

Investigating Rehabilitation Act Complaints After the ADA Amendments Act

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What the ADA Amendments Act Does Not Change

- Definition of “impairment”
- Reasonable Accommodation, except that individuals covered only under “regarded as” prong are not entitled to accommodation
- Undue hardship defense
- Direct threat defense
- Rules concerning disability-related inquiries and medical examinations, and rules concerning confidentiality of medical information

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Definition of “Disability”

- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment
- Being regarded as having such an impairment

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Definition of “Disability” (cont.)

- Should be construed broadly and generally should not demand extensive analysis
- Mitigating measures (other than ordinary corrective lenses) will not be considered
- Impairment can be disability even if **episodic** or **in remission**

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Mitigating Measures

Mitigating measures include:

- Medication, medical supplies and equipment, low vision and hearing devices, prosthetics, mobility devices, etc.
- Use of assistive technology
- Reasonable accommodations
- Learned behavioral or adaptive neurological modifications

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Ordinary Eyeglasses or Contact Lenses

- Distinguished from “low vision devices,” defined as “devices that magnify, enhance, or otherwise augment a visual image”
- Definition: “lenses that are intended to fully correct visual acuity or eliminate refractive error”

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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.

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Major Life Activities

- The term “major life activities” also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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“Regarded As” Disabled

- Broader definition of “regarded as” disabled that would cover anyone subjected to an action “prohibited by this Act” because of a real or perceived physical or mental impairment
- “Regarded as” would, however, exclude impairments that are transitory (less than six months) and minor
- Individuals only “regarded as” disabled not entitled to reasonable accommodation

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Other Provisions

- Qualification standard based on uncorrected vision must be job-related and consistent with business necessity
- Term “qualified individual” replaces “qualified individual with a disability”
- In general prohibition of discrimination, the phrase “**discriminate on the basis of a disability**” replaces “discriminate against a qualified individual with a disability because of the disability of such individual”
- No discrimination based on lack of disability
- Federal agencies, including EEOC, given authority to issue regulations interpreting the term “disability”

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Scenario 1

Complainant claims he has a back impairment that “usually doesn’t give me any trouble,” but can cause “some pain” the day after he has spent several hours working around the house. On the few occasions when that happens, he tells the investigator, “I have to take it easy for a day or so and limit my bending.” Complainant claims he was denied a reasonable accommodation on one such occasion when his employer refused to temporarily re-assign some marginal job functions that involved heavy lifting.

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Scenario 2

An investigation of complainant’s Rehabilitation Act claim reveals that, as part of a request for accommodation, complainant provided his supervisor with documentation from his doctor indicating that he has degenerative disc disease necessitating a lifting limitation of 15 pounds that will last at least six months and perhaps longer.

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Scenario 3

An employee files a complaint claiming that the agency refused to reassign her to another supervisor as a reasonable accommodation for her depression and anxiety. Documentation from the employee's psychologist submitted in support of the request for accommodation indicates that the employee's depression and anxiety are situational, resulting from difficulties she has interacting with her supervisor, and in particular from what the employee believes are unreasonable deadlines she has to meet. "Her depression and anxiety should quickly resolve themselves if she is removed from her current work situation," the psychologist says.

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Scenario 4

Complainant claims an agency refused to hire her for a safety inspector position because she took antiseizure medication for epilepsy and was concerned that she could be seriously injured if she had a seizure while at a worksite where dangerous machinery was operated. Complainant has worked for private employers performing similar duties in work settings that were no more dangerous than those she would encounter in the inspector position. The agency claims it hired someone who was better qualified.

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Scenario 5

An agency admits during an investigation of a Rehabilitation Act claim that it refused to hire complainant for a temporary position as a receptionist (lasting a month) because he had a sprained wrist that would have prevented him from typing for three weeks, and the job involved a significant amount of typing.

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Scenario 6

Complainant recently had surgery, chemotherapy, and radiation treatment for breast cancer and has been declared “cancer free.” She is denied a job that the agency says requires “a lot of foreign travel – some of it to places where there aren’t adequate medical facilities for complainant to have follow-up examinations related to her cancer or treatment if she develops further complications.”

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Scenario 7

- A federal agency contracts with a private company to provide security guards for its facilities and directs the company not to send it anyone who uses hearing aids. The agency says that guards using hearing aids would have difficulty “localizing sound,” making it impossible for them to respond effectively to many types of emergencies.

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Scenario 8

- A federal law enforcement agency requires all of its officers to have visual acuity of at least 20/40 in one eye, uncorrected vision of no less than 20/70 in the weaker eye, and vision correctable to 20/20 in both eyes. An applicant with uncorrected vision of 20/20 in one eye and uncorrected vision of 20/100 in the other eye, that is correctable to 20/20, is denied a job because he does not meet the agency’s vision standard.

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