorder
- Environmental, cultural or economic disadvantages, such as poverty, lack of education or a prison record
- Advanced age (however, medical conditions usually associated with aging, such as hearing loss, osteoporosis or arthritis, would be defined as impairments)

What is a major life activity?

A major life activity is a basic function that the average person in the general population can perform with little or no difficulty.

Examples of a major life activity 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.

Major life activities include major bodily functions like the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

IMPORTANT: The major life activities and major bodily functions listed are only examples and do not constitute an exhaustive list.

What is a substantial limitation?

An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.” Generally, whether an impairment substantially limits a major life activity shall be determined without regard to the effects of mitigating measures, such as medication or hearing aids. The exceptions are ordinary eyeglasses and contact lenses. Also, an impairment that comes and goes or is in remission is a disability if it would substantially limit a major life activity when active.

DISCRIMINATION

The ADA specifically excludes the following conditions from the definition of disability:

- Actions or behavior resulting from illegal drug use (However, former drug users do have rights under the ADA)
- Homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, and gender identity disorders
- Compulsive gambling, kleptomania, or pyromania
- Psychoactive-substance use disorders resulting from current drug use

Discrimination based on association

The ADA protects people who are discriminated against simply because they associate with people with disabilities. People who associate with people with disabilities through a range of activities – by being their friend, spouse, domestic partner, relative, business associate, advocate or caregiver – are covered under the association provision.

For example, a person who is discriminated against simply because she is a volunteer for an organization that delivers meals to people with AIDS would be covered by the ADA even though she does not have a disability. ■

For more information:

The United States Department of Justice's Overview of the ADA:
www.ada.gov/ada_intro.htm

The Equal Employment Opportunity Commission's Overview of the ADA:
www.eeoc.gov/laws/types/disability.cfm



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