

Americans with Disabilities Act (ADA) and ADA Amendments Act (ADAAA)

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Learning Objectives:

- 1) Describe and understand the differences between the ADA (Americans with Disabilities Act) and ADAAA (ADA Amendments Act).
- 2) Describe and understand how the ADA and ADAAA (ADA Amendments Act) defines epilepsy as a disability.
- 3) Understand what employment rights are protected under the ADA and ADAAA for a potential employee with epilepsy. This objective would include an understanding about what questions can be asked, what information is confidential, and what medical information can be requested.
- 4) Understand how the ADA requires employers to provide accommodations for persons with epilepsy.
- 5) Understand and describe how the ADA addresses issues of safety at work with regard to persons with epilepsy.
- 6) Understand how the ADA protects persons with epilepsy from discrimination from public transportation systems.
- 7) Be able to describe how a person with epilepsy can be assisted in filing charges of employment discrimination in the private or public sector if they feel their rights are compromised under the ADA.

Outline:

1. Background – ADA and ADAAA

- a. Why consider the ADA for people with epilepsy?
 - i. Unemployment rates for people with epilepsy are high
 1. May be 5 times the national average
 2. May be up to 50% unemployment rate in this patient population
 - ii. People with epilepsy (PWE) may benefit from legal and other protection under this law
 - iii. If a person with epilepsy cannot show that he/she has a disability, then there is not legal protection against discrimination from the condition
- b. General review of history of legal protection under ADA and ADAAA
 - i. ADA was passed and signed by Congress on 7/26/90 granting civil rights protections to individuals with disabilities that is similar to those granted for women and minorities
 - ii. Makes discrimination against people with disabilities illegal with applications to employment, access to public places and places of accommodation
 - iii. Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing title I of the ADA
 - iv. ADA Amendments Act (ADAAA) was passed in 2008 (effective 1/1/09) as amendment to ADA to essentially clarify who is protected under the ADA.
 1. Original ADA was followed by Supreme Court decisions that narrowed the scope of who was protected under the law.
 2. Many PWE found that they were not considered to have a disability because their seizures were controlled by medications.

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- v. Other than clarifying/reinforcing who is covered under the ADA, the amendment does not change anything else from the original ADA in 1990
 - vi. The ADA and ADAA applies in the workplace but also in other public areas which include hotels, restaurants, public transportation and other venues.

2. Definitions:

- a. ADA (Americans with Disabilities Act) and ADAAA (ADA Amendments Act)
 - i. Epilepsy as a disability – some important points:
 1. People/persons with epilepsy (PWE) are found has having a disability because they are considered to be limited in neurologic function and life activities when seizures occur.
 2. Important to note that even if treatments control seizures partially or completely, PWE are still considered to have a disability.
 3. PWE are considered to have a disability even if they had epilepsy in the past according to the law.
 4. If an employer takes a prohibited action because of epilepsy or a belief that a person has epilepsy, the individual is covered under the law.
 - ii. What employment rights are protected
 1. What questions can/cannot be asked
 - a. Employers cannot ask if a person has epilepsy, uses prescription drugs or whether they have filed for workers' compensation or been injured before being offered a job
 - b. An employer can ask if a person meets job qualifications (i.e. do they have a drivers' license or whether they can operate heavy machinery or equipment

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- c. An employer can ask for medical information related to performance issues
 - 2. What information is confidential
 - a. In general, employers are to keep medical information confidential
 - b. Exceptions include disclosure to supervisors for accommodations and restrictions, first aid use, investigations of compliance with ADA and for workers' compensation and insurance reasons
 - 3. What medical information can be requested
 - a. In general, employers cannot ask applicants questions about epilepsy, treatment or prognosis even if they have disclosed the condition
 - 3. Accommodations for people with epilepsy
 - a. If the person applying for a job discloses that they have epilepsy, and the employer "reasonably believes that the applicant will require an accommodation to perform the job because of epilepsy or treatment, then the employer may ask if he needs an accommodation and what type"
 - b. Employers are required to provide reasonable accommodations unless it would impose an undue burden on the employer. Factors that determine this burden are:
 - i. Size of employer and number of employees
 - ii. Number and type of facilities
 - iii. Size of budget
 - iv. Cost and nature of requested accommodation
 - c. Three categories of accommodations exist
 - i. Modification to job process that allows PWE to be considered
 - ii. On the job accommodations
 - iii. Accommodations to allow PWE to have equal benefits and privileges of employment

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- d. Need to be considered case-by case. Some examples:
 - i. Leave for treatment or time for medication adjustment (see FMLA)
 - ii. Breaks for medication and private area to rest after seizure
 - iii. Flexible work schedules including options to work at home
 - iv. Mat to cushion fall from seizures
 - v. Consistent work times/shifts
 - vi. Permission for service animals
 - e. Methods and process for a person with epilepsy to request “reasonable accommodations” should involve employer and PWE. Resources include:
 - i. Job Accommodation Network – askjan.org
 - ii. EEOC – www.eeoc.gov
 - iii. Legal assistance (see below)
4. Safety at work for people with epilepsy
- a. Individual determinations need to be made with regard to whether epilepsy is relevant to safety in job hiring and placement
 - b. Employers consider a concept of “direct threat” that may be considered with harm to individual or others that cannot be reduced by accommodations
 - c. Employers must consider duration and specific characteristics of the risk
 - i. Duration of risk
 - ii. Nature and severity of potential harm
 - iii. Likelihood that potential harm would occur
 - iv. Imminence of potential harm
 - d. Exceptions may occur when federal laws regulate employment of PWE
 - i. Examples from transportation regulations may preclude PWE from flying a plane or driving a commercial vehicle

5. Protection from discrimination

a. Public transportation and the ADA

- i. Under the ADA a PWE has the right to request an accommodation with the regular bus service
 - 1. Examples may include seat belts or other accommodations
- ii. Paratransit services may be provided if the regular bus services do not meet the needs of the PWE

6. How To's and Resources for PWE

- a. How do people with epilepsy file charges if they feel there has been employment discrimination?
 - i. File charge of discrimination with the EEOC
 - 1. www.eeoc.gov/employees/howtofile.cfm
 - ii. Third party may file charge on behalf of the person with epilepsy
 - iii. Process may be different if filing against federal government
 - 1. Can use resources through EEOC for this as well
- b. How do people with epilepsy get legal assistance?
 - i. General legal resources – legal information
 - 1. <https://www.eeoc.gov/laws/types/epilepsy.cfm>
 - ii. Information to refer to area attorneys for PWE
 - iii. Jeanne A. Carpenter Epilepsy Legal Defense Fund
 - 1. www.epilepsylegal.org
 - 2. Provides legal guidance to PWE and their families
 - 3. Provides referrals to nationwide network of attorneys
 - a. Attorneys provide legal advice and representation
 - b. Attorneys agree to provide at least 3 hours of free advice to referred PWE
 - iv. General EFA contact information/numbers