

Epilepsy and the American with Disabilities Act

The Americans with Disabilities Act (ADA) and amendments is a federal law that prohibits discrimination against qualified individuals with disabilities.

Is epilepsy a disability under the ADA?

The ADA does not contain a list of medical conditions that constitute disabilities. Instead, the ADA has a general definition of disability that each person must meet on a case by case basis. A person has a disability if he/she has a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or is regarded as having impairment.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA.

According to the EEOC virtually all people with epilepsy will result in a determination of disability under the ADA; given its inherent nature, epilepsy will almost always be found to substantially limit a major life activity (for example, speaking or interacting with others) when seizures occur...

Topics addressed today:

- What types of reasonable accommodations employees with epilepsy may need;
- Disability disclosure and employment
- When an employer may ask an applicant or employee questions about her epilepsy and how it should treat voluntary disclosures;
- How an employer should handle safety concerns about applicants and employees with epilepsy; and
- How an employer can ensure that no employee is harassed because of epilepsy or any other disability.

ACCOMMODATING EMPLOYEES WITH EPILEPSY

The ADA requires employers to provide adjustments or modifications -- called reasonable accommodations -- to enable applicants and employees with disabilities to enjoy equal employment opportunities unless doing so would be an undue hardship (that is, a significant difficulty or expense).

Accommodations vary depending on the needs of the individual with a disability. Not all employees with epilepsy will need an accommodation or require the same accommodations, and most of the accommodations a person with epilepsy might need will involve little or no cost. An employer must provide a reasonable accommodation that is needed because of the epilepsy itself, the effects of medication, or both.

Types of reasonable accommodations employees with Epilepsy may need:

Some employees may need one or more of the following common accommodations at work:

- breaks to take medication
- leave to seek or recuperate from treatment or adjust to medication
- a private area to rest after having a seizure
- a rubber mat or carpet to cushion a fall
- adjustments to a work schedule
- a consistent start time or a schedule change (for example, from the night shift to the day shift)
- a checklist to assist in remembering tasks
- permission to bring a service animal to work
- someone to drive to meetings and other work-related events
- permission to work at home
- reassignment to a vacant position if the employee is no longer able to perform her current job

However there are many accommodations that may help

Accommodation Ideas for Cognitive Impairments Associated with Epilepsy

Memory: People with epilepsy may experience memory deficits, which can affect their ability to complete tasks, remember job duties, or recall daily actions or activities. This could be caused by a side-effect of medications or from recent seizure activity.

- Provide written or pictorial instructions or prompt with verbal cues
- Offer training refreshers
- Use a chart to describe steps to complicated tasks
- Maintain, safely and securely, paper lists of crucial information such as passwords
- Use voice recordings of verbal instructions
- Provide the employee directory with pictures
- Use nametags and door/cubicle name markers
- Provide a building directory or employee directory by name, floor, unit, etc.
- Label items on the employee's desk (in-box, this week's videos, etc.)
- Use auto-dial phone features to connect quickly to used numbers
- Provide written information to employee
- Post written information in a central location
- Use a wall calendar
- Use a daily or weekly task list
- Provide verbal prompts or reminders
- Use electronic organizer on computer or hand-held device

Disorientation/Disorganization that may be associated with seizures

- Put employee's name plate on desk and/or door
- Provide building directory or employee directory by name, floor, unit, etc.
- Label items at desk (in-box, this week's videos, etc.)
- Use nametags (or other identification) for all employees
- Have auto-dial programmed on phone that connects to supervisor or other numbers

Office Equipment Use:

- Use large-buttons with universal symbols (fire, police, and doctor) and clear labels
- Post directions and write down access codes, long distance account number, etc.
- Identify contact person to answer questions (example: secretary)
- Provide retraining
- Change schedule so employee is never first person in or last person out

Time Management: People with epilepsy may have difficulty managing time, which can affect their ability to complete tasks within a specified timeframe. It may also be difficult to prepare for, or to begin, some work activities.

