

Discrimination Based on Disability

The legislation prohibiting employment discrimination because of disability is more recent than the other equal employment opportunity legislation. The Rehabilitation Act of 1973 prohibits discrimination because of disability by the federal government, by government contractors, and by recipients of federal financial assistance. The Americans with Disabilities Act of 1990 (ADA) also prohibits discrimination in employment because of disability. The ADA is patterned after the Civil Rights Act of 1964. The coverage of the ADA is much broader than the Rehabilitation Act. The ADA covers all employers with 15 or more employees. This chapter discusses both the ADA and the Rehabilitation Act.

10-1 The Americans with Disabilities Act

The ADA is a comprehensive piece of civil rights legislation for individuals with disabilities. Title I of the act, which applies to employment, prohibits discrimination against individuals who are otherwise qualified for employment. The act became law on July 26, 1990, effective two years after that date for employers with 25 or more employees and three years from that date for employers with 15 or more employees. In 2009, the act was amended by the Americans with Disabilities Act Amendment Act (ADAAA), which broadened the definition of covered disabilities to include a wide range of life activities that previously had been declared outside the ADA by a series of Supreme Court decisions, which the ADAAA in effect overruled.

10-1a Coverage

The ADA applies to both private and public sector employers with 15 or more employees but does not apply to most federal government employers, American Indian tribes, or bona fide private membership clubs. The Congressional Accountability Act of 1995¹ extended the coverage of the ADA and the Rehabilitation Act to the employees of the following offices:

- House of Representatives
- Senate

¹ Pub. L. 104-1, 109 Stat. 3.

- Capitol Guide Service
- Capitol Police
- Congressional Budget Office
- Office of the Architect of the Capitol
- Office of the Attending Physician
- Office of Technology Assessment

The Presidential and Executive Office Accountability Act² extended coverage of the ADA and the Rehabilitation Act to:

- the executive office of the president;
- the executive residence at the White House; and
- the official residence of the vice president.

U.S. employers operating abroad or controlling foreign corporations are covered with regard to the employment of U.S. citizens, unless compliance with the ADA would cause the employer to violate the law of the foreign country in which the workplace is located.

In *Board of Trustees of the University of Alabama v. Garrett*,³ the U.S. Supreme Court, in a 5-4 decision, ruled that the Eleventh Amendment of the U.S. Constitution gave the states immunity from individual suits for damages under the ADA. The Court's reasoning in *Garrett* was consistent with its earlier decision in *Kimel v. Florida Board of Regents*.⁴

10-1b Provisions

The ADA prohibits covered employers from discriminating in any aspect of employment because of disability against an otherwise qualified individual with a disability. Illegal discrimination under the ADA includes:

... limiting, segregating, or classifying employees or applicants in a way that adversely affects employment opportunities because of disability, using standards or criteria that have the effect of discriminating on the basis of disability or perpetuating discrimination against others, excluding or denying jobs or benefits to qualified individuals because of the disability of an individual with whom a qualified individual is known to associate, failing to make reasonable accommodation to the known limitations of an otherwise qualified individual unless such accommodation would impose an undue hardship, failing to hire an individual who would require reasonable accommodation, and failing to select or administer employment tests in the most effective manner to ensure that the results reflect the skills of applicants or employees with disabilities.

The ADA also prohibits retaliation against any individual because the individual has opposed any act or practice unlawful under the ADA or because the individual has filed a charge or participated in any manner in a proceeding under the ADA. The act also prohibits coercion or intimidation of, threats against, or interference with an individual's exercise of or enjoyment of any rights granted under the act.

² Pub. L. 104-331, 110 Stat. 4053.

³ 531 U.S. 356 (2001).

⁴ 528 U.S. 62 (2000).

10-2 Qualified Individual with a Disability

qualified individual with a disability

an individual with a disability who is able to perform, with reasonable accommodation, the requirements of the job in question, despite the disability

The ADA and the Rehabilitation Act impose obligations not to discriminate against an otherwise **qualified individual with a disability**. According to the Supreme Court decision in *Southeastern Community College v. Davis*,⁵ a person is a qualified individual with a disability if the person “is able to meet all ... requirements in spite of his disability.” The individual claiming to be qualified has the burden of demonstrating his or her ability to meet all physical requirements legitimately necessary for the performance of duties. An employer is not required to hire a person with a disability who is not capable of performing the duties of the job. However, the regulations under the act require the employer to make “reasonable accommodation” to the disabilities of individuals.

