The Americans with Disabilities Act (ADA)
Coverage of Contagious Diseases

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Summary

The Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 et seq., provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications. As stated in the act, its purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Due to concern about the spread of highly contagious diseases such as epidemic influenza1 and extensively drug-resistant tuberculosis (XDR-TB),2 questions have been raised about the application of the ADA in such situations. This report briefly discusses the Americans with Disabilities Act’s statutory provisions relating to contagious diseases and relevant judicial interpretations.

It will be updated as necessary.

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Statutory Language and Legislative History

The Americans with Disabilities Act, often described as the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964, provides protections against discrimination for individuals with disabilities. The threshold issue when discussing the applicability of the ADA is whether the individual in question is a person with a disability. Generally, individuals with serious contagious diseases would most likely be considered individuals with disabilities. However, this does not mean that an individual with a serious contagious disease would have to be hired or given access to a place of public accommodation if such an action would place other individuals at a significant risk. Such determinations are highly fact specific and the differences between the contagious diseases discussed by the courts (e.g., HIV infection, tuberculosis, and hepatitis) and potential pandemic flu may give rise to differing conclusions. Each contagious disease has specific patterns of transmission that affect the magnitude and duration of a potential threat to others.

Title I of the ADA, which prohibits employment discrimination against otherwise qualified individuals with disabilities, specifically states that “the term ‘qualifications standards’ may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.” In addition, the Secretary of Health and Human Services (HHS) is required to publish, and update, a list of infectious diseases that are considered “highly contagious” for the purposes of the ADA.


The issues involving the definition of disability have been among the most controversial under the ADA. The ADA was recently amended to expand the interpretation of the definition of disability. See CRS Report RL34691, The ADA Amendments Act: P.L. 110-325, by Nancy Lee Jones.


42 U.S.C. §12113(b).
and communicable diseases that may be transmitted through handling the food supply. Similarly, title III, which prohibits discrimination in public accommodations and services operated by private entities, states: “Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term ‘direct threat’ means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.”

Contagious diseases were discussed in the ADA’s legislative history. The Senate report noted that the qualification standards permitted with regard to employment under title I may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace and cited to School Board of Nassau County v. Arline, 480 U.S. 273, 287, note 16 (1987), a Supreme Court decision concerning contagious diseases and Section 504 of the Rehabilitation Act of 1973. Similarly, the House report of the Committee on Education and Labor reiterated the reference to Arline and added “[t]hus the term ‘direct threat’ is meant to connote the full standard set forth in the Arline decision.”

**Supreme Court Decisions**

*School Board of Nassau County v. Arline.* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, in part prohibits discrimination against an otherwise qualified individual with a disability in any program or activity that receives federal financial assistance. Many of the concepts used in the ADA originated in Section 504, its regulations, and judicial interpretations. The legislative history of the ADA, as discussed above, specifically cited to the Supreme Court’s interpretation of Section 504 in Arline which held that a person with active tuberculosis was an individual with a
disability but may not be otherwise qualified to teach elementary school. Footnote 16, which was referenced in the ADA’s legislative history, states in relevant part that “a person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk.”

The Court in Arline examined the standards to be used to determine if an individual with a contagious disease is otherwise qualified. In most cases, the Court observed, an individualized inquiry is necessary in order to protect individuals with disabilities from “deprivation based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to such legitimate concerns of grantees as avoiding exposing others to significant health and safety risks.” The Court adopted the test enunciated by the American Medical Association (AMA) amicus brief and held that the factors which must be considered include “findings of facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.” The Court also emphasized that courts “normally should defer to the reasonable medical judgments of public health officials” and that courts must consider whether the employer could reasonably accommodate the employee. Arline was remanded for consideration of the facts using this standard and the district court held that since the teacher had had negative cultures and the possibility of infection was “extremely rare,” the school board must reinstate her or pay her salary until retirement eligibility.

Bragdon v. Abbott. The Supreme Court in Bragdon v. Abbott, addressed the ADA definition of individual with a disability and held that the respondent’s asymptomatic HIV infection was a physical impairment impacting on the major life activity of reproduction thus rendering the HIV infection a disability under the ADA. The Court also addressed the question of what is a direct threat, finding that the ADA’s direct threat language codified the Court’s decision in Arline. In Bragdon the plaintiff, an individual with asymptomatic HIV infection, sought dental treatment from the defendant and was told that she would be treated only in a hospital, not in the office. The plaintiff, Ms. Abbott, filed an ADA complaint and prevailed at the district court, court of appeals and the Supreme Court on the issue of whether she was an individual with a disability but the case was remanded for further consideration regarding the issue of direct threat.

The Supreme Court provided some guidance regarding the direct threat issue in Bragdon stating that “the existence, or nonexistence, of a significant risk must be determined from the standpoint of the person who refuses the treatment or

14 Id. at 287.
15 Id. at 288.
16 Id.
The lower courts have dealt with a number of direct threat cases under the ADA. Although a comprehensive survey of these cases is beyond the scope of this report, they have involved a number of types of disabilities as well as varying occupations and accommodations. The disabilities at issue have often involved AIDS or HIV infection.

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22 42 U.S.C. §12113(b).
23 226 F.3d 1063 (9th Cir. 2000).
24 29 C.F.R. §1630.15(b)(2).
25 See e.g., *Montalvo v. Radcliffe*, 167 F.3d 873 (4th Cir. 1999), *cert. denied*, 528 U.S. 813 (1999), where the fourth circuit held that excluding a child who has HIV from karate classes did not
or mental illness\textsuperscript{26} but have also included hepatitis,\textsuperscript{27} and other conditions. The various occupations have included public health care workers, public safety officers, transportation operators, food handlers, and industrial workers.\textsuperscript{28}

\textsuperscript{25} (...continued)  

violate the ADA because the child posed a significant risk to the health and safety of others which could not be eliminated by reasonable modification.

\textsuperscript{26} See e.g., \textit{Lassiter v. Reno}, 885 F.Supp. 869 (E.D.Va. 1995), \textit{aff’d} 86 F.3d 1151 (4\textsuperscript{th} Cir. 1996), \textit{cert. denied}, 519 U.S. 1091 (1997), where the court found that a deputy U.S. Marshal diagnosed as suffering from delusional paranoid personality disorder presented a reasonable probability of substantial harm if permitted to carry a firearm.

\textsuperscript{27} See e.g., \textit{Doe v. Woodford County Board of Education}, 213 F.3d 921 (6\textsuperscript{th} Cir. 2000), where the court upheld the school’s decision to place a student who was a hemophiliac and a carrier of the hepatitis B virus on hold status for the varsity basketball team pending a medical clearance.