



Access

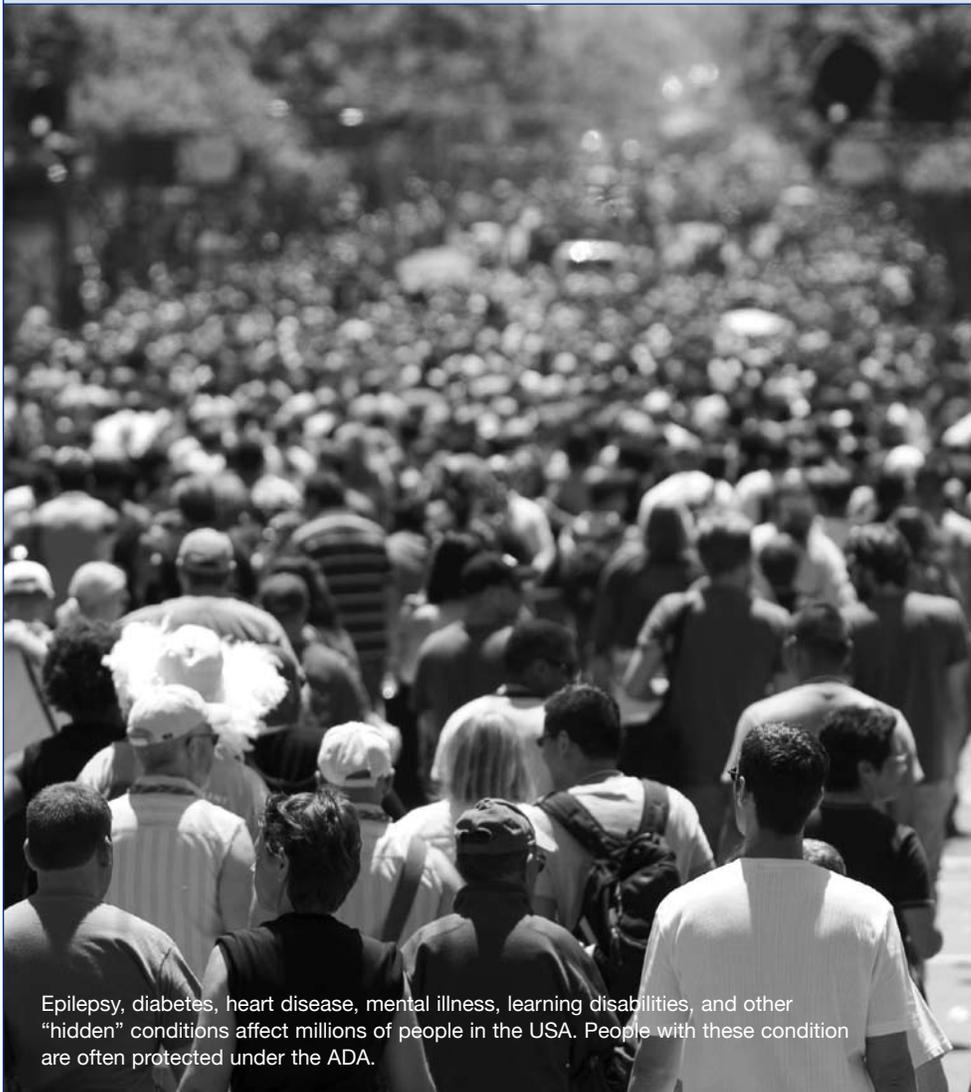
New England

A publication of the DBTAC—New England ADA Center

A project of Adaptive Environments, Inc. www.AdaptiveEnvironments.org

This Issue Highlights

Non-Apparent Disabilities and Disclosure in Employment and Higher Education



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For more information

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www.NewEnglandADA.org

Epilepsy, diabetes, heart disease, mental illness, learning disabilities, and other "hidden" conditions affect millions of people in the USA. People with these condition are often protected under the ADA.

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Regional Advisory Board

The Regional Advisory Board meets twice a year. The members' input and commitment greatly assists the DBTAC – New England ADA Center in its mission.

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Springtime in New England: Planting Seeds of Success

Each spring, New England colleges and universities celebrate the graduation of thousands of students from their 280 institutes of higher education. Obviously, students with disabilities are among the ranks of graduates; and in this issue of *Access New England*, we examine some of the factors and strategies that make the difference—in academic success for students with disabilities in higher education, and eventually—success in employment.

We are excited to announce that *New England ADA Center* and *No Limits Media* release fresh and informative videos this spring. In the videos, students with disabilities share strategies to successfully stay in school, graduate and get jobs. Students reveal their struggles with self-reporting their disability, and negotiating accommodations in school and at work. These videos can be viewed at www.NewEnglandADA.org. DVDs are available upon request. Read more about the student's stories on page 8.