The ADA defines “qualified individual with a disability” as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” When determining the essential functions of a job, the court or the Equal Employment Opportunity Commission (EEOC), which administers and enforces the ADA, is to consider the employer’s judgment as to what is essential. If a written job description is used for advertising the position or interviewing job applicants, that description is to be considered evidence of the essential functions of the job.

In *Cleveland v. Policy Management Systems*,⁶ the Supreme Court held that an individual who applies for Social Security disability benefits may still be a “qualified individual with a disability” within the meaning of the ADA. In *Albertsons, Inc. v. Kirkingburg*,⁷ the Supreme Court held that a truck driver who was not able to meet federal safety standards for commercial motor vehicle operators was not “a qualified individual with a disability” under the ADA. The employer was not required to participate in an experimental program that would have waived the safety standards.

10-3 Definition of Disability

The ADA defines “individual with a disability” very broadly. Disability means, with respect to an individual:

- (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (b) a record of such an impairment; or
- (c) being regarded as having such an impairment.

10-3a The ADA Amendments Act of 2008

The ADA was amended, effective January 1, 2009,⁸ to indicate that the definition of disability should be construed in favor of broad coverage of individuals under the ADA. Spe-

⁵ 442 U.S. 397 (1979).

⁶ 526 U.S. 795 (1999).

⁷ 527 U.S. 555 (1999).

⁸ Pub. L. 110-325, 122 Stat. 3553.

cifically, the amendments expanded the definition of “major life activities” to include, but not be limited to:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

The amended ADA also states that “major life activity” also includes the operation of a major bodily function, including but not limited to:

- Functions of the immune system
- Normal cell growth
- Digestion
- Bowel
- Bladder
- Neurology
- Brain
- Respiratory
- Circulatory
- Endocrine
- Reproduction

Individuals can establish that they are “regarded as having such an impairment” if they show that they have been subjected to discriminatory treatment 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.

In cases decided before the 2009 ADAAA, the Supreme Court restricted the scope of the ADA’s definition of disability. In *Sutton v. United Air Lines, Inc.*,⁹ the Court held that when determining whether an individual has a disability that substantially limits one or more major life activities, a court must also consider the existence of corrective, mitigating, or remedial measures that may reduce the effect of the disability. In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,¹⁰ the Court stated that when assessing the impact of a disability on the major life activity of performing manual tasks, the central inquiry must be whether the individual is unable to perform the variety of tasks central to most people’s daily lives, not whether the individual is unable to perform the tasks associated with her specific job.

The 2009 amendments specifically overrule those two decisions and set out rules of construction for the definition of disability. The ADA now provides that “[a]n impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability” and that “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” The amendments also state that when determining whether an impairment substantially limits a major life activity, the court is not to consider the ameliorative effects of mitigating measures, assistive devices, or aids other than eyeglasses or contact lenses.

Employees who use illegal drugs are not protected by the ADA, nor are alcoholics who use alcohol at the workplace or who are under the influence of alcohol at the workplace. Individuals who are former drug users or recovering drug users, including persons participating in a supervised rehabilitation program and individuals “erroneously regarded” as using drugs but who do not use drugs, are under the ADA’s protection.

⁹ 527 U.S. 471 (1999).

¹⁰ 534 U.S. 184 (2002).

The definition of disability under the ADA includes infectious or contagious diseases, unless the disease presents a direct threat to the health or safety of others and that threat cannot be eliminated by reasonable accommodation. Temporary or short-term nonchronic conditions, with little or no long-term or permanent impact, are usually not considered disabilities. The 2009 amendments to the ADA specifically state that the “being regarded as having an impairment” aspect of the definition of disability shall not apply to impairments that are transitory (defined as an impairment with an actual or expected duration of six months or less) and minor. The act’s protection does not apply to an individual who is a transvestite, nor are homosexuality, bisexuality, or sexual behavior disorders such as exhibitionism or transsexualism considered disabilities. Compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs are also not within the definition of disability.