- Divide large assignments into several small tasks
- Set a timer to make an alarm
- Provide a checklist of assignments
- Supply an electronic or handheld organizer and train on how to use effectively
- Use a wall calendar to emphasize due dates

Stress management: People with epilepsy may have seizures when stress is not properly managed. Situations that create stress can vary from person to person, but could likely involve heavy workload, unrealistic timeframes, shortened deadlines, or conflict among coworkers.

- Provide praise and positive reinforcement
- Refer to employee assistance programs
- Allow the employee to make telephone calls to doctors (and others) for support
- Provide sensitivity training
- Modify work schedule

Accommodation Ideas for Motor Impairments Associated with Seizures. Driving: People with epilepsy may have driving restrictions. For specific information about a state's regulations involving driving with epilepsy, see:

<http://www.epilepsyfoundation.org/living/wellness/transportation/drivinglaws.cfm>

- Pair the employee with a co-worker who can drive to meetings or events
- Allow telework or work from home
- Transfer the employee to a position that does not require driving
- Adjust schedule so the employee can access public transportation
- Help facilitate a carpool with co-workers for transportation to/from work

Balancing/Climbing: People with epilepsy may have difficulty balancing or climbing.

- Cushion a fall by using rubber matting on floor and by adding padded edging to corners and edges
- Install machine guarding
- Use rolling safety ladders with handrails and locking casters
- Provide head protection
- Provide eye protection
- Use fall protection

Fatigue: People with epilepsy may experience fatigue due to a side-effect of medications or to recent seizure activity.

- Use anti-fatigue matting on the floor
- Provide flexible start or ending times
- Adjust workweek
- Provide private or secure rest area during breaks

Ensuring Safety in the Workplace: Take some universal precautions to ensure safety in the workplace.

- Designate a person to respond to emergencies
- Keep aisles clear of clutter
- Provide a quick, unobstructed exit
- Post clearly marked directions for exits, fire doors, etc.
- Know when to (or not to) call 9-1-1
- Consult employee's plan of action to determine how to respond/react when employee has a seizure on the job (see "Plan of Action" section for additional information)

Accommodation Ideas for Sensory Impairments Associated with Seizures

Photosensitivity: People with epilepsy may have seizures or headaches due to light sensitivity, which can be exacerbated by light sources such as computer screens or fluorescent lights.

- Use a flicker-free monitor (LCD display, flat screen)
- Use a monitor glare guard
- Allow frequent breaks from tasks involving computer
- Provide alternative light sources: °
- Replace fluorescent lights with full spectrum lighting
- Use natural lighting source (window) instead of electric light

Seeing/Hearing/Communicating: During or after seizures, an employee may temporarily have limited ability to see, hear, or speak.

- Allow the employee time to recuperate from seizure
- Identify hand signals or other universal signals that the employee might use to communicate with another person
- Use PECS (picture exchange communication system) to communicate
- Use paging systems to communicate with coworkers
- Provide 2-way radios with texting options
- Use alert systems to send message

Other Accommodations Attendance/Absenteeism: Seizure activity can affect a person's attendance at work.

- Allow employee to remain on the job after a seizure when possible
- Provide flexible schedule
- Modify an attendance policy
- Provide leave while the employee is adjusting to medications
- Work a straight shift instead of rotating shifts

Personal Care: During or after a seizure, people with epilepsy may exhibit behaviors such as crying, drooling, spitting, or urinating. As a result, the person may need time following a seizure to engage in activities of daily living such as grooming and changing clothes.

- Allow the employee to keep a change of clothes at the workplace
- Provide a private space to regain composure and perform self-care tasks
- Provide sensitivity training/disability awareness to coworkers

Attendance/Absenteeism:

- Allow employee to remain on the job after a seizure, if possible
- Provide flexible schedule or workweek, if possible
- Count all absences due to seizure activity as one occurrence

Behavior:

- Understand employee's limitations, and be prepared for behaviors such as: drooling or spitting, urination on self or on furniture, and inappropriate behavior such as trying to push or kiss someone
- Allow employee to keep change of clothes at the workplace
- Provide private space for employee to go when exhibiting such behavior
- Have employee alert co-worker/supervisor when seizure is about to occur
- Provide sensitivity training/disability awareness to coworkers

Seizures on the Job:

- Try to reduce or eliminate triggers so seizure activity is less likely to occur. Some triggers include: hormonal changes (pregnancy, menstruation, and aging); sensitivity to fragrances or other chemicals in the workplace; stress on the job; and disruption in daily activities due to working varied shifts (such as sleeping, taking medications, or eating)

The website for the Job Accommodation Network (JAN) ([www. askjan.org/media/epilepsy.html](http://www.askjan.org/media/epilepsy.html)) provides information about many types of accommodations for employees with epilepsy.

