



## The EEOC Provides ADA Guidance on Specific Conditions

by Mark Busto and Nate Bailey

The Equal Employment Opportunity Commission (EEOC) recently issued four new "Question and Answer" documents that address how the Americans with Disabilities Act of 1990 (ADA) relates specifically to diabetes, epilepsy, intellectual disabilities, and cancer. These documents provide clear answers to common employer questions about hiring and accommodating employees with one or more of these conditions. They also offer various concrete examples showing how to apply the ADA to specific scenarios.

### The ADA Amendments Act

The ADA generally prohibits discrimination against people with disabilities. The ADA Amendments Act of 2008 broadened the definition of "disability" to make it easier for people with disabilities to receive the protections of the ADA. This brought the federal law more in line with the Washington Law Against Discrimination, which has historically offered greater protection than the ADA. As a result of the amendment, the EEOC revised its regulations implementing the ADA in 2011. One significant addition to the regulations is a list of conditions that the EEOC believes will constitute disabilities "in virtually all cases," including diabetes, epilepsy, intellectual disabilities, and cancer, among others. The broader definition of "disability" enables more employees to qualify for ADA protection, so it is more important than ever for employers to ensure their policies and practices conform to the law.

Much of the information in the Q&A documents is applicable to the employment of all individuals with disabilities. This makes them a valuable resource for employers seeking more information about the ADA in general. For example, all four documents make clear what an employer can and cannot ask job applicants about disabilities. For example, employers may not ask applicants whether they have a disability before making a job offer. After making a job offer, the employer may only ask questions about the extent of the disability if the applicant has already told the employer s/he has a disability.

The documents address the treatment of current employees as well. An employer may ask whether a disability is affecting a current employee's job performance only when it has observed performance issues *and* "reasonably believes that the problems are related to a medical condition." The employer also has a duty to keep its employees' health information confidential. Employers may tell supervisors to the extent necessary to provide a reasonable accommodation, or first-aid and safety personnel if the employee might need emergency help. But, employers may not tell co-workers that apparent special treatment is really a reasonable accommodation or the reason their colleague appeared to have a medical emergency at work.

The most helpful feature of the Q&A documents is the guidance on reasonable accommodations for individuals with the specific disabilities. Importantly, employers must provide reasonable accommodations for the condition itself, for the effects of treatment, or for both. For example, the documents note that an employer must accommodate an epileptic employee's seizures *and* the side effects of medication. In some respects, employers have a heightened duty to seek reasonable accommodations for employees with intellectual disabilities. For instance, even though the duty to provide a reasonable accommodation normally arises only when the employee requests one, an employer must initiate a discussion about the need for a reasonable accommodation if it knows the employee's disability is preventing the employee from requesting an accommodation.

The EEOC provides a list of common reasonable accommodations for each condition: an employee with diabetes might ask for more frequent breaks during which to manage her diabetes; an employee with an intellectual disability might need additional training or more detailed instructions; an employee with epilepsy might ask for a carpet to soften a fall or to bring a service animal to work; and, an employee with cancer might need to modify the office temperature or be allowed leave for doctor appointments.

### **Compliance Tips**

The amendments to the ADA, which extended its protections to more employees, make it even more important for employers to review their policies for compliance. What's more, the newly-broadened definition of "disability" makes it much tougher for employers to defeat disability discrimination claims on summary judgment. Because discrimination claims will be harder to dismiss pre-trial, employers would be wise to focus even more energy on claim prevention. To that end, employers should:

- Thoroughly educate supervisors and HR personnel on what information they may request, and how to provide reasonable accommodation
- Implement specific policies to protect confidential employee health information
- Address complaints of discrimination or harassment promptly, take corrective action if necessary, and remind those accused of misconduct that retaliatory responses are unacceptable and will be grounds for discipline
- Ensure that supervisors consistently document performance problems of all employees, not just employees with disabilities, on an ongoing basis. Even-handed performance management will serve as evidence supporting decisions made with respect to disabled employees and can rebut allegations of discrimination or retaliation

The guidance documents are available on the EEOC's [website](#) under "The Questions and Answers Series."

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