10-4 Medical Exams and Tests

The ADA limits the ability of an employer to test for or inquire into the disabilities of job applicants and employees. Employers are prohibited from asking about the existence, nature, or severity of a disability. However, an employer may ask about the individual's ability to perform the functions and requirements of the job. Employers are likewise not permitted to require preemployment medical examinations of applicants. However, once an offer of a job has been extended to an applicant, employers can require a medical exam, provided that such an exam is required of all entering employees. Current employees are similarly protected from inquiries or exams, unless those requirements can be shown to be "job-related and consistent with business necessity." The act does not consider a drug test to be a medical examination, and it does not prohibit an employer from administering drug tests to its employees or from making employment decisions based on the results of such tests.

10-5 Reasonable Accommodation

The definition of a "qualified individual with a disability" includes the individual who is capable of performing the essential functions of a job with reasonable accommodation on the part of the employer. The ADA and the Rehabilitation Act impose on employers the obligation to make reasonable accommodations for such individuals or employees, unless the accommodation would impose "undue hardship" on the employer. Examples of accommodations listed in the ADA include:

- Making facilities accessible to disabled individuals
- Restructuring jobs
- Providing part-time or modified work schedules
- Acquiring or modifying equipment
- Adjusting or modifying examinations, training materials, or policies
- Providing qualified readers or interpreters

Failure to make such reasonable accommodation (which would not impose an undue hardship), or failure to hire an individual because of the need to make accommodation for that individual, is included in the definition of illegal discrimination under the act. Employers are not required to create a new position for the disabled applicant or employee, nor are they required to offer the individual the most expensive means of accommodation.

A number of courts have held that extending a medical leave beyond the 12-week leave available under the Family and Medical Leave Act (discussed in Chapter 7) can be a reasonable accommodation to an employee's disability under the ADA. The courts have considered whether the extended leave would create an undue hardship for the employer, and whether the leave would permit the employee eventually to perform the essential functions of her or his job, as in *Nunes v. Wal-Mart Stores*¹² and *Cehrs v. Northeast Ohio Alzheimer's Research*

¹² 164 F.3d 1243 (9th Cir. 1999).

Center.¹³ According to *Smith v. Blue Cross/Blue Shield of Kansas, Inc.*,¹⁴ an accommodation that would eliminate an essential function of the employee's job is not reasonable, and an employer is not required to wait indefinitely for an employee to return to work.

When an employee requests an accommodation that conflicts with the seniority provisions of a collective bargaining agreement, the employer ordinarily need only demonstrate the conflict to establish that the accommodation is unreasonable. However, according to the Supreme Court decision in *U.S. Airways, Inc. v. Barnett*,¹⁵ the employee may present evidence of special circumstances that would make an exception to the seniority rules reasonable under the particular facts.

Reasonable accommodations may include the minimal realignment or assignment of job duties or the provision of certain assistance devices. For example, an employer could reassign certain filing or reception duties from the requirements of a typist position to accommodate an individual confined to a wheelchair. An employer could also be required to equip telephones with amplifiers to accommodate an employee's hearing disability. Although the extent of accommodation required must be determined case by case, drastic realignment of work assignments or the undertaking of severe financial costs by an employer would be considered "unreasonable" and would not be required. In *PGA Tour, Inc. v. Martin*¹⁶ (which involved the public accommodation provisions of Title III of the ADA and not the ADA's employment-related provisions under Title I), the Court held that allowing a disabled golfer to ride in a golf cart rather than walk during a golf tournament, was a reasonable accommodation that did not fundamentally alter the nature of the event.

How should an employer respond to an employee's request for reasonable accommodation? This is discussed in the following case.

A court's consideration of what would be a reasonable accommodation to the individual's disability is to be done on a case-by-case basis. What may be a reasonable accommodation in one situation may not be reasonable under differing circumstances. In *Vande Zande v. State of Wisconsin Dept. of Administration*,¹⁷ the court held that an employer's refusal to allow a disabled employee to work at home was not a violation of the ADA. The court there stated:

Most jobs in organizations public or private involve teamwork under supervision rather than solitary unsupervised work, and teamwork under supervision generally cannot be performed at home without a substantial reduction in the quality of the employee's performance. This will no doubt change as communications technology advances, but is the situation today. Generally, therefore, an employer is not required to accommodate a disability by allowing the disabled worker to work, by himself, without supervision, at home.... An employer is not required to allow disabled workers to work at home, where their productivity inevitably would be greatly reduced.

