



ADA Turns Ten CLAIMS BRIEF

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The Americans With Disabilities Act Turns Ten

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On July 26, 2000, the Americans with Disabilities Act (ADA) became ten years old. When President George Bush signed the legislation on a hot summer day, he declared the ADA the "world's first comprehensive declaration of equality for people with disabilities." Undoubtedly, the ADA was the most comprehensive anti-discrimination law passed by Congress since the Civil Rights Act of 1964. The law protects not only persons traditionally considered disabled, but it also protects recovering drug abusers, alcoholics, and persons with mental disabilities. The ADA has two basic components. It prohibits discrimination in employment in all businesses with more than 14 employees and requires that all public facilities be made accessible to individuals with disabilities.

Although our members are experiencing an increase in claims arising from all aspects of the ADA, the Trust has noticed a disturbing and dramatic increase in administrative complaints filed with the Equal Employment Opportunity Commission (EEOC) or the Maryland Commission on Human Relations (HCHR), which allege ADA discrimination. This article is intended focus on guidelines and recent court decisions that address who is disabled under the ADA.

THE ADA AND THE EMPLOYER

The ADA provides that no employer or other ADA covered entity may discriminate against a qualified individual with a disability in the terms and conditions of employment. An employer may not take any adverse action against persons with disabilities, such as failing to hire or relegating disabled employees to low-level jobs. Furthermore, the ADA requires an employer to make reasonable accommodations for a known physical or mental disability of a qualified applicant or employee, unless it can show that the accommodation would impose undue hardship on the operation of the business. The ADA also prohibits an employer from taking any adverse action against a person for having opposed any act or practice made unlawful by the ADA. When an employee or prospective employee alleges a disability, it is important to initially determine if they are ADA disabled.

What is a Disability?

Under the ADA a person is disabled if he or she:

- Has a physical or mental impairment that substantially limits a major life activity;

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- Has a record of such impairment; or
- Is regarded as having such an impairment.

Congress refused to limit the ADA's coverage to a selected list of disabilities. Over the years, the definition of persons who are considered disabled under the act has broadened. However, to be considered disabled, the impairment must "substantially limit a major life activity." Major life activities developed under the Rehabilitation Act of 1973¹ and the EEOC include:

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| • Breathing | • Reaching |
| • Caring for Oneself | • Seeing |
| • Concentrating | • Sitting |
| • Hearing | • Sleeping |
| • Interacting with Others | • Standing |
| • Learning | • Walking |
| • Lifting | • Working |
| • Performing Manual Tasks | |

What Is Substantial Limitation?

The Supreme Court recently addressed the definition of substantial limitation. On June 22, 1999, the Supreme Court decided *Sutton v. United Air Lines*, 119 S. Ct. 2139 (1999) and *Murphy v. United Parcel Service, Inc.*, 119 S. Ct. 2135 (1999), holding that although the ADA does not define "substantially limited," substantially suggests considerable or specified to a larger degree." The Court further stated that

¹ The Rehabilitation Act of 1973 was the predecessor to the ADA that established funding for vocational training for persons with disabilities and provided protection for individuals with disabilities in federal jobs and in federally funded contracts and programs.

mitigating measures, such as corrective lenses and medication, should be considered in determining whether an individual suffers substantial limitation in a major life activity. In *Sutton*, the Court found that severely myopic applicants, who were denied positions as airline pilots, were not disabled within the meaning of ADA because the applicants could fully correct their vision with corrective lenses. In *Murphy*, the Court found that an employee's high blood pressure did not substantially limit his major life activities when he was medicated for his condition; therefore, he was not disabled under ADA.

Remember, however, that individuals "regarded as" having a disability are disabled within the meaning of the ADA. Therefore, if an employer mistakenly believes that a person's non-limiting impairment substantially limits a major life activity, that individual is disabled within the meaning of the ADA. These misperceptions by employers that an individual has an impairment that does not substantially limit life activities, often result from society's fears and myths about a particular disability or disease. Consequently, when an employee or potential employee alleges a disability, which requires accommodation, it is imperative to first determine whether the person's corrected or medicated medical or physical condition, substantially limits a major life activity.

Simply put, if you treat an employee as disabled, you may be stuck. If you are unsure and suspect a potential claim to arise from an employee regarding an ADA limitation, contact the LGIT Employment Law Hotline (1-800-845-8055) or the LGIT Claims Analyst assigned to your jurisdiction. ■

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