This edition of our newsletter features the issue of 'self-reporting', most prominently with discussions on the interplay between non-apparent or "hidden" disabilities, disclosure, and accommodations for youth and adults. Today, there are more students with disabilities enrolled in college than



Oce Harrison, Project Director for the DBTAC—New England ADA Center.

ever before. Non-apparent disabilities are the most prevalent for these students; such as learning disabilities, ADHD, asperger syndrome and psychological disabilities. A student with a hidden disability may choose to disclose a disability to a disability service coordinator, professor, career counselor, or classmate. However, most do not.

The proportion of students in higher education who self-report a disability is 11.3% of the total student population. Within the total student population, the proportion of students with disabilities who don't self-identify is unknown. It may be likely that there are many more students with non-apparent disabilities within the total student population given that the most prevalent causes of disability in children ages 3-21 are learning disabilities¹.

For students with hidden disabilities, added issues such as self-disclosure and accommodations can be specific factors influencing success. In high school, a student's parent or teacher advocates to get the student what he/she needs to succeed. In college, students advocate for themselves. Read more about this process on page 6.

Similarly, the most common disabilities of adults in the US are non-apparent disabilities such as arthritis, back problems, heart disease and respiratory disease². Read about the advantages and disadvantages of disclosing a non-apparent disability at work on pages 3-5.

We hope these articles help you to plant seeds of success in school and at work.

Happy Spring!
Oce

1. U.S. DoE, National Center for Education Statistics (2006). Profile of Undergraduates in U.S. Postsecondary Education Institutions: 2003-04.

2. U.S. DoE, 2001-2002, IDEA.

NOTE: 2-3 M Americans use wheelchairs or scooters out of 54 M with disabilities.

“I’ll Believe It When I See It”: People with Non-Apparent Disabilities Living In-Between Two Worlds

In an essay written for the World Institute on Disability, Sarah Triano of Access Living in Chicago, explores the challenges, frustrations, and also some positive aspects of having a disability that is not visible to the casual observer.

Sarah asks what is the first thing that comes to mind when thinking of the word, “disability?” For most people, she says, “disability” [brings] up images of canes and walkers, or the ever-prevalent international symbol of disability - the blue stick-figure sitting in a wheelchair that is on disabled parking places and accessible restrooms. Sarah says that she is the last thing most people think of when they hear the word, “disability.” To anyone on the street, she looks like your typical, thirty-something activist. Most wouldn’t know it by looking at her that she has a hereditary and incurable primary immune system disorder.

Like most other people with hidden, or what many choose to call “non-apparent” disabilities, Sarah says that she gets some pretty common reactions from people based on “entrenched societal stereotypes.” Sarah offers several examples and reflections on these myths below:

“You don’t look disabled.”

Some well-meaning people say this to me as if they are trying to give me a compliment, but it can be very offensive. As advocate, Amanda Hamilton points out, saying, “you don’t look disabled,” to someone with a non-apparent disability is like saying,

“You don’t look gay,” or, “You don’t look Jewish.”

“You must be faking it.”

Due to my immune system disorder, I sometimes have difficulty walking so I have disabled plates on my car. Once when I was in college, I went to the university and parked in a disabled parking space. I had been up all night extremely sick and it was all I could do to walk to class. When I returned to my car later that day, someone had glued a sign to my windshield that read, “MENTALLY HANDICAPPED.” Because they couldn’t see my disability, the person who put that sign on my windshield mistakenly thought I was faking it and taking advantage of a right reserved for “truly” disabled people—people who fit their preconceived stereotype of what a disabled person looks like.

“It’s all in your head.”

This reaction is widespread and is usually directed toward people with lesser known/understood disabilities. Rather than admit their lack of knowledge and understanding regarding certain disabilities, some people instead demean or trivialize symptoms and tell us it’s all in our head.

“You could do it if you tried. You’re just being lazy.”

According to Bek Oberin, an activist with a non-apparent disability, one of the main challenges for people with more visible disabilities is proving they can do things against a general assumption that they can’t. People with visible disabilities often complain that people assume they can’t do things they are perfectly capable of... but just as damaging as assuming people can’t do things is assuming that they can. People in the benign or early stages of multiple sclerosis, lupus, rheumatoid arthritis and other autoimmune disabilities are often accused of being lazy by those who have no idea of the internal symptoms accompanying these disabilities and students with learning and psychosocial disabilities are routinely referred to by their teachers as lazy, willful, poorly disciplined, and spoiled.

“You’re not disabled enough.”

Even if someone has a disability, often it doesn’t rise to the level of being considered a “real” disability by mainstream society, by the Disability community, and sometimes even by the person themselves.