10-5a Undue Hardship

undue hardship
an accommodation that requires significant difficulty or expense for the employer

An employer is not required to make accommodation for an individual if that accommodation would impose "undue hardship on the operation of the business of the covered entity." The ADA provides a complex definition of what constitutes an **undue hardship**, including a list of factors to be considered in determining the impact of the accommodation on the employer. An accommodation imposes an undue hardship if it requires significant difficulty or expense when considered in light of the following factors:

- the nature and cost of the accommodation needed under this act;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect

¹⁷ 44 F.3d 538 (7th Cir. 1995).

- on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
- the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
 - the type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

It should be obvious that the definition of undue hardship is intended to be flexible. What would be a reasonable accommodation for Microsoft could be a significant expense or difficulty for a much smaller employer.

Concept Summary 10.1

DISCRIMINATION BASED ON DISABILITY

- The Americans with Disabilities Act (Title I) prohibits employment discrimination based on disability against otherwise qualified individuals with a disability
- ADA applies to public and private sector employers with 15 or more employees
- ADA requires employers to make reasonable accommodation to otherwise qualified individuals with a disability, unless accommodation would impose undue hardship on employer

10-6 Defenses Under the ADA

In addition to the defense of undue hardship, the ADA sets out four other possible defenses for employers.

10-6a Direct Threat to Safety or Health of Others

Employers may refuse to hire or accommodate an individual if that individual's condition poses a "direct threat" to the health or safety of others in the workplace. Direct threat is defined as a "significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." The definition of disability under the act includes infectious or contagious diseases. According to *School Board of Nassau County, Florida v. Arline*,¹⁸ in determining if such a disease presents a direct threat to others, the employer's considerations must be based on objective and accepted public health guidelines, not on stereotypes or public attitudes or fears. An employer would probably not be required to hire an individual with an active case of hepatitis or tuberculosis,

¹⁸ 480 U.S. 273 (1987).

but could not discriminate against an individual who has been treated for cancer, has been exposed to the HIV virus (associated with AIDS), or has had a history of mental illness. According to *Chevron, U.S.A. v. Echazabal*,¹⁹ an employer may refuse to hire an individual when performance of the job would endanger the individual's own health due to an existing disability.

10-6b Job-Related Criteria

Employers may hire, select, or promote individuals based on tests, standards, or criteria that are job related or are consistent with business necessity. Employers could refuse to hire or promote individuals with a disability who are unable to meet such standards, tests, or criteria or when performance of the job cannot be accomplished by reasonable accommodation. For example, an employer would be justified in refusing to hire a blind person for a bus driver position.

10-6c Food Handler Defense

An employer in the food service industry may refuse to assign or transfer to a job involving food handling any individual who has an infectious or communicable disease that can be transmitted to others through the handling of food, when the risk of infection cannot be eliminated by reasonable accommodation. The ADA requires the secretary of Health and Human Services to develop a list of diseases that can be transmitted through food handling. Only the diseases on that list (which is to be updated annually) may be used as a basis for refusal under this defense. The secretary of Health and Human Services has stated that HIV infection (associated with AIDS) cannot be transmitted through food handling.²⁰

10-6d Religious Entities

Title I of the ADA does not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. As discussed in Chapter 8, a gymnasium operated by the Church of Jesus Christ of Latter-day Saints could discharge an employee who failed to meet the requirements for continued membership in the Mormon church. More specifically, the Court held that the religious-organization exemption in Title VII extends to the auxiliary operations of a church, and that exemption does not offend the "establishment" clause of the First Amendment.

In the following case, the Supreme Court was asked to decide whether the so-called ministerial exception applies to a retaliation claim brought under the ADA.

¹⁹ 536 U.S. 73 (2002).