FAQ

Job Applicants: Before an Offer of Employment Is Made

1. May an employer ask a job applicant whether she has epilepsy or about her treatment related to epilepsy before making a job offer?

No. An employer may not ask questions about an applicant's medical condition or require an applicant to have a medical examination before it makes a conditional job offer. This means that an employer cannot legally ask an applicant questions such as:

- whether she has epilepsy or seizures;
- whether she uses any prescription drugs; or
- whether she ever has filed for workers' compensation or been injured on a job.

An employer may ask questions of qualifications or performance of the job:

- whether an applicant has a driver's license; or
- whether he can operate heavy machinery or equipment.

2. Does the ADA require an applicant to disclose that she has epilepsy or some other disability before accepting a job offer?

No. The ADA does not require applicants to voluntarily disclose that they have epilepsy unless they will need a reasonable accommodation for the application process (for example, permission to bring a service animal to an interview). Some individuals with epilepsy, however, choose to disclose their condition because they want their co-workers or supervisors to know what to do if they have a seizure. Often the decision to disclose depends on the type of seizure a person has, the need for assistance during or after a seizure, the frequency of seizures, and the type of work for which the person is applying.

3. May an employer ask any follow-up questions if an applicant voluntarily reveals that she has epilepsy?

No. An employer generally may not ask an applicant who has voluntarily disclosed that she has epilepsy any questions about her epilepsy, its treatment, or its prognosis. The employer may ask whether the applicant will need an accommodation and what type.

After an Offer of Employment Is Made

After making a job offer, an employer may ask questions about the applicant's health (including questions about the applicant's disability) and may require a medical examination, as long as all applicants for the same type of job are treated equally

4. What may an employer do when it learns that an applicant has epilepsy after he has been offered a job but before he starts working?

When an applicant discloses after he has received a conditional job offer that he has epilepsy, an employer may ask the applicant additional questions about his epilepsy, such as whether he has held the same or a similar job since his diagnosis; whether he takes any medication; whether he still has seizures and, if so, what type; how long it takes him to recover after a seizure; and/or, whether he will need assistance if he has a seizure at work. The employer also may send the applicant for a follow-up medical examination or ask him to submit documentation from his doctor answering questions specifically designed to assess the applicant's ability to perform the job's functions safely

5. When may an employer ask an employee whether epilepsy may be causing her performance problems?

Generally, an employer may ask disability-related questions or require an employee to have a medical examination when it knows about a particular employee's medical condition, has observed performance problems, and reasonably believes that the problems are related to the medical condition. At other times, an employer may ask for medical information when it has observed symptoms, such as extreme fatigue or irritability, or has received reliable information from someone else (for example, a family member or co-worker) indicating that the employee may have a medical condition that is causing performance problems. Often, however, poor job performance is unrelated to a medical condition and generally should be handled in accordance with an employer's existing policies concerning performance.

6. May an employer require an employee on leave because of epilepsy to provide documentation or have a medical examination before allowing her to return to work?

Yes. If the employer has a reasonable belief that the employee may be unable to perform her job or may pose a direct threat to herself or others, the employer may ask for medical information. However, the employer may obtain only the information needed to make an assessment of the employee's present ability to perform her job and to do so safely.

7. Are there any other instances when an employer may ask an employee with epilepsy about her condition?

Yes. An employer also may ask an employee about epilepsy when it has a reasonable belief that the employee will be unable to safely perform the essential functions of her job because of epilepsy. In addition, an employer may ask an employee about her epilepsy to the extent the information is necessary:

- to support the employee's request for a reasonable accommodation needed because of her epilepsy;
- to verify the employee's use of sick leave related to her epilepsy if the employer requires all employees to submit a doctor's note to justify their use of sick leave;
- to enable the employee to participate in a voluntary wellness program.

