**The American’s With Disabilities Act**

The ADA was passed in 1990 and prohibits discrimination against American’s with Disabilities. Bob Dole helped establish this protection, after being disabled in World War II. The ADA was enacted to counterbalance society's historic tendency to isolate and segregate individuals with disabilities. 42 U.S.C. § 12101. The ADA serves as a mechanism to level the playing field so that individuals living with disabilities are treated fairly and afforded equal opportunity within the workplace, among other areas. Thus, the ADA prohibits an employer from discriminating “against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a).

To recover on a claim of discrimination under the ADA, a plaintiff must show that: (1) they are an individual with a disability; (2) they are “otherwise qualified” to perform the job requirements, with or without reasonable accommodation; and (3) they were either denied a reasonable accommodation for the disability or suffered an adverse employment action solely because of the disability. [Monette v. Elec. Data Sys. Corp., 90 F.3d 1173, 1178 (6th Cir.1996)](https://apps.fastcase.com/Research/Pages/Document.aspx?LTID=MezsD7ZqCTITFsKBoy1Vsyt7dyf4julyz5Outf1%2fHo3pS31GYlijuQEdoeT3rb5jRFchhW%2f77MGpFRrBWKKgv6ULN2byXV8IhzI7Kcw7bfmsoIcgvJdHV0tQs1wBlj8lG1o2tKUg%2b6ltdGhfT3t%2fOg%3d%3d&ECF=Monette+v.+Elec.+Data+Sys.+Corp.%2c+90+F.3d+1173%2c+1178+(6th+Cir.1996)); [Smith v. Ameritech, 129 F.3d 857, 866 (6th Cir.1997)](https://apps.fastcase.com/Research/Pages/Document.aspx?LTID=MezsD7ZqCTITFsKBoy1Vsyt7dyf4julyz5Outf1%2fHo3pS31GYlijuQEdoeT3rb5jRFchhW%2f77MGpFRrBWKKgv6ULN2byXV8IhzI7Kcw7bfmsoIcgvJdHV0tQs1wBlj8lG1o2tKUg%2b6ltdGhfT3t%2fOg%3d%3d&ECF=Smith+v.+Ameritech%2c+129+F.3d+857%2c+866+(6th+Cir.1997)). “The term ‘qualified individual’ means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” 42 U.S.C. § 12111(8).

The Sixth Circuit has stated that where a plaintiff presents direct evidence of disability discrimination:

(1) The plaintiff bears the burden of establishing that he or she is disabled.

(2) The plaintiff bears the burden of establishing that he or she is “otherwise qualified” for the position despite his or her disability;

(a) without accommodation from the employer;

b) with an alleged “essential” job requirement eliminated; or

(c) with a proposed reasonable accommodation; and

(3) The employer will bear the burden of proving that a challenged job criterion is essential, and therefore a business necessity, or that a proposed accommodation will impose an undue hardship upon the employer. [Hedrick v. Western Reserve Care Sys., 355 F.3d 444, 453 (6th Cir.2004)](https://apps.fastcase.com/Research/Pages/Document.aspx?LTID=MezsD7ZqCTITFsKBoy1Vsyt7dyf4julyz5Outf1%2fHo3pS31GYlijuQEdoeT3rb5jRFchhW%2f77MGpFRrBWKKgv6ULN2byXV8IhzI7Kcw7bfmsoIcgvJdHV0tQs1wBlj8lG1o2tKUg%2b6ltdGhfT3t%2fOg%3d%3d&ECF=Hedrick+v.+Western+Reserve+Care+Sys.%2c+355+F.3d+444%2c+453+(6th+Cir.2004)).

**What constitutes a disability?**

An individual can recover under the ADA, even if they don’t have a disability, when the employer “regards” them as disabled. Normally, an individual is disabled under the ADA if: (1) they have a physical or mental impairment that substantially limits one or more major life activities; (2) they have a record of such impairment; or (3) they are regarded as having such an impairment. 42 U.S.C. § 12102(1). Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. § 12102(2)(A). They Courts are supposed to view the definition of disability “in favor of broad coverage.” 42 U.S.C. § 12102(4)(A). Thus, “[a]n impairment that substantially limits one major life activity need not limit other major life in order to be considered a disability.” 42 U.S.C. § 12102(4)(C). Further, “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” 42 U.S.C. § 12102(4)(D).

However, an individual is regarded as having an impairment where the individual is subjected to discrimination “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.” 42 U.S.C. § 12102(3)(A). The “regarded as” theory does “not apply to impairments that are transitory and minor.” 42 U.S.C. § 12102(3)(B).

**Accommodation:**

Failure to provide reasonable accommodations is a violation of the ADA. To prove a prima facie case of discrimination the employee must show that: (1) he or she is disabled; (2) otherwise qualified for the position, with or without reasonable accommodation; (3) suffered an adverse employment decision; (4) the employer knew or had reason to know of the plaintiff's disability; and (5) the position remained open while the employer sought other applicants or the disabled individual was replaced. The defendant must then offer a legitimate explanation for its action.