

## Reference Guide to HIV as an ADA Disability

Posted By [David W. Webber](#) On April 6, 2011 @ 9:13 am In [Uncategorized](#) | [No Comments](#)

The following listing of ADA provisions (amended in 2008) and EEOC regulations (amended in 2011) focuses on how HIV infection is defined as a disability. The Reference Guide accompanies my [essay on the EEOC's new ADA regulation](#) <sup>[1]</sup>.

### Key Legal Terms or Concepts

#### *Impairment*

- **ADA as amended:** No statutory definition.
- **EEOC:** Includes any physiological disorder or condition affecting one of more body systems, such as the reproductive, immune, hemic, or lymphatic systems. 29 C.F.R. § 1630.2 (h)(1). See *also* *Bragdon v. Abbott*, 524 U.S. 624, 637 (1998) (holding that HIV infection is an impairment).

#### *Major Life Activity*

- **ADA as amended:** Operation of a major bodily function, including functions of the immune and reproductive systems. 42 U.S.C. § 12102(2)(B).
- **EEOC:** Operation of a major bodily function, including functions of the immune system, and hemic, lymphatic, and reproductive functions. 29 C.F.R. § 1630.2(i)(ii).

#### *Remission*

- **ADA as amended:** An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 U.S.C. § 12102(4)(D).
- **EEOC:** An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 29 C.F.R. § 1630.2(j)(1)(vii).

#### *Mitigating Measures*

- **ADA as amended:** The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as ... medication [or] medical supplies. 42 U.S.C. § 12102(2)(E)(1).
- **EEOC:** The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. 29 C.F.R. § 1630.2(j)(1)(vi). Mitigating measures include, but are not limited to, medication and medical supplies. 29 C.F.R. § 1630.2(j)(5)(i).

#### *Inherent Disabilities*

- **ADA as amended:** No statutory definition or reference.
- **EEOC:** Individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under the "actual disability" prong or the "record of" prong of the ADA. 29 C.F.R. § 1630.2(j)(3)(ii). Example: Human Immunodeficiency Infection (HIV) substantially limits immune function. 29 C.F.R. § 1630.2(j)(3)(iii). However, there is no "per se" disability. Interpretive Guidance on Title I of the Americans with Disabilities Act, Appendix to Part 1630, 76 Fed. Reg. at 17,011 (Mar. 25, 2011).

#### *Regarded as Having an Impairment*

- **ADA as amended:** An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under [the ADA] because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. 42 U.S.C. § 12102(3)(A).
- **EEOC:** An individual is “regarded as having such an impairment” if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment. 29 C.F.R. § 1630.2(l)(1).

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[1] essay on the EEOC’s new ADA regulation: [http://aidsandthelaw.com/wp/?page\\_id=219](http://aidsandthelaw.com/wp/?page_id=219)