

DISABILITY DISCRIMINATION IN EMPLOYMENT: RIGHTS AND RESPONSIBILITIES UNDER FEDERAL AND STATE LAW

Overview

While the Americans with Disabilities Act of 1990 (ADA) is the best known of the legislative efforts to protect the rights of people with disabilities in the workplace, the ADA is not the only statutory law on the subject. At the federal level, the ADA was amended and clarified by Congress through the Americans with Disabilities Amendments Act of 2008 (ADAAA). At the state level, Missouri's workers with disabilities enjoy the protections of the Missouri Human Rights Act (MHRA), which are sometimes similar but not necessarily identical to federal law and which may afford greater legal protections. Thus, employers and employees alike are well-advised to consider both federal and state law when assessing their duties and rights under current disability law.

Employers: Who Is Subject to Disability Laws?

Federal

Generally, the provisions of the federal ADA Title I apply to both public and private employers with 15 or more employees (as of 1994). The ADA applies to religious entities and corporations as well as private and public employers.

State

The provisions of the MHRA extend to private employers, labor unions, employment agencies, state and local governmental agencies and political subdivisions. Under the MHRA, employers must employ six or more employees. The MHRA also includes as employers individuals who are acting on behalf of an employer. The MHRA contains an exception for religious and sectarian organizations and corporations owned by such organizations.

Employees: Who Is Considered Disabled for Purposes of Disability Laws?

Both federal and state laws contain a three-prong structure for defining

a disability. With respect to an individual, the term disability means: (1) actually having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) a record of having such an impairment; or (3) being regarded as having such an impairment.

What Does It Mean to Actually Have a Physical or Mental Impairment?

Under federal and state law, a physical or mental impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. The laws also cover any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

What Does It Mean to Be “Regarded as Having” an Impairment?

Federal

An individual can establish coverage under the “regarded as” prong by showing that he/she was subjected to an action prohibited by the ADA based on an actual or perceived impairment, regardless of whether the impairment limits a major life activity.

State

Under the MHRA, being regarded as having an impairment means the person: (1) has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or others as constituting such a limitation; or (2) does not have a classified impairment but is treated by an employer or by others as having an impairment that substantially limits a major life activity.

What Does It Mean to “Have a Record” of an Impairment?

Federal

Under federal law, this provision is intended to ensure that people are not discriminated against because of a history of disability or because they have been misclassified as having a substantially limiting impairment.

State

Under Missouri law, having a record of such impairment means a person has a history of, or has been misclassified as, having a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

What is a Major Life Activity?

Federal

Under current federal law, a major life activity is an activity of central importance to the daily lives of most people. The ADAAA offers a non-exhaustive list of major life activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, sitting, reaching, lifting, bending, speaking, breathing, thinking, interacting with others, working, learning and concentrating. Also, major life activities include “major bodily functions,” such as the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The ADAAA clarifies that impairments that are episodic or in remission are considered disabilities “if” the impairment would substantially limit a major life activity when the condition is considered in its active state.

State

Under the MHRA, major life activities are those life activities that affect employability, such as communication, ambulation, self-care, socialization, education, vocational training, employment and transportation.

What Is a Discriminatory Employment Action Under Federal and State Law?

There are many actions that can qualify as a discriminatory employment action. Under federal law, qualified applicants and employees with disabilities are protected from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide reasonable accommodations to qualified applicants that do not impose undue hardship. Under state law, it is an unlawful employment action for an employer to use an individual’s status as a disabled person: (1) to refuse to interview, hire or promote; (2) to discharge or demote; (3) to

withhold pay or terms, privileges, or conditions of employment due; or (4) to refuse to provide reasonable accommodations to the known disabilities of the applicant or employee.

What Sorts of Accommodations Must an Employer Provide?

Under both federal and state law, employers are required to make reasonable accommodation to the known limitations of an employee with a disability or applicant for employment. An accommodation may include making facilities readily accessible to and usable by persons with disabilities, and job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and the provision of readers or interpreters and other similar actions.

Exception: What Is an “Essential Function of the Job”?

Neither federal nor state law requires employers to provide accommodations to disabled individuals who are incapable of performing the essential functions of the job. In general, essential functions of the job are duties that an employee must be able to perform on their own or with the help of a reasonable accommodation. An employer cannot refuse to hire an individual because a disability prevents him/her from performing duties that are not essential to the job.

What Is a “Reasonable Accommodation”?