To Disclose or Not to Disclose

It can take a lot for someone with a non-apparent disability to get to a place where they actually believe they have a bona fide disability, openly acknowledge that disability, and proudly identify as Disabled. The pressures for us to “pass” [as non-disabled] and deny our disability - and our community - are tremendous.

Living In-Between Two Worlds

More recently, Sarah says she has come to a place in her life where she no longer feels like she has to disclose her disability to be accepted and accommodated. She says, part of the “power” of having a non-apparent disability is being able to choose when and where she discloses her disability and to whom. “Like many others that live permanently in the world between obviously disabled and non-disabled, I’ve come to embrace the lack of definition in my life, the ability to have a foot in both worlds, and the power to navigate between them.”

Source: Adapted and edited from the article, “I’ll Believe It When I See It: People with Non-Apparent Disabilities Living In-Between the Able/Disabled Divide” by Sarah Triano for the World Institute on Disability www.wid.org/topics

The 411 on disability disclosure

The advantages and disadvantages of disclosing a non-apparent disability are many. Only the individual with the disability can decide whether or not he or she will want to disclose a disability (or any other sensitive information) to others. It is always best to make an informed decision so individuals should consider all of the options before deciding whether or not to disclose.

As with most important informed decisions you will make during your lifetime, there are both advantages and disadvantages associated with the decision to disclose. On the one hand, disability disclosure can open up opportunities for you to participate in activities that you may have avoided (or in which you have been unable to participate), and help you put into place a strong support system. On the other hand, it can be downright scary to tell someone something personal when there are no assurances that they will react positively to the news.

What follows is a summary of advantages and disadvantages to disclosure. This list is by no means exhaustive, but it may give you some good information to think about. Remember, what may seem a disadvantage in one setting or situation may be an advantage in another.

Advantages of Disclosure:

- It allows you to receive reasonable accommodations so that you can pursue work, school, or community activities more effectively.
- It provides legal protection against discrimination (as specified in the Americans with Disabilities Act).
- It reduces stress, since protecting a “secret” can take a lot of energy.
- It gives you a clearer impression of what kinds of expectations people may have of you and your abilities.
- It ensures that you are getting what you need in order to be successful (for example, through an accommodation or medication).
- It provides full freedom to examine and question health insurance and other benefits.
- It provides greater freedom to communicate should you face changes in your particular situation.
- It improves your self-image through self-advocacy.
- It allows you to involve other professionals (for example, educators and employment service providers) in the learning of skills and the development of accommodations.
- It increases your comfort level.

(continued on page 5)

Disability Disclosure in Employment Under the Americans With Disabilities Act

Issues surrounding the disclosure of disability-related and medical information under the ADA are difficult for employers, employees, and job seekers. The Equal Employment Opportunity Commission (EEOC) is the government agency that issues employment regulations under the ADA. EEOC Guidance and ADA case law form the basis for this FAQ.

Q: When may an employer request disability related information?

A: The EEOC has divided the employment process into three stages. The amount of disability-related information that an employer may request depends on which stage of the employment process is involved. **The three employment stages are:**

1. **Pre-Employment:** An employer may not request any disability-related information or give any medical examinations prior to making a job offer to the applicant. Any question that may elicit disability-related information is prohibited.
2. **After a Conditional Job Offer is Made:** Once an employer makes a job offer to a job applicant, the employer may require medical examinations before hiring and may ask wide-ranging questions that

involve disability-related information. However, the information must be requested of every applicant for that position.

3. **Once An Employee is on the Job:** Once an individual is on the job, the employer may only seek disability-related information if s/he has a “reasonable basis” to think that the employee: is unqualified to do the job; needs a reasonable accommodation; or poses a direct threat to the health or safety of the employee or others.

Q: Must an individual with a disability disclose a disability when applying for a job or when on the job?

A: An individual does not have to disclose a disability to an employer unless they have an immediate need for a “reasonable accommodation” under the ADA during the interview, application process, or later, while on the job.

Q: If an employer notices that a job applicant or employee has a disability, what is the employer allowed to say regarding the disability, if anything?

A: When an employer notices that an individual has a disability and reasonably believes that the individual will need reasonable



Employees with apparent and non-apparent disabilities must be able to perform the essential functions of the job with or without reasonable accommodation.

accommodations to apply for or to safely perform the essential functions of a job, the employer may ask certain limited questions. Specifically, the employer may ask whether the applicant would need reasonable accommodations, and if so, what type of accommodations would be needed.

Q: If a job applicant or employee chooses to disclose a disability to an employer, what may the employer ask about the applicant’s disability?

