



The Americans with Disabilities Act is there to protect you

As part of an ongoing attempt to educate Psoriasis Foundation Members about the laws and regulations that protect them and allow them to be successful in the workplace, this article will cover the Americans with Disabilities Act (ADA).

The ADA went into effect in 1990 with the intention, in part, of preventing employers from discriminating against workers with a recognized disability.

While use of the Family and Medical Leave Act (FMLA) (mentioned in the last article on this subject in the May/June 2003 *Psoriasis Advance*) is relatively common and routine, the ADA can be a bit more complicated. In a way, the law may seem contradictory because to qualify a person has to be “disabled” but also has to be able to do their job.

Background

The ADA applies to companies that have 15 or more employees. The key points to remember are that an employee must have “an impairment that substantially limits a major life activity” and the employer must make “reasonable accommodations” that allow the employee to do his or her job.

Being considered “disabled” under the ADA is different than qualifying for disability under the Social Security Disability Act. Under the ADA, you have a legal disability, but if you are still able to perform the essential functions of your job, your employer is required to accommodate your needs, within reason, and cannot fire you or discriminate against you because of your disability. “The Americans with Disabilities Act prevents employers from discriminating against people who *can* do their jobs,” emphasizes Dan Farrington, an attorney from Maryland who focuses his practice on employment law.

Defining disability

In order to qualify under the ADA, a person must have an impairment that substantially limits a major life activity, such as walking, breathing or caring for one’s self. “Everyone who has psoriasis or psoriatic arthritis has an impairment, but only the more severe cases will substantially limit a major life activity,” says Farrington, who has both psoriasis and psoriatic arthritis.

For example, a case of psoriatic arthritis that substantially limits a person’s ability to walk would be considered a disability under the ADA. A case of pustular psoriasis on the soles of the feet could also potentially cause the same level of disability.

Defining reasonable accommodations

Let’s say a person has psoriatic arthritis and, as a result, cannot do a lot of walking. Parts of the person’s job require him or her to do quite a bit of walking, but these tasks are not essential to the job. An example could be a receptionist who answers the telephone and greets customers, but is also usually the one who runs down to the supply room to get more paper for the printer when it runs out. If the person’s psoriatic arthritis becomes such that he or she cannot perform this function any longer, the employer is required to accommodate this person by finding someone else at the company to take over this task.

Reasonable accommodations as defined under the ADA may also include time off for treatment. Sometimes, if an employee cannot secure the needed time off for treatment using the FMLA, they may be able to pursue this time off under the ADA. It is more difficult to establish a “disability” under the ADA than it is to establish a “serious health condition” under the FMLA, which is why the FMLA should probably be the first choice for people with psoriasis and psoriatic arthritis, according to Farrington. The FMLA involves filling out a routine form from the Department of Labor.

Where to start

If a company is covered under the ADA and an employee has established that they do have a disability, the company must then make reasonable adjustments to allow that employee to perform his or her job. This could include modified work schedules or extra leave (above and beyond sick leave) to receive treatment or recover from a flare. “Basically, anything that helps the employee do his or her job, including time off, can be a reasonable accommodation so long as it does not impose an undue hardship on the employer,” Farrington says.

**“I’m really optimistic that
this will help inform Psoriasis
Foundation Members about
significant rights they have
that they may not realize.”**

— Dan Farrington, attorney

If a disabled employee needs an accommodation, the first step is to inform the employer. At this point, ideally, there would be an interactive process where the employer and the employee work together to come up with an accommodation that works for both of them. An employer may request information to verify that an employee who is requesting accommodation has a disability and that the requested accommodation would actually help. Any medical information about the employee must be kept confidential and separate from the employee’s personnel file.

The silent act

Qualifying as having a disability under the ADA may not mean going to court or even going through any kind of formal process. Often, an employer will see where accommodations need to be made for an employee and simply make them.

However, it becomes important to understand the law when a person with psoriasis, psoriatic arthritis or any disability is struggling at his or her job and fears for the security of the position. At that point, it is time to look into whether he or she qualifies as disabled, what his or her rights are and what the next step is.

Even if the company a person works for does not meet the criteria for the ADA, people may be entitled to protection under their state’s laws. Many states have extended ADA-like protections to employees who work for smaller companies. An employment attorney can advise you of your rights.

Sources for more information:

Equal Employment Opportunity Commission
www.eeoc.gov

Job Accommodation Network
www.jan.wvu.edu ♿

— Norah Barnard, Writer

This article is the second in a series about legal issues faced by people with psoriasis and psoriatic arthritis. Information about the Family and Medical Leave Act and how it can be used by people with these diseases appeared in the May/June 2003 *Psoriasis Advance*. Look for an article about Social Security Disability in the upcoming September/October issue. Anyone with comments or a personal story to share can contact Norah Barnard at 800.546.8376 or send e-mail to nbarnard@psoriasis.org.