Keeping Medical Information Confidential

With limited exceptions, an employer must keep confidential any medical information it learns about an applicant or employee. Under the following circumstances, however, an employer may disclose that an employee has epilepsy:

- to supervisors and managers in order to provide a reasonable accommodation or to meet an employee's work restrictions;
- to first aid and safety personnel if an employee would need emergency treatment or require some other assistance if she had a seizure at work
- to individuals investigating compliance with the ADA and similar state and local laws; and
- where needed for workers' compensation or insurance purposes (for example, to process a claim).

8. May an employer tell employees who ask why their co-worker is allowed to do something that generally is not permitted (such as have more breaks) that she is receiving a reasonable accommodation?

No. Telling co-workers that an employee is receiving a reasonable accommodation amounts to a disclosure that the employee has a disability.

9. If an employee has a seizure at work, may an employer explain to other employees or managers that the employee has epilepsy?

No. Although the employee's co-workers and others in the workplace who witness the seizure naturally may be concerned, an employer may not reveal that the employee has epilepsy. Rather, the employer should assure everyone present that the situation is under control. The employer also should follow the employee's plan of action if one has been created

10. How does an employee with epilepsy request a reasonable accommodation?

There are no "magic words" that a person has to use when requesting a reasonable accommodation. A person simply has to tell the employer that she needs an adjustment or change at work because of her epilepsy. A request for reasonable accommodation also can come from a family member, friend, health professional, or other representative on behalf of a person with epilepsy.

11. May an employer request documentation when an employee who has epilepsy requests a reasonable accommodation?

Yes. An employer may request reasonable documentation where a disability or the need for reasonable accommodation is not known or obvious. An employer, however, is entitled only to documentation sufficient to establish that the employee has epilepsy and to explain why an accommodation is needed. A request for an employee's entire medical record, for example, would be inappropriate as it likely would include information about conditions other than the employee's epilepsy.²⁴

12. Does an employer have to grant every request for a reasonable accommodation?

No. An employer does not have to provide an accommodation if doing so will be an undue hardship. Undue hardship means that providing the reasonable accommodation would result in significant difficulty or expense. An employer also does not have to eliminate an essential function of a job as a reasonable accommodation, tolerate performance that does not meet its standards, or excuse violations of conduct rules that are job-related and consistent with business necessity and that the employer applies consistently to all employees (such as rules prohibiting violence, threatening behavior, theft, or destruction of property).

13. May an employer be required to provide more than one accommodation for the same employee with epilepsy?

Yes. The duty to provide a reasonable accommodation is an ongoing one. Although some employees with epilepsy may require only one reasonable accommodation, others may need more than one. For example, an employee with epilepsy may require leave because of frequent seizures and later may request a part-time or modified schedule to get more rest to control her seizures. An employer must consider each request for a reasonable accommodation and determine whether it would be effective and whether providing it would pose an undue hardship.

14. May an employer automatically deny a request for leave from someone with epilepsy because the employee cannot specify an exact date of return?

No. Granting leave to an employee who is unable to provide a fixed date of return may be a reasonable accommodation. Although epilepsy often can be successfully controlled, some individuals may be need to take extended leave because of the frequency or severity of their seizures and may be able to provide only an approximate date of return (for example, "in six to eight weeks," "in about three months").

15. If an employee does not have a driver's license because of epilepsy, does an employer have to eliminate driving from his job duties?

It depends. If driving is an essential function of a job, an employer does not have to eliminate it. However, an employer should carefully consider whether driving actually is an essential job function, a marginal job function, or simply one way of accomplishing an essential function

CONCERNS ABOUT SAFETY

When it comes to safety, an employer should be careful not to act on the basis of myths, fears, generalizations, or stereotypes about epilepsy. Instead, the employer should evaluate each individual on his knowledge, skills, experience, and how having epilepsy affects him.

16. When may an employer refuse to hire, terminate, or temporarily restrict the duties of a person with epilepsy because of safety concerns?