A: Once an employer knows about an individual’s disability, if the employer reasonably believes that an applicant may need a reasonable accommodation, the employer may ask whether an accommodation is needed, and if so, what type of accommodation will be needed. The employer’s questions must focus on

Disadvantages of Disclosure:



People with non-apparent disabilities should consider the benefits and disadvantages of disclosure.

- It can cause you to relive bad past experiences that resulted in the loss of a job or negative responses from your peers.
- It can lead to the experience of exclusion.
- It can cause you to become an object of curiosity.
- It can lead to your being blamed if something doesn't go right.
- It can lead to your being treated differently than others.
- It can bring up conflicting feelings about your self-image.
- It can lead to your being viewed as needy, not self-sufficient, or unable to perform on par with peers.
- It could cause you to be overlooked for a job, team, group, or organization.
- Disclosing personal and sensitive information can be extremely difficult and embarrassing.

Source: The 411 on Disability Disclosure: A Workbook for Youth with Disabilities

Published by the National Collaborative on Workforce and Disability for Youth

www.ncwd-youth.info/assets/guides/411/411_Disability_Disclosure_complete.pdf

the reasonable accommodation, not the applicant's underlying condition. The employer's questions may not address reasonable accommodations unrelated to job functions. Any employer inquiry must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.

Q: How should an individual disclose their disability when requesting a reasonable accommodation?

A: According to the EEOC, there are no "magic words" that must be used as part of a reasonable accommodation request. When individuals decide to request an accommodation, they must let their employer know that they need a change at work for a reason related to a medical condition. The request need not be in writing, although that is usually recommended for the benefit of both the employer and the individual with a disability. If an individual's disability is not obvious or known to the employer, the employer may require documentation of the individual's disability and their need for a reasonable accommodation. An employer is allowed to ask for a restricted amount of disability-related information as it relates to the accommodation request. This

information must be specifically limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.

Q: How can an employer determine whether an individual is able to perform the essential functions of a job?

A: An employer may ask whether a job applicant can do the essential job functions with or without a reasonable accommodation.

Q: What are the confidentiality requirements for medical information in the possession of the employer?

A: Under the ADA, employers must keep all information concerning the medical condition or history of their applicants or employees confidential. The information must be collected on a separate form and kept in a separate medical file, apart from an employee's personnel file.

Sources: Based on the EEOC Enforcement Guidance publication: Preemployment Disability-Related Questions and Medical Examinations.
www.eeoc.gov/policy/docs/preemp.html
www.ada-il.org/resources/disabilitydisclosureFAQ.doc

The Why, When, What, and How of Disclosure in an Academic Setting, After High School



Major life activities include brain-based functions like reading, thinking and concentrating.

Deciding what to do after high school is a complex decision for all youth. Youth with disabilities are significantly less likely to start postsecondary education than are their peers without disabilities (national surveys report 27% of students with disabilities transition to postsecondary education compared to 68% of their peers without disabilities). A “postsecondary setting” is any educational training, which takes place after high school. It includes four-year university degree programs, two-year community college programs, and vocational training programs.

If you are a youth with a disability, you must consider the supports and services that you may need to be successful in the program of your choice. When you are researching programs to attend, you should consider information about how

the program provides reasonable accommodations and how well students with disabilities are treated. It is a good idea to speak to current students with disabilities in the program. The school’s disability support services can put you in touch with current students.

Why disclose in the post-secondary setting?

As a student with a disability in elementary, middle, and high school, you did not need to share information about your disability to receive accommodations because the school and your parents or guardians were there to assist you with arranging accommodations. Also, you had the support of the Individuals with Disabilities Education Act (IDEA), a law that entitles students with disabilities to receive free appropriate public education. Once you leave high school, the IDEA does not apply to you. Instead, as a person with a disability, you are covered under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. Both of these laws require that covered individuals with disabilities must be provided with reasonable accommodations if the individual discloses a disability and the institution is a covered entity. These laws do not specify the process for obtaining accommodations

in the same manner in which the IDEA does. Therefore, it is up to you to share information about your disability to make sure you receive the accommodations you need.

After high school, accommodations are usually provided by the program’s disability support service only if you disclose your disability and request accommodations. **Some reasons for disclosing your disability in a postsecondary setting include:**

- Obtaining information about available supports and services;
- Discussing academic requirements and practical components of your course of study; and
- Ensuring that faculty members implement the reasonable accommodations you require in order for you to be successful in your courses.

When to disclose your disability

The timing of your disclosure depends upon when you need accommodations. Generally, there are five instances where it may be important to consider disclosure.

1. **Prior to enrollment** - you would disclose at this time if you needed accommodations during the application process.

