

American with Disabilities Amendments Act: Legislation may protect more people with ET from discrimination

The Americans with Disabilities Act (ADA) was passed in 1993 with the intent of eliminating discrimination against people with disabilities, particularly in the workforce. But starting in 1999 the Supreme Court narrowed the definition of disability and so denied protection to a wide range of people, including many people with neurological conditions such as ET. In 2008, Congress passed The Americans with Disabilities Amendments Act (ADAAA), which took effect in January 2009. The ADAAA restores the intent of Congress in 1993 of providing “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”

The ADAAA, like the ADA, protects the same three broad categories of individuals:

- Persons who have a physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- Persons who have a record of an impairment; or
- Persons who can be regarded as having an impairment.

Specifically the ADAAA reverses the Supreme Court's decisions in regard to the interpretation of the phrases “substantially limits,” “major life activities,” and “regarded as” in the ADA.

Substantially Limits:

Persons who take medication to treat the symptoms of a condition such as primidone or propranolol for ET - or require a medical device such as a hearing aid in order to hear - were previously excluded from protection under the ADA. Because they were being treated, they were not considered to have a disability even if that treatment provided no cure or did not work all of the time or even if the treatment stopped working all together. The ADAAA now provides protection for those people. (An exception in this area is the use of ordinary eyeglasses and contact lenses.)

In addition, persons being treated with surgery, including Deep Brain Stimulation (DBS), will also be protected, according to Linda Carter Batiste, Principal Consultant with the Job Accommodation Network (JAN), a free consulting service funded by the United States Department of Labor's Office of Disability Employment Policy. She has in-depth training on the Americans with Disabilities Act (ADA) and employment law as well as accommodations related to mobility impairments, emergency evacuation, and substance abuse.

Batiste - who says she is quite familiar with ET and has spoken with a number of persons with ET - explains that the list of mitigating measures currently listed in the ADAAA is not exhaustive of all types of treatments. Surgery is not listed, but she says that she and others are “heavily involved” in clarifying that surgery is a treatment, not a cure, and persons having this type of treatment will be protected.

Major Life Activities:

Previous to the ADAAA, a person was protected if one or more “Major Life Activities” was impaired – all of the time. If a person was unable to hear, walk, talk, etc. they were

protected from discriminatory practices under the ADA. A person who required the use of a wheelchair all of the time because of spinal cord injury, or a person who was completely deaf and had been born that way was protected. The ADAAA continues to protect these people.

But if another person had a malfunctioning immune system that left them more susceptible to infection - or had a neurological condition such as epilepsy - they were not protected under the ADA, because these conditions are considered episodic or are not consistent in the degree or type of disability inflicted. In addition a person who had a condition affecting mood or state of mind - such as depression or anxiety - instead of a life activity were not considered disabled and so were not protected. Within this group of conditions are many neurological diseases that are not understood very well. The ADAAA extends protection against discrimination to people affected by these conditions, as well as those with impacted the following major life activities: reading, concentrating, thinking and communication.

In addition, the ADAAA says that people need not be limited in several life activities all at once and all of the time. The importance of this ruling can be illustrated by the experiences of many students who have ET attending schools that did not separate the daily activity of learning into its many different tasks – such as listening, writing, speaking, etc. - when determining a student's need for accommodation.

It is important to understand what the ADAAA's intent is not to punish employers or schools – or other public and private organizations for that matter - for discriminating against people with disabilities. It is intended to insure a level field of play for the disabled through the use of accommodations.

Accommodations are things employers can do or provide a disabled employee - or a school can provide a disabled student - to help them to fully participate in the workforce or in education. Accommodations are alternate ways or means of doing a task when a viable alternative is available. Firing or demoting an employee, or allowing a student to fail, is not acceptable just because they can't do something in the "usual" way it is done by everyone else.

An example of accommodation that an employer can provide an employee or a school can provide a student who has ET and who cannot type accurately and quickly in order to enter information into a computer, but who can otherwise perform all the tasks of a job or class assignment adequately, is to provide voice recognition software.

The IETF has heard from a number of students who have ET and from parents of students who have ET over the years who were very upset that no accommodation was allowed for written test taking. Examinations are very stressful for most students at all levels of education. Adding to this stress for the student with ET was the requirement to pencil in small circles on a multiple choice computer form or handwriting lengthy answers to essay questions within a limited amount of time. Schools would not provide more time for students with ET to complete these tests and did not allow an alternative method of testing such as typing or verbally answering questions instead of handwriting. These schools said that students with ET did not require accommodation, because their tremor did not interfere in all activities of the learning process such as when reading or

engaging in class discussion. Schools must now provide accommodation for the specific life activity impacted by a disability.

Also of important note, the ADAAA now protects people who are in remission from diseases. Cancer survivors are now protected from discrimination based upon the fact that their cancer could return at some point in the future.

Regarded As:

The ADAAA expands the scope of coverage under the "regarded as" section of the definition of "disability." Now an employee or job candidate need only show that they have been subjected to a negative employment action prohibited under the statute - such as being fired, failing to hire or failing to promote - because of a real or "perceived" (imagined) disability in order to get a hearing. There is no guarantee that they will receive a ruling favorable to them, but they will be granted a hearing.

Previously - for example - a person who has hand tremor applies for a job and the interviewer sees the tremor and then does not offer a job. Unless the interviewer admits that they were not offering a job because they saw a hand tremor, they were protected from legal action. There was no way an applicant could prove that the thought processes of the interviewer were discriminatory, and so would not even be granted a hearing on discrimination. This section guarantees that the hearing would be granted.

According to Batiste, this protection in the ADAAA means that employees "no longer need to get into the brains of employers. An employee who experiences a negative action in employment on the basis of a real or perceived impairment can get into the door to be heard."

In addition - An important exclusion for many with ET

The ADAAA also protects people who are associated with a person with a disability, and is discriminated against because of that relationship. Examples of people protected are caregivers, spouses, and partners.

It is important to realize that the ADAAA clause that protects "associates" of persons with disabilities from discriminatory practices **does not** cover persons from families with genetic conditions such as ET.

According to Batiste, the Genetic Information Nondiscrimination Act (GINA) of 2008 prevents discrimination by health insurers and employers against persons because of their DNA – their genetic makeup. If a person is a member of a family in which a genetic disease runs such as ET, but they themselves do not have ET, they are protected by GINA. Once the condition presents its self within the person they are then protected from discrimination under the ADAAA.

Where to get information and help is you believe you have been discriminated against because of a disability

Disability law, like all law, requires interpretation by the courts. This is a complex and sometimes bewildering process. Every possible case of disability discrimination is

different even among people with the same condition. No article such as this can possibly cover each and every possible situation. If you believe that you have been discriminated against in the workforce or at school because you have ET - or because you have any other disabling condition - contact the Job Accommodation Network (JAN). JAN's office hours are 9 am to 6 pm Eastern Time, Monday through Friday.

By Telephone:

- (800)526-7234 (Voice) in the United States
- (800)ADA-WORK [(800)232-9675] (Voice) in the United States
- (877)781-9403 (TTY) in the United States
- (304)293-7186 (Voice) locally and outside the United States

By E-Mail

- JAN on Demand for JAN questions that are related to accommodation, ADA, and workplace issues.
- Training Request Tool for training requests. For information on the ADA or work accommodations, or for a free consultation.

Visit JAN's website at www.jan.wvu.edu.