

# Your Rights in the Wo

## THE TRANSITION FROM SCHOOL TO THE WORKPLACE

is a challenge for people with ADHD. The demands are higher and the willingness to accept lapses is lower. Worst of all, unlike in other aspects of life, there are no true second chances. It's like a parachute jump; you have to get it right the first time.

Having ADHD presents special challenges in the world of employment. Difficulties focusing, being easily distracted, impulse control, and difficulty managing time often interfere with a person's ability to perform his or her job. Employers generally don't understand that these are symptoms of a medical condition and often move to get rid of the person.

Fortunately, the law provides some help to people with ADHD. This protection, however, is limited and not easily obtained.

- Under the Americans with Disabilities Act, it is illegal for employers to discriminate against employees or job applicants because they are disabled. Even more important, the ADA requires employers to provide "reasonable accommodation" to people with disabilities.

### Is ADHD a disability?

For someone to be protected by the ADA they must have a "disability." Not every physical or mental limitation is a disability under the ADA. To be considered a disability, the condition must "substantially limit a major life activity." Unless the limitation is substantial, the condition is not a disability. Mild ADHD symptoms may not meet this standard.

People with more serious ADHD symptoms have a disability under the ADA. Employers may not legally discriminate against them. If an employee with ADHD performs her job as well as other employees, she cannot be terminated because her occasional lapses in concentration or other symptoms annoy her employer.

But even here, getting legal protection can be difficult. Judges, like most people, don't understand ADHD and are reluctant to consider it a disability. While some court decisions have held that ADHD is a disability, the majority have held that it is not. Winning a disability discrimination case involving ADHD requires educating the judge about ADHD and the way it affects the person involved in the case. Having a qualified expert can be the key to this process.

Fortunately, one roadblock to legal protection has been eliminated. Prior to 2008, the courts determined whether a person is



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*They Do That? Reclaiming Our Fundamental Rights at Work (Portfolio, 2009).*

# rkplace ADHD & Employment

## NOTE TO PARENTS

Chances are your teen or young adult did not receive information like this from high school guidance counselors or the college employment office. Before your young adult enters the working world, be sure he or she is aware of its realities for people affected by ADHD or other disabilities.

disabled by examining the extent of her limitation after mitigating steps have been taken. A person with ADHD would be evaluated by the extent of her limitation after she had taken medication. In 2008, the ADA Amendments Act changed this rule. Whether a person is sufficiently limited to be legally disabled is now determined by their condition without medication (or other mitigation).

### Is the accommodation reasonable?

Many people with disabilities have difficulties performing a job under exactly the same circumstances as other people, but can perform the job if changes (accommodations) are made. If these accommodations are reasonable, the employer is legally required to make them.

Whether an accommodation is reasonable depends on how much cost it would impose on the employer. While there is no numerical formula, the costs must be modest. Examples of accommodations courts have held reasonable include:

- providing a telephone amplifier for an employee with a hearing impairment
- providing anti-glare computer screens for employees with visual disorders
- raising the level of desks and other work stations for people in wheelchairs

While there have been very few cases involving reasonable accommodations for people with ADHD, decisions involving other disabilities indicates that physical devices that reduce the amount of distraction would be considered reasonable. Accommodations that might help people with ADHD that would generally be considered reasonable are:

- being allowed to wear ear plugs or headphones to reduce distracting noise
- being allowed to work behind a closed door
- receiving instructions in writing

In some cases, a person with ADHD may be incapable of performing one job at a company but capable of performing another. If the employer has an opening for such a job, a transfer would generally be considered a reasonable accommodation.

Flexibility on time might also be valuable to employees with ADHD. For example, an employee with ADHD-induced time-management problems might be excused if he or she came in a few minutes late for work occasionally, unless it interfered with getting the job done. An employee who works on his or her own could easily make up the lost time by staying late or skipping lunch. For an employee who works as part of a team, it would be different. Unfortunately, there are virtually no judicial decisions in this area.

### Requesting accommodation

Whatever the accommodation, it is essential that the employee ask for it. Under the ADA, it is the employee's responsibility to inform the employer of her disability and the accommodation that she needs.

### ADA Amendments Act

Many people have the impression that the ADA eliminates all the legal difficulties facing someone with ADHD. This is not the case. While the ADA solves the problem of a person with ADHD not being protected because his or her symptoms are reduced by medication, it does not change the accommodation standard. An employer is required to provide an accommodation only if it is "reasonable." As discussed above, courts have not been generous in their definition of what is reasonable.

### Practical considerations

There is no single right way for a person with ADHD to approach the workplace; every job and every boss is different. But here are some general guidelines:

- › **Look for a job and workplace where your ADHD symptoms will not interfere with your job performance.** Momentary lapses in attention, having trouble with deadlines, and other ADHD symptoms interfere with performance more in some jobs than others. Among medical professions, for example, ADHD is less likely to affect a researcher than a surgeon. Some workplaces are more conducive to success for people with ADHD. A small, informal, cooperative workplace is generally better for someone with ADHD than a large, impersonal, corporate one.
- › **Look for an employer with an enlightened attitude about disabilities.** Some employers are willing to do much more than others to accommodate people with disabilities. Before you accept an employment offer, ask employees what it's like to work there. There is absolutely nothing inappropriate about this. Any employer who objects probably has something to hide.
- › **Do not tell prospective employers about your ADHD.** This disclosure cannot help you and can easily hurt you. Having ADHD is not an asset; it is a disability that can be managed. By telling prospective employers about your ADHD, you raise the question of how well you manage it. Technically, it is illegal for a prospective employer to reject your application because of your ADHD. But that doesn't mean that some employers won't do it. It's better to have a job than a lawsuit.
- › **If your boss criticizes your job performance for reasons related to your ADHD, explain that you have ADHD and how this affects your job performance.** Be prepared to explain how you will perform your job to your employer's standards by managing your ADHD or the accommodation you need in order to meet these standards.
- › **If you lose your job because of your ADHD, seek help.** If you can't afford an attorney, contact the closest office of the EEOC or your state's human relations commission. 🗨