

EEOC Offers Updated ADA Guidance Q&A's Pertaining To Cancer, Diabetes, Epilepsy And Intellectual Disabilities

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In a measure to keep up with the changes made by the Americans with Disabilities Amendments Act (ADAAA) in relation to what employees and applicants must show to establish that they have a “disability,” the Equal Employment Opportunity Commission (EEOC) has revised its informal “Question and Answer” guidance forms pertaining to four categories of medical conditions – [cancer](#), [diabetes](#), [epilepsy](#), and [intellectual disabilities](#) – to provide clarification as to how employers should address such conditions and to confirm that individuals having each of the types of conditions discussed “should easily be found to have a disability” within the ADA’s initial prong of the definition of a disability. These revised forms can be found by clicking on the links above.

The revised guidance materials include not only a general discussion of each type of condition and discuss prohibitions against discrimination, harassment, and retaliation against individuals with such conditions, they further discuss the means by which employers can obtain, use and disclose medical information relating to such conditions and possible accommodation scenarios for such conditions. In addition, the EEOC explicitly states its position as to why individuals with each type of medical condition at issue should be found to have a disability under the ADA/ADAAA:

1. “[P]eople who currently have cancer, or have cancer that is in remission, should easily be found to have a disability within the meaning of the first part of the ADA’s definition of disability because they are substantially limited in the major life activity of normal cell growth or would be so limited if cancer currently in remission was to recur . . . Similarly, individuals with a history of cancer will be covered under the second part of the definition of disability because they will have a record of an impairment that substantially limited a major life activity in the past . . . Finally, an individual is covered under the third (“regarded as”) prong of the definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of cancer or because the employer believes the individual has cancer.”

2. “[I]ndividuals who have diabetes should easily be found to have a disability within the meaning of the first part of the ADA’s definition of disability because they are substantially limited in the major life activity of endocrine function . . . Additionally, because the determination of

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whether an impairment is a disability is made without regard to the ameliorative effects of mitigating measures, diabetes is a disability even if insulin, medication, or diet controls a person's blood glucose levels. An individual with a past history of diabetes (for example, gestational diabetes) also has a disability within the meaning of the ADA . . . Finally, an individual is covered under the third ("regarded as") prong of the definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of diabetes or because the employer believes the individual has diabetes."

3. "[I]ndividuals who have epilepsy should easily be found to have a disability within the meaning of the first part of the ADA's definition of disability because they are substantially limited in neurological functions and other major life activities (for example, speaking or interacting with others) when seizures occur . . . Additionally, because the determination of whether an impairment is a disability is made without regard to the ameliorative effects of mitigating measures, epilepsy is a disability even if medication or surgery limits the frequency or severity of seizures or eliminates them altogether . . . An individual with a past history of epilepsy (including a misdiagnosis) also has a disability within the meaning of the ADA . . . Finally, an individual is covered under the third ("regarded as") prong of the definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of epilepsy or because the employer believes the individual has epilepsy."

4. "[I]ndividuals who have an intellectual disability should easily be found to have a disability within the meaning of the first part of the ADA's definition of disability because they are substantially limited in brain function and other major life activities (for example, learning, reading, and thinking) . . . An individual who was misdiagnosed as having an intellectual disability in the past also has a disability within the meaning of the ADA . . . Finally, an individual is covered under the third ("regarded as") prong of the definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of an intellectual disability or because the employer believes the individual has an intellectual disability."

The guidance provided by the EEOC also contains multiple examples and fact patterns for employers to consider in making decisions in their workplaces when faced with situations involving employees and applicants having the identified conditions.