2. **At the time of enrollment** - if you anticipate that you will need accommodations to complete your classes, it would be important to disclose at this point. Remember, you want to disclose your disability before you have trouble in a course due to lack of accommodations.
3. **During your course of study** - you would disclose at this point if you discover that you need accommodations while taking classes.
4. **After being diagnosed** - you want to disclose if you acquire a disability during your course of study and need accommodations to successfully complete the program.
5. **Never** - you may choose not to disclose your disability if no accommodations are needed, or if you have decided to accommodate your needs personally.

How to disclose your disability

Determine your own personal privacy boundaries concerning the amount and type of information you want to share with others. Pick a time when you are not rushed and can thoughtfully explain your needs to others. Remember to keep the disclosure conversation focused on your abilities and be self-determined and practical. It is also a good idea to

practice talking about your disability with someone you trust.

What to disclose about your disability

Programs may vary regarding the information they request from you. Below is information that you should be prepared to share with the disability support service staff.

- Information about your disability, including assessments and, if requested, documentation of your disability.
- Types of academic accommodations that have worked for you in the past.
- Types of academic accommodations you anticipate needing in the postsecondary setting.
- How your disability and other life experiences can contribute to your success in your studies.
- How your disability affects your capacity to learn and study effectively.

To whom do you disclose your disability?

Generally, you should only disclose your disability to those individuals who have a need to know because of the accommodation process. You may consider disclosing to the



To have rights to a reasonable accommodation or academic adjustment, a non-apparent disability must be disclosed.

program's disability support service's staff, academic advisor, directly on your application, or to an admissions officer. Some programs discourage students with disabilities from disclosing directly to faculty and staff because of student confidentiality. It is a good idea to begin by disclosing to the disability support services office to learn what the specific procedures are for your program.

Source: The Why, When, What, and How of Disclosure in an Academic Setting, After High School www.dol.gov/odep/pubs/fact/www.htm

From the Center

New England ADA Center Releases New Videos

We are excited to announce that *New England ADA Center* and *No Limits Media* released fresh and informative videos this spring. In the videos, students with disabilities share strategies to successfully stay in school, graduate and get jobs. Students reveal their struggles with self-reporting their disability, and negotiating accommodations in school and at work.

Succeeding in College and at Work: Students with Disabilities Tell Their Stories

www.NewEnglandADA.org
DVDs available upon request.

Alexander



Now an engineer at Mathworks, Alexander developed a visual impairment during infancy. Alexander tells all-how he covered up his disability all the way to junior high. His cover up was discovered by his teacher and it changed his life. While in high school, Alexander decides on going to college. He shares his strategies for deciding on going to the university with the most supportive disability services. (7:12 minutes)

Danielle



Born with one arm, Danielle always wanted to be a nurse. While in college, Danielle is told by the Dean of Nursing she cannot be a nurse. Watch Danielle find ways to succeed in nursing school, graduate and land a job as a pediatric nurse (9:42 minutes).

Santara



A college student with Spina bifida and Borderline Personality explains the process of negotiating classroom accommodations that make the difference in her academic success at school (7:48 minutes)

Valeska



At age three, Valeska's parents were told she would never graduate from college. Valeska struggled in school all her life. After many years of dropping in and out of school, Valeska, now an older student with a learning disability finds ways to succeed in college. (9:34 minutes)

Eastern Association of Colleges and Employers (EACE) Providence, RI

We are very excited to have the opportunity to network with *Career Counselors in Higher Education* at their Annual Conference in Providence on June 18-20. We are providing a workshop, advertising in conference materials, and staffing an exhibit booth for two days.

Adaptive Environments/ Institute for Human Centered Design at the American Institute of Architects AIA Convention, Boston, MA

Open House-Institute for Human Centered Design

05/14/08-05/16/08,
10:00 AM - 6:00 PM

Adaptive Environments/Institute for Human Centered Design will be hosting a 3-day open house for attendees of the American Institute of Architects AIA convention, design and architecture professionals and students. For more information, please visit www.adaptiveenvironments.org.

Around the Region

Massachusetts

MA State Law and Non-Apparent Disabilities

The Massachusetts Office on Disability regularly speaks to individuals with hidden disabilities who call seeking advice on when and how to disclose a disability to an employer or a prospective employer. Often individuals want to maintain confidentiality for fear of possible discrimination yet are concerned that if they do not disclose their disability to their employer up front that they might later react negatively if they find out about it. Given that each situation is unique based on an individual's disability and the particular workplace setting there is not a standard "right time" to disclose disability.

When MOD gets these calls our Client Services advocates inform the caller that an employee is not required to disclose any information about their disability to their employer until they feel they need a workplace accommodation to assist them in performing their duties. It is when they request the accommodation that they must disclose that they have a disability. They will then need to supply documentation from a provider that treats their condition that the accommodation is necessary. Our advocates will help people through the process by explaining such things as the provider is not required to supply a diagnosis of the disability, but rather must only verify that the person has a disability and describe the resulting functional limitations. The description of the limitations should

make it clear to the employer that the specific accommodation requested is necessary.