Federal

Under the ADA, a reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

State

Under the MHRA, reasonable accommodation means an employer shall make reasonable accommodation to the known limitations of a handicapped employee or applicant. An accommodation may include: (1) making facilities used by employees readily accessible to handicapped persons; and (2) job restructuring, part-time or modified work schedules, or other accom-

modations in the workplace. To determine whether an accommodation is reasonable, factors to be considered may include: (1) nature and cost of the accommodation needed; (2) size and nature of a business, including the number and type of facilities; (3) good faith efforts previously made to accommodate similar disabilities; and (4) ownership interest in the subject of the proposed accommodation, including the authority to make the accommodation under terms of a bona fide agreement, such as a lease.

Special Cases: Are There Any Protections for Those Addicted to Drugs or Alcohol?

Federal

The ADA excludes coverage from a person who currently engages in the illegal use of drugs. However, the ADA provides that a person no longer engaging in the use of illegal drugs may qualify as an individual with disability if he/she: (1) successfully completed a supervised drug rehabilitation program; or (2) has participated in a supervised rehabilitation program.

State

The MHRA also excludes from coverage a person who is illegally using drugs. However, the MHRA does protect those who: (1) have successfully completed a supervised drug rehabilitation program; (2) have participated in a supervised rehabilitation program; or (3) have been erroneously regarded as currently illegally using or being addicted to a controlled substance.

Pre-Employment Screening: What Types of Questions and Testing May Employers Legally Ask and Impose?

Federal

Under the ADA, it is unlawful to: (1) use employment tests to screen out an individual with disabilities unless the test is shown to be job-related and consistent with business necessity; (2) fail to select and administer employment tests in the most effective manner to ensure that test results accurately reflect the skills, aptitude, or other factors that the test measures; and (3) fail to make reasonable accommodations, including in the administration of tests, unless such accommodation would impose an undue hardship.

State

Under the MHRA, an employer shall not make use of any employment test that screens out persons with disabilities unless: (1) the test score is shown

to be job-related for the position in question; and (2) alternative job-related tests that do not screen out as many persons with disabilities are shown to be unavailable. An employer shall select tests concerning employment to ensure that, when administered to the applicant or employee who has a disability that impairs sensory, manual, reading or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the tests measure rather than reflecting the applicant's or employee's impaired sensory, manual, reading or speaking skills, except where those skills are the factors that the test purports to measure.

Are There Any Other Obligations Imposed on Employers?

Under the ADA and MHRA, employers are required to post a notice in an accessible format to applicants, employees and members of labor organizations describing the provisions of the act. EEOC will provide employers with a poster summarizing these and other federal non-discrimination policies and requirements. EEOC also provides guidance on making this information available in accessible formats for people with disabilities.

How Does an Employee or Applicant Who Believes That He/She Has Been Discriminated Against File a Complaint?

Federal

Complainants must file a complaint or "charge" of discrimination with the EEOC within 180 days of the alleged discrimination. Individuals in Missouri have up to 300 days to file a charge because there is a state law, the MHRA, that provides relief for discrimination on the basis of disability. The federal government encourages complainants to resolve differences through alternative dispute mechanisms such as mediation. If alternate dispute mechanisms fail, the federal agency will issue a "right to sue" letter or, in some cases, will file suit. Individuals may file a lawsuit in federal or state court only after they receive a "right-to-sue" letter from the EEOC. Individuals may file a charge of discrimination on the basis of disability by contacting any EEOC field office, located in cities throughout the United States. You are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. For information and instructions on reaching your local office, call:

- (800) 669-4000 (Voice)
- (800) 669-6820 (TDD)

State

Under the MHRA, persons who believe they have been discriminated against because of a disability must file a charge of discrimination with the Missouri Commission on Human Rights (MCHR). A signed complaint must be filed within 180 days of the latest date of discrimination. For assistance in filing charges of discrimination, contact MCHR at:

- (877) 781-4236 (Voice)
- (800) 735-2466 (Relay)
- (800) 735-2966 (TDD)

Key Changes Made to the ADA by the ADAAA

The 2008 ADAAA differs from the ADA by:

1. Making it clear that Congress intended the ADA to require a less demanding standard in defining who is an individual with a qualified disability;
2. Construing the ADA to favor a standard of broad coverage to the maximum extent permitted by the terms of the act;
3. Clarifying that mitigating measures should not be a consideration in determining whether an individual has an impairment that substantially limits a major life activity; and
4. Expanding the list of major life activities that are indicative of having a disability.

Other Resources

Federal law: <http://www.ada.gov>
 <http://www.eeoc.gov>

State law: <http://www.labor.mo.gov/mohumanrights>

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