The Americans with Disabilities Act

Title 1: Employment

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When the Americans with Disabilities Act (ADA) was enacted by Congress and signed into law by President George Bush on July 26, 1990, it was recognized that persons with disabilities are often discriminated against. It was found by Congress that "some 43 million Americans have one or more physical or mental disabilities." The ADA was meant to protect persons with disabilities in employment, state an local government activities, public accommodations, public transportation, telecommunications, and public services. This article focuses on employment. It is usually referred to as "Title 1" of the ADA. Title 1 says that qualified individuals may not be discriminated against in being hired for a job, job duties, pay, layoffs, firing, promotions, benefits, and leave.

In the process of interviewing, employers are forbidden to ask applicants if they have any disabilities. However, an employer is permitted to ask you

- objective questions as to whether you can do important duties of the position you are applying for;
- about your ability to meet the physical standards for jobs involving physical labor;
- about your ability to get along with others
- about your ability to complete assignments on time, and to come to work every day.

When we look at what a law says, it is very important to know what definitions there are for important words in the law. Let us look at some of these definitions.

Disability:

1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
2) a record of such an impairment; or
3) being regarded as having such an impairment.

There is one very important thing to know about the definition of disability. You are not protected if your disability is related to current use of illegal drugs.

Mental Impairment:

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Discriminate (derived from the book, "Disability Law Deskbook", by Michael Faillace):

Treating someone differently than other employees for no reason other than their disabilities, or to make a decision against someone just because of their disability. This means that if your employer wants to hire someone else because that person is *more qualified* then you, you are not being discriminated against. But if your employer decides not to hire you just because of your disability, it is discrimination. If your boss wants to fire you because of something that is not related to your disability, that is not discrimination. It is discrimination if your boss wants to fire you because of your disability.

The ADA says that an employer must provide a "reasonable accommodation" to a qualified employee to help that person do the job. This means that if you can do the job well with or without the accommodation, you are qualified for the job. These accommodations could include

- having a job coach;
- flexible hours so that you can go to doctor's appointments;

- allowing you to have time off (maybe unpaid) if you need to go into the hospital;
- telling you how well you're doing and what you need to improve on, and making sure the workplace is accessible to wheelchairs, etc.;
- giving you a supportive boss. (It may be difficult to prove that the employer has not provided a supportive boss.)

It is important to know that your employer only has to give you accommodations if they know about your disability and you ask for them! They also might not have to give you accommodations if they are too expensive or difficult for the company. This is called "*undue hardship*". So, providing a reader for a blind clerk might be unreasonable for a small company, but not for a large company's blind lawyer. Also, if the employer can show that providing you with accommodation would cause a danger to you or to anyone else, they do not have to. This is called a "*direct threat*".

According to David K. Fram, the director of ADA and EEO Services for the National Employment Law Institute, people with mental disabilities are not winning ADA cases because they do not want to tell their employers about their illnesses. There is a lesson to be learned here. You do not need to be ashamed of your illness, and you should tell your employer about it, if you need accommodations. You also need to communicate to your employer about what sort of accommodations you need.

You should know that those employers with fewer than fifteen employees are not subject to Title I. However, in the District of Columbia, the Human Rights Act covers all employers with no minimum number of employees. (The Human Rights Act is similar to the ADA, but only applies to the District of Columbia.)

The ADA covers state and local governments, employment agencies, labor organizations, and management committees. The ADA does not apply to the federal government, but discrimination by the federal government or federally assisted programs is prohibited under Title V of the Rehabilitation Act of 1973.

This concludes the first part of this article about Title I of the ADA. The second part will feature some case studies that show how the courts have interpreted the ADA. It will also tell you what to do if you think that someone has discriminated against you.

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