

Employees with Physical and Learning Disabilities

Utilizing a University
Team Approach



Work on a preventative-law approach

Make sure that your team receives training in:

- how to interview,
- work with, and
- properly discipline/terminate employees with disabilities

Physical/Learning Disabilities

- back and other orthopedic impairments
- cardio-vascular and neurological
- Diabetes, hearing, vision, and cancer
- “regarded as disabled”
- “having a record of a disability”

Prima facie case of discrimination

A plaintiff must show that s/he is:

- (1) **disabled as defined** in the ADA;
- (2) qualified to perform
 - the **essential functions** of the job
 - with or without a **reasonable accommodation**; and
- (3) discriminated against **because of** disability

ADA Definition of “Disabled”

- A physical or mental impairment that
- substantially limits
- one or more major life activities,
- a record of such impairment,
 - [or] being regarded as having such impairment.

***Definition:* Physical impairment**

- any physiological disorder,
- cosmetic disfigurement, or
- anatomical loss affecting body system

considered in light of mitigating measures

***Definition:* Substantially limits**

- a significant restriction
as compared to an average person
in the general population

***Definition:* Major Life Activities**

- caring for oneself
- performing manual tasks
- walking, seeing, hearing, speaking
- breathing, learning, and (sometimes) working

split in Circuits: ability to get along with others

Definition:

“Record of” Such Impairment

- **Treated as disabled** by the employer
 - one has either a history of such impairment or
 - one has been wrongly classified as having such impairment

Definition:

Regarded as Having an Impairment

- employer must actually **perceive** the employee as being impaired

Qualified to Perform the Essential Functions of the Job

- *(1) disabled as defined in the ADA;*
- (2) qualified to perform the **essential functions** of the job with or without a **reasonable accommodation**; and
- *(3) discriminated against because of disability*

Essential functions of the job

Courts consider the:

- (1) employer's judgment
- (2) written **job descriptions**
- (3) **time** expended performing the function
- (4) **consequences of not requiring** function
- (5) work **experience of past employees**

With or without a reasonable accommodation

- qualified person with disability
- change in work environment
- reject reasonable accommodation: not qualified

to avoid reasonable accommodation:
employer must prove **undue hardship** or **business necessity** requiring that certain criteria be met

Discriminated against because of disability

Employee must prove both:

- **intentional discrimination and**
- **an adverse employment action**

Steps for Managing Employees with Physical/Learning Disabilities

A. Individualized and Interactive Assessments

Termination of disabled employees

- Unable to perform essential functions of job (even w/ reasonable accommodations)
- Posing a direct threat to self and/or others

Using standards and tests

- When tests measure the legitimate requirements for the job

Recent EEO Publications

President's New Freedom Initiative:

EEO issued fact sheet re disabled workers
teleworking as a reasonable accommodation

Accommodation of the Intellectually Disabled

Tips

- avoid asking if they “might have a disability”
- consider mediation
- have updated Policies:
 - Disability-Based Harassment
 - Retaliation for filing disability grievances

Additional Tips

Utilize a checklist or decision tree:

- thorough fact-finding
- complete analysis

- Work on a preventative-law approach