²⁰ See "How to Comply with the Americans with Disabilities: A Guide for Restaurants and Other Food Service Employers," available at http://www.eeoc.gov/facts/restaurant_guide.html.

10-7 Enforcement of the ADA

The ADA is enforced by the EEOC. The act specifically provides that the procedures and remedies under Title VII of the Civil Rights Act of 1964 shall be those used or available under the ADA. This means that an individual must first file a complaint with a state or local agency, where appropriate, and then with the EEOC. The EEOC, or the individual if the EEOC declines, may file suit against an employer. Remedies available include injunctions, a hiring or reinstatement order (with or without back pay), and attorney fees. The Civil Rights Act of 1991 amended 42 U.S.C. Section 1981A to allow suits for compensatory and punitive damages against parties accused of intentional discrimination in violation of the ADA.

Such damages are not available where the alleged discrimination involves provision of a reasonable accommodation of an individual's disability and the employer demonstrates that it made a good-faith effort to accommodate the individual's disability. Punitive damages are not available against public sector employers. The ADA also directs the EEOC to develop and issue regulations to enforce the act.

10-8 The Rehabilitation Act

The Rehabilitation Act of 1973 protects the employment rights of individuals with a disability. The act's provisions prohibit discrimination against otherwise qualified individuals with a disability. The definition of "individual with a disability" under the Rehabilitation Act is similar to that under the ADA:

any person who (a) has a physical or mental impairment, which substantially limits one or more of such person's major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment.

The Supreme Court decision in *School Board of Nassau County, Fla. v. Arline*²¹ held that the definition of disability under the Rehabilitation Act included contagious diseases; the employee with an infectious disease is "otherwise qualified" within the meaning of the act if the threat posed to others by the disease can be eliminated or avoided through reasonable accommodation by the employer.

The Civil Rights Restoration Act of 1988, passed by Congress over President Reagan's veto, amended the definition of "individual with a disability" under the Rehabilitation Act to exclude a person with:

a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

10-8a Provisions

The Rehabilitation Act imposes obligations not to discriminate against otherwise qualified individuals with a disability. According to *Southeastern Community College v. Davis*, a person is "an otherwise qualified individual with a disability" under the Rehabilitation Act

²¹ 480 U.S. 273 (1987).

(as with the ADA) if the person is able to meet the requirements of the position in spite of the disability or with reasonable accommodation of the disability. The individual claiming to be qualified has the burden of demonstrating her or his ability to meet all physical requirements legitimately necessary for the performance of the duties of the position. An employer is not required to hire a person with a disability who is not capable of performing the duties of the position. However, the employer is required to make reasonable accommodation to the disability of the individual if such accommodation will allow the individual to perform the job and does not impose undue hardship on the employer.

Three main provisions of the Rehabilitation Act deal with discrimination against otherwise qualified individuals with a disability:

- Section 501 prohibits such discrimination by federal government employers
- Section 503 prohibits such discrimination by employers with federal contracts
- Section 504 prohibits the denial of participation in, or the benefits of, any federally funded activity to an otherwise qualified individual with a disability

Section 501: Federal Government Employers

Section 501 of the Rehabilitation Act prohibits discrimination on the basis of disability by federal executive agencies, departments, and instrumentalities. It also requires them to develop affirmative action plans for the hiring, placement, and advancement of individuals with disabilities. The plans are to be updated annually and reviewed and approved by the EEOC.

Enforcement of Section 501

Section 505(a) of the act provides that Section 501 is enforced through the provisions under Title VII of the Civil Rights Act of 1964, as amended. While federal executive employees with complaints of alleged violations may bring a private suit, they must first seek review of the alleged violation with their agency's equal employment opportunity (EEO) counselor, whose decision is subject to a formal review through the agency's EEO complaint procedures. The employee can then either seek judicial review of the final decision of the agency or appeal the action to the EEOC. If the employee elects to seek judicial review, a civil action may be filed in federal court within 90 days of receipt of notice of the agency's final decision or within 180 days of filing with the agency if there has been no decision. Employees choosing to refer the complaint to the EEOC may file a civil action within 90 days of receipt of the EEOC's notice of final action or within 180 days of filing with the EEOC if there has been no EEOC decision within that time.