An employer only may exclude an individual with epilepsy from a job for safety reasons when the individual poses a direct threat. A "direct threat" is a significant risk of substantial harm to the individual or others that cannot be eliminated or reduced through reasonable accommodation. This determination must be based on objective, factual evidence, including the best recent medical evidence and advances in the treatment of epilepsy. The harm must be serious and likely to occur, not remote and speculative.

17. May an employer require an employee who has had a seizure at work to submit periodic notes from his doctor indicating that his epilepsy is under control?

Yes, but only if the employer has a reasonable belief that the employee will pose a direct threat if he does not regularly see his doctor

HARASSMENT

The ADA prohibits harassment, or offensive conduct, based on disability just as other federal laws prohibit harassment based on race, sex, color, national origin, religion, age, and genetic information. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

18. What should employers do to prevent and correct harassment?

Employers should make clear that they will not tolerate harassment based on disability or on any other basis. This can be done in a number of ways, such as through a written policy, employee handbooks, staff meetings, and periodic training. The employer should emphasize that harassment is prohibited and that employees should promptly report such conduct to a manager. Finally, the employer should immediately conduct a thorough investigation of any report of harassment and take swift and appropriate corrective action.

For more information on the standards governing harassment under all of the EEO laws, see www.eeoc.gov/policy/docs/harassment.html.

The majority of this information can be found in a more comprehensive format at

www.jan.org

Search specifically for accommodations and briefs at <http://askjan.org/media/epil.htm>

Plan of Action:

In the event that a seizure does occur in the workplace, it is wise to be prepared. Preparation begins with a plan of action.

Can you remember back to elementary school? Think back to practice for a fire drill. Everyone in the entire school knew the plan and was prepared for the fire drill. Everyone knew who was in charge, what responsibilities each person had, how quickly to respond to an alarm, and how to exit the building. That type of preparedness made the fire drill work efficiently.

A plan of action is very similar to an elementary school fire drill.

A plan of action is an emergency preparedness tool. It can be used to prepare for, or respond to, emergency situations that arise when a person has a seizure on the job.

A plan of action can be created with the employee and employer and can include information such as:

- Emergency contact information
- Visual or audible warning signs
- How/when to provide on-site medical assistance
- How/when to call 9-1-1
- How to provide environmental support
- Who to designate as emergency responders
- Who to go to for help
- How to educate co-workers about epilepsy

A properly implemented plan of action may reduce the confusion, panic, or fear that co-workers or customers experience if they see an employee having a seizure on the job. When the plan of action is “in action,” one designated person calls a spouse or emergency contact. One designated person watches over the employee. No one provides incorrect or unnecessary medical assistance (CPR, for example). No one overreacts to the emergency because everyone is prepared for it, can identify it, and respond appropriately to it.

Employers are not required by the ADA to use the following form, nor are employees with epilepsy required by the ADA to use the form.

SAMPLE Plan of Action.

Consider using this as guidance on how to write a plan of action.

Disability and/or Limitation(s): Epilepsy (simple partial seizures)

Warning Signs for Oncoming Seizure:

- a. John will experience nausea.
- b. John's face or shoulder/arm will jerk involuntarily.
- c. Warning signs give John 3-4 minute before seizure activity begins.
- d. John will signal designated co-worker using 2-way radio (with texting) to inform of oncoming seizure.

Action Plan:

- a. Using his hand or arm, gently lead John to designated safe area.
- b. If necessary, help John into a seated or lying position.
- c. If necessary, loosen any restrictive clothing (such as a tie or scarf).
- d. During seizure (which lasts from 2 - 5 minutes), John will not need medical attention.
- e. When seizure subsides, offer John a cool cloth for his face or a cool drink.
- f. If John is disoriented, identify yourself and identify his location/surroundings.

Additional Comments:

- a. Two designated co-workers will carry radios to hear John's emergency signal.
- b. Supervisor will call John's emergency contact person.
- c. Based upon John's documentation provided by his neurologist, ambulance/medical attention is not required unless John falls or hits his head.

This form may NOT be kept in an employee's personnel file. It must be kept in the employee's confidential medical file.