

Stigma and Mental Health Advisory Committee: Legal Issues

ADA as a starting point:

Legislative intent includes language discussing the ADA's intent

- to end discrimination against people with disabilities; and
- to facilitate full participation in society as a whole by people with disabilities (including mental illness)

ADA applies to:

- Employment (Title I)
- State and Local Government (Title II)
- Public Accommodations/Private Businesses (Title III)
- Telecommunications (Title IV)

ADA does not apply to:

- Airlines (Air Carrier Access Act)
- Housing (Fair Housing Act and California Fair Employment and Housing Act)
- Special Education (IDEA and Section 504 of the Rehabilitation Act)

How does the law define who qualifies as a person with a disability?

- **ADA:**
 - Has a physical or mental impairment that substantially limits one or more major life activities,
 - Has a record of such an impairment,
 - Is regarded as having such an impairment**
- **Major life activities include:**
 - caring for oneself
 - walking
 - performing manual tasks
 - seeing
 - hearing
 - breathing
 - learning
 - working (e.g. mental health medication affects your work schedule)

- **ADA Amendments Act of 2008: Positive Changes**

--**Mitigating Measures:** Prior to this change in the law, courts had to consider mitigating measures when evaluating whether someone is a qualified individual with a disability (Catch 22). For example, if eyeglasses help correct your vision and you can wear eyeglasses, you cannot be considered a qualifying individual with a disability based on your visual impairment.

New rule: Disability must be assessed without considering mitigating measures.

--**Clarification of protections for persons “Regarded as” having a disability:**

If a covered entity (e.g. employer) takes adverse action against you based on a perceived mental illness – whether or not you actually have a mental illness that substantially limits a major life activity, you are protected from discrimination.

--**Overall, broad construction of definition of disability:**

Rules of Construction require that the definition of disability “shall be construed . . . in favor of broad coverage of individuals . . . to the maximum extent permitted by the coverage of this Act.”

- **California State Law: Generally Much Broader Definition of Disability:**

As an example, the Fair Employment and Housing Act Covers the Following Persons:

- person with physical or mental disability that limits (makes the achievement of the activity difficult) a major life activity (construed broadly; includes working even a particular job); history; regarded or treated as even if no current disabling effects
- Disorder requiring receipt of Special Ed services qualifies

- medical condition (cancer or genetic characteristics)
- Might cover people who currently use drugs illegally; ADA does not
- Did not have mitigating measures exception

Situations where disclosure of mental illness required to seek protections of Disability Rights Laws:

- Requesting Reasonable Accommodations (whether under ADA, Fair Housing Act, Section 504, etc.)
- Do not have to turn over medical or mental health records
- Covered entity (e.g. employer) may request “reasonable documentation.”

(e.g. EEOC guidance: Reasonable documentation means that an employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation.)

- Housing: Disclose Prior to Eviction?
- Employment: Disclose Prior to Being Fired?
- Education: Disclose Prior to Exams or being graded? Disclose Prior to Expulsion?

Not in My Backyard (NIMBY):

- Zoning Ordinances
- Resident/Neighborhood Groups

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example

- would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

Health Care Privacy Laws and Stigma:

- See Handouts for Discussion of Rights and Remedies
- Limited enforcement of federal HIPAA authority by the U.S. Government
- HIPAA contains no private right of action
- California State law does provide for individual enforcement actions and damages

Entitlements for Persons with Mental Illness:

- Compare DD system (entitlements under the Lanterman Act)
- Treatment options of low-income adults with mental illness
- Olmstead and how the most integrated setting applies to persons with mental illness
- MHSA and the Future

Cultural Competency and Stigma

- Access of certain groups to mental health treatment and/or advocacy
- Stigma within communities/cultures

Discussion Points:

- Role of Disability Rights Laws in Changing Attitudes
- Education About the Law
- How Enforcement of Disability Discrimination Laws Influences Attitudes

- Age, Cultural, Gender, Sexual Orientation differences within the mental health community
- Homelessness and Substance Abuse and Stigma