



## **DO YOU HAVE A “DISABILITY” COVERED BY THE ADA?**

Congress enacted the Americans with Disabilities Act (ADA) in 1990 to confer broad protections on individuals with disabilities in the areas of employment, state and local government services, and public accommodations (such as restaurants, stores, museums, theaters, service establishments, and private schools). Unfortunately, the courts initially narrowly construed the term “disability” under the ADA, effectively excluding many people who should have been covered from the Act’s protections. As a result, Congress passed the Americans with Disabilities Amendments Act in 2008 to overturn those narrow interpretations. This Fact Sheet will address the current definition of “disability” under the ADA as well as situations in which the ADA applies to people who do not have disabilities.

### **How is “disability” defined under the ADA?**

The ADA defines disability as:

- A **physical or mental impairment** that **substantially limits** one or more **major life activities**.
- A **record** of having a physical or mental impairment that substantially limits one or more major life activities.
- Being **regarded as** having a physical or mental impairment.

A person meeting any one of these three standards will be deemed to have a disability under the ADA.

### **What are “physical or mental impairments”?**

A physical impairment is any physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily systems

(including, but not limited to, neurological, musculoskeletal, respiratory, reproductive, cardiovascular, or endocrine systems).

A mental impairment is any mental or psychological disorder, such as intellectual disability, mental illness, or specific learning disabilities.

### **What are “major life activities”?**

Major life activities include, but are not limited to, the following activities: seeing; hearing; walking; caring for oneself; performing manual tasks; eating; standing; sitting; reaching; lifting; bending; speaking; breathing; learning; reading; concentrating; thinking; writing; communicating; and interacting with others.

The operation of a major bodily function (including, but not limited to, sensory organs and the immune, digestive, bowel, bladder, neurological, respiratory, circulatory, cardiovascular, reproductive, and endocrine systems) is also a major life activity.

### **What does it mean to be “substantially limited” in a major life activity?**

There is no express definition of what it means for a major life activity to be “substantially limited” by a physical or mental impairment. But, the statute and regulations offer guidance.

An impairment need not prevent or even significantly or severely restrict the individual from performing the major life activity to be considered substantially limiting. Rather, in considering whether a person’s impairment substantially limits a major life activity what is relevant is his or her ability to perform that activity as compared to most people in the general population. In making this determination, it may be useful to consider the following in comparison to people in the general population:

- the difficulty in performing a major life activity (including pain);
- the amount of effort or time it takes for the individual to perform the major life activity;
- how long the individual can perform the major life activity;
- the conditions under which the individual performs the activity;
- the manner in which the individual performs the activity; and
- the impact of the impairment on a major bodily function.

In assessing whether a person's impairment is substantially limiting, the outcomes he or she is able to achieve are unimportant. For instance, a person with a learning disability may be substantially limited in the ability to read, write, or learn even though he or she achieves high academic success because he or she spends more time or effort on those activities when compared with the general population.

There are some types of impairments that, due to their nature, will almost always be deemed substantially limiting. For instance: deafness substantially limits hearing; blindness substantially limits seeing; intellectual disability, autism, traumatic brain injury, and major mental illness substantially limit brain function; mobility impairments that require the use of a wheelchair or partially or completely missing limbs substantially limit musculoskeletal function; diabetes substantially limits endocrine function; epilepsy, muscular dystrophy, and multiple sclerosis substantially limit neurological function; and HIV infection substantially limits immune function.

**Can a disability that is episodic or in remission be deemed to substantially limit a major life activity?**

Yes, if the person can show that the impairment substantially limits a major life activity when it is active.

**Does it matter that medications, prosthetics, mobility devices or other “mitigating measures” decrease or even eliminate the impact of an impairment on a major life activity?**

The ADA recognizes that individuals with disabilities may use mitigating measures (including but not limited to medication; medical supplies or equipment; prosthetics; hearing aids; assistive technology; mobility devices; and learned behavioral or adaptive neurological modifications) that can limit or even eliminate entirely the impact of an impairment on a major life activity. Importantly, though, the ADA explicitly provides that courts must determine whether the person's impairment substantially limits a major life activity **without regard to the ameliorative effects of such mitigating measures.**

There is one exception to that rule. The use of ordinary eyeglasses or contact lenses which fully correct visual acuity or eliminate refractive error

will be considered in determining whether a person's ability to see is substantially limited.

### **What is a "record" of an impairment?**

An individual will have a "record" of an impairment if he or she has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

### **What does it mean to be "regarded as" having a disability?**

A person will be "regarded as" having a disability if he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment. It is not necessary to show that the impairment actually limited a major life activity or even was considered or perceived to limit a major life activity. It is enough that the person is considered to have a physical or mental impairment (as defined above) and was subject to a form of discrimination that violated the ADA.

A person, however, will not be able to show that he or she was "regarded as" having a disability if his or her impairment is both "transitory" (with an actual or expected duration of 6 months or less) and "minor." For instance, it is unlikely that a person who had the flu that resolved in a week or two will be able to show that he or she was "regarded as" having a disability.

### **Can a person who is only "regarded as" having a disability assert a claim for reasonable accommodations or reasonable modifications under the ADA?**

No. The ADA requires that employers make reasonable accommodations for people with disabilities and that covered government entities and public accommodations make reasonable modifications to their policies, practices, and procedures. However, a person who asserts only that he or she was "regarded as" having a disability cannot demand reasonable accommodations/modifications under the ADA.

### **Are there any people who are excluded from the ADA's protections?**

There are some types of impairments that may be disabilities for medical purposes, but that are explicitly excluded from the ADA's protections. These include:

- Substance abuse disorders where the individual is engaged in the current illegal use of drugs;
- Compulsive gambling, kleptomania, or pyromania;
- Pedophilia, exhibitionism, and voyeurism, and other sexual behavior disorders; and
- Transvestism and transsexualism, though gender identity disorders resulting from physical impairments can be disabilities covered by the ADA.

Congress also explicitly provided that homosexuality and bisexuality are not covered by the ADA based on the recognition that they are not impairments.

### **Do people who do not have disabilities have any protections under the ADA?**

There are some provisions of the ADA that apply to people regardless of whether they have disabilities. Specifically:

- **Relationship with Person with Disability** – The ADA prohibits covered entities from discriminating against a person because of the known disability of an individual with whom he or she is known to have a family, business, social or other relationship or association (though this does not require the covered entity to accommodate the individual without the disability due to his relationship with the person with a disability).
- **Medical Inquiries and Examinations** – The ADA limits employers in when and what types of medical inquiries and examinations they can make of job applicants and employees. Any person – regardless of whether he or she has a disability – can challenge an unlawful medical inquiry or examination under the ADA. Similarly, the ADA's protections of confidential medical information by employers applies to all employees regardless of disability status.

- **Retaliation, Interference, Intimidation, and Coercion** – The ADA bars retaliation against any person – regardless of whether he or she has a disability – because he or she has opposed a discriminatory act or practice or because he or she made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce the ADA. Likewise, the ADA bars coercion, intimidation, threats, harassment, or interference with any person – regardless of whether he or she has a disability – because he or she aided or encouraged any other individual in the exercise of any right granted or protected by the ADA.

On the other hand, people who do not have disabilities cannot use the ADA to assert “reverse discrimination” claims based on “lack of disability.”

### **Contact Information**

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: [intake@disabilityrightspa.org](mailto:intake@disabilityrightspa.org).

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**PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443, Ext. 400, TDD: 877-375-7139 or [intake@disabilityrightspa.org](mailto:intake@disabilityrightspa.org).**