



Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck, P.C.
77 W. Washington Street
20th Floor
Chicago, IL 60602-2904

Telephone: 312-263-6330
Fax: 312-372-5555
Toll Free in Illinois: 800-444-1525
National Toll Free: 888-626-5556

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CHICAGO LAWYER REPRESENTS EMPLOYEES WITH DISABILITIES

PRACTICE AREAS

Workers' Compensation
Personal Injury
Employment Discrimination
Sexual Harassment
Family Medical Leave Act
(FMLA)
Collections/ERISA

Ron Schwartz, an attorney at Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck, P.C., is an employment law lawyer who represents workers who have discrimination claims.

INTRODUCTION

This article is for informational purposes only and should not be construed as legal advice regarding the Americans with Disabilities Act. It is limited to federal law. The Illinois Human Rights Act addresses "handicap discrimination." The City of Chicago and Cook County also have disability discrimination laws.

The Americans with Disabilities Act ("ADA") is a federal statute that prohibits employers from discriminating against qualified individuals with disabilities. The ADA covers (1) hiring, (2) firing, (3) pay and (4) other terms, conditions, and privileges of employment. The ADA applies to employers with 15 or more employees. As of January 1, 2009, Congress significantly improved the protections of the ADA law.

DEFINITION OF DISABILITY

A "disability" is defined as: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment. A qualified employee or applicant with a disability is someone with or without reasonable accommodation, who can perform the essential functions of the job. Unless the reasonable accommodation would



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pose an "undue hardship" on the employer's business, it must allow the accommodation. Undue hardship is something that requires significant difficulty or expense. In making this determination, an employer's (1) size, (2) financial resources, and the (3) kind of business are considered.

MEDICAL EXAMS

An employer making hiring decisions cannot ask job applicants about the existence, nature, or severity of a disability. Workers may be asked about their ability to perform specific job functions. When employers make tentative offers of employment they may require a medical exam. However, the exam must be required for all new employees in similar jobs. The exam must be related to the job and to the employer's business needs.

RETALIATION

It is unlawful to retaliate against persons who oppose employment practices that discriminate based on (1) having a disability, (2) filing a discrimination charge, (3) testifying, or (4) participating in any way in an investigation, proceeding, or litigation under the ADA.

NEW LAW STRENGTHENS ADA

The ADA Amendments Act of 2008 is now law. It stresses that the definition of "disability" should be interpreted broadly. The Act makes important changes to the definition of the term "disability." The Act rejects the holdings in several U.S. Supreme Court decisions that severely limited the scope of the ADA. The Act states that those "mitigating measures" other than "ordinary eyeglasses or contact lenses" will not be considered in assessing whether an individual has a disability. For example, taking medication to ease or eliminate symptoms of heart disease is considered a mitigating measure.

The new law (1) clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; (2) states that an individual subjected to an action prohibited by the ADA,



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such as failure to hire, because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor; and (3) states that individuals covered only under the "regarded as" category are not entitled to reasonable accommodation.

The new law is of particular importance to employees who have chronic illnesses. Persons taking medication and in remission are now clearly covered by the ADA. They no longer face the frustrating situation of not being considered "disabled" if an adverse action is taken against them by their employer. However, employers who contend that they were unaware of an employee's disability may not be held liable under the ADA. This presents a dilemma for persons with a disability who are able to work. To tell or not to tell, that is the question. Finding the answer involves both personal and legal considerations.

PROCEDURE AND REMEDIES

Before an ADA lawsuit is filed, you must file a charge of discrimination with the Equal Employment Opportunity Commission or another agency authorized by the EEOC. In Illinois, the charge must be filed with the EEOC within 300 day of the date of the discriminatory act. The remedies provided by the ADA are (1) back pay, (2) reinstatement, (3) compensatory damages for emotional distress, (4) punitive damages, and (5) attorney's fees.

If you believe you may have a claim under the ADA, please call Ron Schwartz at 312-263-6300 to discuss whether an in-person consultation should be scheduled.