Massachusetts General Law ch. 151B enforced by the Massachusetts Commission Against Discrimination offers protection against discrimination in the workplace to individuals with hidden disabilities. Although the protections afforded under Chapter 151 B are very similar to Title I of the ADA, if an individual files a claim with MCAD their status as a qualified individual with a disability will be determined without regard to whether the effect of the disability can be mitigated by measures such as medication, auxiliary aids or prosthetic devices.

Individuals seeking guidance or advocacy on issues related to disclosure and reasonable accommodation in the workplace should contact the Massachusetts Office on Disability at 617-727-7440.

Maine

Maine State Government as a Model Employer for Workers with Disabilities

In October of 2007 Maine's governor, John Baldacci, led the way for business to hire people with disabilities by signing a proclamation stating that Maine will become a model employer for workers with disabilities. The key points in the document are: **State government is Maine's largest employer, and can serve as both a resource and a model for private business throughout the state.**

The goal is to improve existing policies, adopt better employment practices, and promote the results of hiring people with disabilities within state government. Maine government holds the belief that it can lead the way in expanding employment opportunities and building a stronger more diversified Maine Workforce.

LD 2147 "An Act to Ensure that State Government is a Model Employer of Person's with Disabilities" was introduced this session. The act provides for a state government position designed to monitor, advise, and ensure the hiring of persons with disabilities within the state government structure. A public hearing is scheduled for later this month.

Vermont

"Well, you look fine, what's wrong with you? Hidden disabilities, disclosure and accommodation.

"Well, you look fine, what's wrong with you?" Often used, this response is not the best for someone with a hidden disability, especially if he/she doesn't want you to know about it. Yet, how many of us think this way? If we don't see signs of a physical disability then there must not be one, right? Wrong. People with "hidden" disabilities make up the largest number of individuals with disabilities. Described as conditions, illnesses, or impairments that are not apparent, they, nonetheless, meet the American with Disabilities Act (ADA)

(continued on page 11)

Non-Apparent Disabilities and Disclosure: Resources in Employment and Higher Ed.

The following agencies and organization are among the best resources for information on issues of disclosure and non-apparent disabilities in employment. Be sure to check out their websites and publications.

US Department of Labor/ Office of Disability Employment Policy (ODEP)

ODEP is a federal agency in the Department of Labor. Its mission is to provide leadership to increase employment opportunities for adults and youth with disabilities.

202-376-6200 (voice)
202-376-6205 (tty)
www.dol.gov/odep

Fact sheets and publications from the US Dept. of Labor, Office of Disability Employment Policy website
www.dol.gov/odep/pubs/publicat.htm

- The Why, When, What, and How of Disclosure in an Academic Setting, After High School
- Advising Youth with Disabilities on Disclosure: Tips for Service Providers
- Entering the World of Work: What Youth with Mental Health Needs Should Know about Accommodations

U.S. Department of Education/Office for Civil Rights

OCR works to ensure equal access to education and to promote educational excellence throughout the nation through the vigorous enforcement of civil rights.

800-421-3481 (voice)
800-437-0833 (tty)

To order publications, use the ED Pubs On-Line Ordering System (www.edpubs.org) or call 877-433-7827(phone), 877-576-7734 (tty) or edpubs@inet.ed.gov (email)

- The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973
- Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators
- Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities

U.S. Equal Employment Opportunity Commission

The EEOC enforces Title I (employment) of the ADA. Their website has many publications that offer enforcement guidance on issues of disclosure and non-apparent disabilities. These documents may

be ordered by calling the EEOC or downloading them directly at www.eeoc.gov/ada/adadocs.html

U.S. Equal Employment Opportunity Commission Clearinghouse

1-800-669-3362 (voice)
1-800-800-3302 (tty)
www.eeoc.gov

- Disability-Related Inquiries and Medical Examinations of Employees Under the ADA
- EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities
- Preemployment Disability-Related Questions and Medical Examinations
- Definition of the Term Disability
- Reasonable Accommodation and Undue Hardship Under the ADA

Job Accommodation Network

JAN is a free consulting service of the Office of Disability Employment Policy of the U.S. Department of Labor. JAN is designed to increase the employability of people with disabilities by providing individualized worksite accommodations solutions.

