

Employment Rights under The Americans with Disabilities Act and The Wisconsin Fair Employment Act

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ADA History

- ▶ The ADA became law on July 26th 1990.
- ▶ Regulations issued 1991
- ▶ The ADA Amendments Act was passed 2008
- ▶ Became effective 2009



The Structure of the ADA

- ▶ Title I: Employment
- ▶ Title II: State and Local government entities including courts
- ▶ Title III: Public accommodations and services operated by private entities
- ▶ Title IV: Telecommunications
- ▶ Title V: Miscellaneous provisions

Who is Protected?

- ▶ Under the ADA a person with disability has:
 - ▶ A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - ▶ Has a record of such an impairment; or
 - ▶ Is regarded as having such an impairment. (ADA, 42 U.S.C. § 12102 [2])

Definition of Impairment

- ▶ (1) *Physical or mental impairment* means:
 - ▶ (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
 - ▶ (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability

Major Life Activities & Bodily Functions

- ▶ **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.
- ▶ **Major Bodily Functions** include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Qualified Person with a Disability

- ▶ With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions of the job in question
- ▶ With respect to services, a person with a disability who meets the essential eligibility requirements for the receipt of such services

Illustrations

- ▶ Substantial limitation of a major life activity
 - ▶ A person who is deaf is substantially limited in the major life activity of hearing. A person with a minor hearing impairment, on the other hand may not be substantially limited.
 - ▶ During a house fire, Matt received burns affecting his hands and arms. While it is expected that, with treatment, M will eventually recover full use of his hands, in the meantime he is substantially limited in performing basic tasks required to care for himself such as eating and dressing. Because Matt's burns are expected to substantially limit a major life activity (caring for one's self) for a significant period of time, M would be considered to have a disability covered by title III.

Illustrations

- ▶ Record of
 - ▶ A person who has a history of an impairment that substantially limited a major life activity but who has recovered from the impairment. Examples of individuals who have a history of an impairment are persons who have histories of mental or emotional illness, drug addiction, alcoholism, heart disease, or cancer
 - ▶ Persons who have been misclassified as having an impairment.

Illustrations

- ▶ Regarded As:
 - ▶ Sarah, a three year old child born with a prominent facial disfigurement, has been refused admittance to a private day care program on the grounds that her presence in the program might upset the other children. Sarah is an individual with a physical impairment that substantially limits her major life activities only as a result of the attitudes of others toward her impairment
 - ▶ Jennifer, an individual with mild diabetes controlled by medications, is barred by the staff of a private summer camp from participation in certain sports because of her diabetes. Even though Jennifer does not actually have an impairment that substantially limits a major life activity, she is protected under the ADA because she is treated as though she does

ADA Amendments Act 2008

- ▶ Overruled a series of Supreme Court Decisions regarding mitigating measures
- ▶ Supported broad coverage of people
- ▶ Moved questions from who is disabled to whether there has been discrimination

Title I: Employment

- ▶ All employers of 15 or more
- ▶ Requires Reasonable accommodations
- ▶ Prohibition against discrimination
- ▶ Enforcement through the Equal Employment Opportunity Commission

Prohibition Against Discrimination: Employment

- Applies at all stages of the employment and pre-employment relationship
- Limits inquiries about disability to post offer and must be job related and required of all in the position
- Prohibits discrimination in hiring, firing, pay, recruitment, promotion, and other terms and conditions of employment

Qualified Individuals with Disabilities

- ▶ Must have the requisite skills and training for the position
- ▶ Disability means a mental or physical impairment that substantially limits one or more major life activities (life activities include but are not limited to seeing, hearing, speaking, walking, breathing, learning, caring for oneself, reproduction, working, etc.)
- ▶ Can perform the essential functions of the job with or without reasonable accommodations

Reasonable Accommodation

- ▶ Modifications or adjustments to work environment or manner or circumstances in which the job is performed
- ▶ Making existing facilities readily accessible or modifying equipment
- ▶ Job restructuring, modified work schedules, reassignment to a vacant position

Job Modifications Examples:

- ▶ Support Animal/Person
- ▶ Noise proof headphones
- ▶ Screen Reading software
- ▶ Writing aids
- ▶ Scooters
- ▶ Scribe
- ▶ Speech Recognition Software

Reasonable Modifications:

- ▶ Adjustable tables/chairs
- ▶ Aerial lifts
- ▶ Motorized Carts
- ▶ Ladders
- ▶ Book holders
- ▶ Hands free phones
- ▶ Reachers

Modifying Work Schedule and Position

- ▶ Flexible scheduling
- ▶ Modified Break Schedule
- ▶ Working at home
- ▶ Ride sharing

Job Accommodations Network

- ▶ Information for both Employers and Employees
 - ▶ A-Z of Accommodations
 - ▶ EEOC guidance per disability
 - ▶ Legal Resources organized by disability
 - ▶ Disclosure Rules
 - ▶ Rehab Act and ADA library
- ▶ <https://askjan.org/>



Accommodation ideas for persons with mental illness

- ▶ Job restructuring
- ▶ Modified work space
- ▶ Flexible scheduling
- ▶ Organization aids
- ▶ Telework - work from home
- ▶ Additional training
- ▶ Service animal
- ▶ Behavior modification techniques
- ▶ Reminders
- ▶ Modified break schedule

Employer Defenses

- ▶ **Undue Hardship- significant difficulty or expense**
 - ▶ Based on nature and cost of accommodation
 - ▶ Overall financial resources of the facility
 - ▶ Impact on the operation of the facility
 - ▶ Fundamental alteration- employer need not provide an accommodation that would fundamentally alter the nature or operation of the business
- ▶ **Employers can refuse to hire or employ someone if they pose a direct threat to themselves or others**
 - ▶ Significant risk of substantial harm to health or safety
 - ▶ Not based on myth or stereotype
 - ▶ Must consider accommodations or modifications to ameliorate any potential risk

Enforcement

- ▶ Title I of the ADA is enforced by the Equal Employment Opportunity Commission
- ▶ Complaints initiated by the individual with a disability
 - ▶ May allege
 - ▶ Failure to accommodate
 - ▶ Different treatment based on disability
 - ▶ Termination based on disability
 - ▶ Failure to Hire based on disability

Complaints Must be Filed within 300 days of the event giving rise to the complaint

Wisconsin Fair Employment Act

- ▶ Closely parallels ADA Title I
 - ▶ Notable differences:
 - ▶ Applies to all employers
 - ▶ Broader definition of reasonable accommodation- modifying job duties
 - ▶ Does not include notion of a marginal and essential functions

Enforced through the State of Wisconsin Equal Rights Division