Remedies available include injunctions; orders directing hiring or reinstatement, with or without back pay and interest; attorney fees; and expert witness fees. In addition to the remedies under the Civil Rights Act, plaintiffs alleging intentional discrimination in violation of Section 501 can bring an action seeking compensatory damages under 42 U.S.C. Section 1981A. Such damages are not available when the alleged discriminatory practice involves reasonable accommodation and the respondent showed good-faith efforts. Punitive damages under 42 U.S.C. Section 1981A are not available against public sector employers.

Section 503: Federal Contractors

Section 503 of the Rehabilitation Act prohibits discrimination on the basis of disability by federal contractors with annual contracts in excess of \$10,000. Federal contractors with

contracts of \$50,000 or more are also required to develop affirmative action plans as to the hiring of otherwise qualified individuals with a disability. Enforcement of Section 503 is through the administrative procedures of the Office of Federal Contract Compliance Programs (OFCCP) under the Department of Labor. Aggrieved individuals must file a complaint with the OFCCP. There is no individual right to file suit under Section 503. Employers found in violation of Section 503 may be subject to injunctions, withholding of progress payments under the contract, termination of the contract, or debarment from future contracts. Remedies available under the administrative procedures for individuals who are victims of discrimination in violation of Section 503 include hiring or reinstatement, back pay, and benefits.

Section 504: Federally Assisted Programs

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability against otherwise qualified individuals with a disability by persons or entities operating or administering any federally funded programs. To be covered by Section 504, the entities must be the direct recipient of federal financial assistance. According to *U.S. Department of Transportation v. Paralyzed Veterans of America*,²² indirect beneficiaries are not recipients within the meaning of the section. The statutory language provides that "No otherwise qualified individual with a disability ... shall ... (solely by reason of the disability) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under ..." any program receiving federal financial assistance. If any part of the entity receives any federal funding, the nondiscrimination requirement applies to the entire entity. There is no minimum funding amount required for coverage under Section 504. While the language of Section 504 does not specifically refer to employment, its prohibition against discrimination extends to employment discrimination, even though the primary purpose of the federal financial assistance is not providing employment, according to the Supreme Court decision in *Consolidated Rail Corp. v. Darrone*.²³

Employers are required to make reasonable accommodation to the otherwise qualified employee's or applicant's condition. Any employment requirements that adversely affect disabled persons must be directly and substantially related to business necessity and safe job performance. In *Southeastern Community College v. Davis*, the Supreme Court upheld the college's refusal to admit a woman with a severe hearing disability to the registered nurses training program. The woman's disability was not correctable with a hearing aid and would create problems in carrying out her duties during the clinical portions of her training. The college was not required to redesign the program to accommodate her disability because the components of the nursing program were required by state law.

Enforcement of Section 504

The regulations under Section 504 make the agencies administering the funding the primary enforcement authority for complaints against the recipients of such funding. Most agencies have developed their own administrative procedures for investigating and adjudicating claims of discrimination. The federal Department of Education coordinates and oversees enforcement of Section 504 by the other federal agencies. Unlike Section 503,

²² 477 U.S. 597 (1986).

²³ 465 U.S. 624 (1984).



» Summary

- Both the Americans with Disabilities Act (ADA) and the Rehabilitation Act prohibit employment discrimination against otherwise qualified individuals with a disability. Both acts have the same broad definition of disability. Persons otherwise qualified, but who are perceived by others as having a disability, are protected under both acts. Persons with AIDS or who are HIV-positive have generally been held to be protected from employment discrimination under both acts. The Rehabilitation Act covers only employers who are government contractors or who operate or administer federally funded activities. The ADA covers both public and private employers with 15 or more employees. Both acts require employers to make reasonable accommodation to the conditions of otherwise qualified individuals with a disability, as discussed in the *Humphrey* case.
- Neither the ADA nor the Rehabilitation Act requires or forbids drug testing of employees, although the ADA does protect employees who have successfully completed a drug rehabilitation program or who are "erroneously regarded as using drugs." Public employers who require employees to be tested for drugs may face problems under the Fourth Amendment of the U.S. Constitution. Private sector employers who impose drug testing programs may be subject to appropriate state laws.