800-526-7234 (voice)
877-781-9403 (tty)
www.jan.wvu.edu

JAN website offers several online articles addressing issues of disclosure. Publications can also be ordered by phone:

- Employment Tips from the Jobs Accommodation Network
- Disclosing Your Psychiatric Disability to an Employer
- Disability Disclosure and Interviewing Techniques for Persons with Disabilities

The National Collaborative on Workforce and Disability for Youth

NCWD/Youth, funded under a grant supported by the Office of Disability Employment Policy of the US Department of Labor, is charged with assisting state and local workforce development systems to integrate youth with disabilities into their service strategies.

1-877-871-0744 (voice/tty)
www.ncwd-youth.info/

The 411 on Disability Disclosure: A Workbook for Youth with Disabilities
www.ncwd-youth.info/resources_&_Publications/411.html

definition of a “disability,” something that “substantially limits one or more of the major life activities.” The range of hidden disabilities is quite large and affects many people with whom we interact on a daily basis. Some examples are emotional disorders, ADHD, addictions, chemical sensitivity, learning disabilities, arthritis, cancer, diabetes, epilepsy, asthmas, chronic illnesses, etc. As an employee, student, or community member, it is reasonable to expect to have the same rights as any other individual. The ADA requires this, and, it requires that accommodation and modifications are available for everyone and included in company policies and practices. However, be discreet. Make your request for reasonable accommodation to the appropriate person at your job site, usually your HR staff person. Think about it. How -much do you want to disclose, and, to whom? What do you really want others to know? The choice is yours.

By Dhiresha Blose, Vermont Center for Independent Living

Connecticut

The Employee with Multiple Chemical Sensitivity/ Environmental Illness (MCS/EI)

What is MCS/EI? MCS/EI is generally an inability to tolerate an environmental chemical or class of foreign chemicals. It develops from exposure to substances in the environment. MCS/EI causes different symptoms in different people. Symptoms may include: headaches, dizziness, nausea, breathing difficulties, difficulty concentrating, eczema, and muscle pain. Substances such as fragrances,

cleaning products, paint, smoke, and poor indoor air quality are some irritants that cause these symptoms

Is someone with MCS/EI covered by the ADA? Yes, if due to their symptoms they meet the ADA definition of disability. Some people with this illness will be covered and some won't, depending if they have “a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or is regarded as having such impairment.”

What should be considered when determining accommodations for employees with MCS/EI? Elements that should be considered include the limitations the employee is experiencing, how these may affect job performance, what job tasks are actually problematic and then what accommodations are available to reduce or eliminate the problems. Also be sure to consult the employee him/herself regarding possible accommodations

A Few Accommodation Ideas:

- Provide an office or workspace that has working windows
- Use HEPA filters in the ventilation system if possible and have ducts maintained.
- Provide pre-notification of events such as remodeling, painting, pesticide applications, floor waxing, and carpet shampooing by way of signs, memos or e-mail.
- Use non-toxic carpeting or alternative floor covering such as tile or cotton throw rugs
- Discontinue the use of synthetic lawn care products.

Federal Updates

Department of Justice Submits Notice Adopting New ADA Standards

In December, the U.S. Department of Justice (DOJ) submitted a notice to update its ADA standards for administration review and clearance. If approved within the customary timeframe, the notice may be published for public comment in April. DOJ is expected to update its ADA standards according to revised guidelines issued by the Board. These standards apply to the construction and alteration of all facilities covered by the ADA except transportation facilities, which are subject to standards previously updated by the Department of Transportation. In addition to updating the standards, the DOJ notice is likely to address other topics covered by its regulations. A public comment period, expected to be 60 days in duration, will follow publication.

DOJ will need to issue a final notice to complete action, which will include an effective date for the updated standards. Until that date, the existing 1994 standards remain in effect for all facilities under the ADA other than transportation facilities. [The final rule concerning transportation facilities is at www.fta.dot.gov/civilrights/ada/civil_rights_5936.html

Source: U.S. Access Board, Access Currents Jan/Feb 2008
www.access-board.gov/news/Access%20Currents/Jan-Feb08.htm

ADA Restoration Hearing

The House Committee on Education & Labor's hearing on the ADA Restoration Act of 2007 (H.R. 3195) was well-attended by both Members of Congress as well as advocates, who filled the hearing room as well as an overflow room. 27 Members were in attendance.

Robert Andrews (D-NJ) chaired the committee and began the hearing with opening remarks, referencing some of the most damaging court decisions as "tortured interpretations" of the ADA by the courts.

Next, Ranking Member McKeon (R-CA) gave opening remarks, stating that while the goals of H.R. 3195 are well-intended, he holds concern that protections for those with the most significant disabilities may be "diluted" by the bill, with finite resources spread too thin.

Majority Leader Steny Hoyer offered his testimony as the sole Member witness on the first panel. Referencing the ADA as the world's first "declaration of equality" for people with disabilities, Hoyer

voiced his dismay with narrow court interpretations of the definition of disability that have weakened the protections the ADA offers as well as his strong support of H.R. 3195 to restore Congress's original intent.

On the second witness panel, Mr. Andrew Imparato, President and CEO of the American Association (AAPD) offered testimony. Mr. Imparato stated that the courts' interpretation of the ADA has made it look more like a disability retirement law than a civil rights law. He referenced the need for the bill in the broader policy context of the discouraging employment rates of people with disabilities as well as other laws like the Social Security Act, which have the effect of penalizing people with disabilities who function well by removing their health care and income supports.

After Mr. Imparato, Carey McClure provided a real-life story of how the Supreme Court's narrow interpretations have affected everyday people with disabilities in profoundly negative ways. Mr. McClure, who has a form of muscular dystrophy and is an electrician of over 20 years, was offered a job by GM in Texas after passing both a practical and written test. After being offered the job by GM, where his brother and father also worked, Mr. McClure quit his existing

job, sold his house in Georgia, and moved his family to Texas. Following a doctor's exam in which his muscular dystrophy was "discovered," his offer of employment was revoked, despite the fact that he had successfully worked as an electrician for over 20 years and had passed both GM tests. When he brought his discrimination case, the courts told him he wasn't "disabled" for purposes of the ADA according to Supreme Court precedent.

Mr. David Fram testified next, acknowledging the need for a legislative fix of problematic court cases but offering opposition to H.R. 3195 and suggesting that far less than the bill would amply address the current problem. Mr. Fram stated that people with chipped teeth or male pattern baldness would be free to bring discrimination claims or requests for accommodations under H.R. 3195. Mr. Fram questioned whether H.R. 3195 made for good policy, referencing his own male pattern baldness and asserting that an employer would be required give him hair treatments (his claims were addressed and countered in turn by both Members as well as fellow witnesses).

Mr. Robert Burgdorf was last to testify and began his oral remarks by refocusing attention on the thousands

of people with disabilities who were told by Congress and the President in 1990 that they would be protected from discrimination by the ADA who have found, like Mr. McClure, that they are not. Mr. Burgdorf provided legal analysis of the bill and gave Members a chart that outlined what Congress had said in writing the original ADA in legislative history and what the courts have said that has directly contradicted each of those statements of intent.

Question and Answer

The question and answer period from Members was robust and at times lively. Chairman Andrews referenced New Jersey's state law, which has a far broader definition of "disability" than does the ADA and said to Mr. Fram that there was no spike in the percentage of claims brought in New Jersey or in other states with broader definitions once the definition was put into place and that claims of a flood of litigation are not founded.

Rep. Payne referenced the lessons he and other Members of Congress had learned from the late Justin Dart, Jr., recalling the panic that naysayers stirred up prior to the passage of the original ADA. Drawing parallels, Payne stated that critics of the legislation were likely creating more hysteria about the fixes needed than was warranted.



Advocates for the ADA Restoration Act

Rep. Woolsey took Mr. Fram to task. After referencing her 20 years of human resources experience, she stated that people taking advantage of situations were the exception and not the rule, and that the notion of accommodating baldness was a horrible illustration.

The hearing ended following legal clarification regarding the bill's burden of proof for showing that an individual is qualified for a job.

Source: JUSTICE FOR ALL
http://jfactivist.typepad.com/jfactivist/ada_restoration/index.html

EVENTS AND ANNOUNCEMENTS

National ADA Symposium

May 12-14, 2008
America's Center, St. Louis, MO
www.adasymposium.org

Register today to attend the premiere conference on the Americans with Disabilities Act

The National ADA Symposium is a three-day conference on the Americans with Disabilities Act and related disability laws that has earned the reputation as the most comprehensive event available on the ADA. This year attendees will have the unique opportunity to

participate in a U.S. Access Board town meeting to receive feedback and recommendations on issues of airport access.

The 2008 National ADA Symposium also features:

- Extensive break-out session schedule that can be customized to individual needs and interests.
- Presentations from nationally recognized experts including representatives from the U.S. Access Board, U.S. Dept. of Justice, U.S. Dept. of Labor and the EEOC.
- Pre-Conference provides a choice of four sessions, three of which are introductory, the other advanced case law.

- Ample opportunity for networking and problem solving among participants.
- Social activities such as the Evening Reception and table-top discussion areas in the large EXPO Hall provide an atmosphere that encourages interaction.
- EXPO Hall filled with disability-related products and services, an Assistive Technology Fair, and wheelchair golf demonstrations.

Please visit the ADA Symposium website for more information and on-line registration. www.adasymposium.org

The National ADA Symposium is sponsored by the Network of DBTAC-ADA Centers. www.adata.org

