

The Americans With Disabilities Act and Voice Disorders: Practical Guidelines for Voice Clinicians

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Summary: Objective. The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) resulted in changes to the legal definition of disability and substantially affected how those with voice disorders may qualify for reasonable accommodations under the law. However, there has been little guidance and a lack of awareness about these changes within the voice literature. This article examines the Americans with Disabilities Act of 1990 (ADA), the changes made in 2008 (ADAAA), and how the law applies to individuals with voice disorders.

Study Design. This is a review article.

Methods. The ADA and ADAAA are summarized with a particular focus on individuals with voice disorders. Types of reasonable accommodations within the workplace are suggested, and online resources are provided which outline the disclosure and accommodation process. Practical examples are used to provide guidance for clinicians who may be involved in counseling this clinical population.

Results/Conclusions. Many individuals with voice disorders may not realize that their conditions can be classified as disabilities under the law, entitling them to workplace accommodations and time off to pursue medical treatment. However, disclosure laws such as the right to refrain from mentioning a disability during a job interview may not be protective of individuals with severe voice impairments, as symptoms are often difficult to conceal. Clinical implications and directions for future research are discussed.

Key Words: Disability—Voice disorders—ADA.

INTRODUCTION

The Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA) was created by Congress in an attempt to reduce the obstacles faced by individuals with disabilities across many domains. This broadly includes obstacles related to employment discrimination, as well as access to medical care, public facilities, and telecommunication services. Title 1 of the ADA deals specifically with employment-related issues, including how individuals with disabilities are to be treated during the job interview process. The rules and protections under the ADA were recently expanded with the adoption of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). These amendments resulted in substantial changes to how the ADA may be applied to individuals with voice disorders. Yet, to date, there has been little attention in the voice literature about these changes, thus contributing to a potential lack of awareness among practicing speech-language pathologists (SLPs) and physicians. As a consequence, the purpose of this article is to review the ADA, while focusing on the recent changes associated with the ADAAA as applied to individuals with voice disorders. Specifically, this article will focus on the application of disability law within the workplace and during the job interview process. This information is critical to understand in terms of patient advocacy and when counseling individuals with voice disorders. For example, clinicians need to be aware that under the ADA,

two individuals with relatively similar voice impairments (eg, dysphonia severity) may not have the same legal protections if one person feels that his/her disorder is not substantially limiting.

Voice disorders are different from many other communication disorders because their severity may fluctuate from moment to moment (eg, spasmodic dysphonia [SD]), day to day (eg, muscle tension dysphonia [MTD]), or month to month (eg, recovery of function in vocal fold paresis). This variability results in symptoms that may not be consistent within or across patients. To illustrate how the ADA pertains to voice disorders, examples of potential accommodations are provided in this article, along with resources and Web sites that both clinicians and patients might find helpful. Finally, conclusions are drawn as to whether the policies outlined in the ADA are truly protective of individuals with voice disorders. Directions for future research are also suggested. However, before attempting to apply disability law to the area of voice, a thorough understanding of important terminology contained within these legal documents is warranted.

Disability defined. The term “disability” is defined by the ADA as “...(1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.”¹ “Major life activities” include, but are not limited to, self-care, manual tasks, hearing, seeing, eating, interacting with others, breathing, sleeping, walking, standing, lifting, bending, *speaking*, learning, reading, concentrating, thinking, *communicating*, and working.² Thus, it is clear that individuals who have a difficulty in producing voice for the purposes of speaking and communicating are included under the ADA. To qualify as a “substantially limiting” impairment, expert testimony or physician documentation is not necessarily required. Credible testimony from the individual with a disability is often sufficient.

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If an individual with a voice disorder wishes to claim a voice-related disability in the workplace, more formal medical documentation could potentially be requested by an employer. Changes in the definition of disability that occurred in 2008 also need consideration and are summarized in the next section.

The Americans with Disabilities Act Amendments Act of 2008

Many changes were made to the ADA in 2008 (ADAAA) that affected the definition of disability. First, the extent to which any impairment affects a major life activity is now to be evaluated without consideration of the effect of any mitigating measures, with the exception of ordinary eyeglasses or contact lenses. Mitigating measures in this case refer to such things as pharmaceutical and medical interventions or physical devices. As a concrete example, the limitations that a hearing impairment might impose on an individual are to be evaluated as if that person was not able to use hearing aids at all (ie, when the impairment is left untreated). As a second example, an individual postlaryngectomy might feel that he/she can communicate adequately using an electrolarynx as an extrinsic alaryngeal voice source. Yet, if that person had no access to an electrolarynx, then that individual may feel much more limited in terms of communication. This essentially means that the determination of whether an impairment is considered substantially limiting is now to be made prior to any intervention, with respect to a person's baseline level of functioning.

A second major amendment to the ADA was the inclusion of a broader definition of disability that is not necessarily restricted by duration of symptoms. For example, the original ADA of 1990 was interpreted to mean that "temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities."¹ Under the ADA, impairments could not be transitory, and symptoms were required generally to persist for longer than 6 months to be classified as disabilities. Thus, under this rule, many voice disorders would not have qualified because of their transitory or acute nature. However, this changed as a function of the ADAAA of 2008. The Equal Employment Opportunity Commission (EEOC) issued new regulations pursuant to the ADAAA which explicitly state that temporary impairments can qualify. Section 1630.2(j)(1)(ix) of the EEOC regulations states that "The effects of an impairment lasting or expected to last fewer than 6 months can be substantially limiting."² The definition of disability was therefore broadened to also include temporary conditions that might have a substantial impact on a person's functioning. This change broadened the scope of who might qualify as having a disability among those with voice disorders.

Finally, the ADAAA of 2008 ensured that wording was made more inclusive by insisting that the term "substantially limits" in the definition (ie, [an] impairment that "substantially limits" one or more of the major life activities ...) should not be construed to mean "significantly restricts." Episodic conditions may also qualify if they substantially limit activities when flare-ups occur. Section 1630.2(j)(1)(ii) of the newest EEOC regulations states that

An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting ... The term *substantially limits* shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. *Substantially limits* is not meant to be a demanding standard.²

As a result of these changes, an impairment does not need to prevent or significantly restrict a person from performing a major life activity to be considered substantially limiting. Furthermore, in making an assessment of whether the impairment is substantially limiting, a comparison is to be made to most people in the general population without that condition. In making a determination of whether a person might be substantially limited, the assessment "should not demand extensive analysis."² In summary, it is clear that changes made to the ADA under the 2008 Amendments are more inclusive, with a trend toward a broader definition of what it means to have a qualifying disability under the law. Before we apply these definitions to those with voice disorders, it is first important to consider who these laws were meant to protect, and in what situations they apply. Workplace environments are specifically summarized next.

Reasonable accommodations. Under the ADA, an individual with a disability is entitled to "reasonable accommodations" in the workplace, which includes the interview process itself, if necessary. What constitutes reasonable will be explored momentarily; first, it should be emphasized that not every workplace (or what the ADA calls a "covered entity") is mandated to provide such accommodations. A "covered entity" refers only to businesses or organizations that employ more than 15 people.¹ This implies that most small business owners need not adhere to the policies laid out under Title 1 of the ADA. However, there may be state laws in place which mandate similar provisions. Ironically, although the ADA was crafted by the federal government, federal employees are not covered under its policies. The stated rationale for this is that federal employees are instead to be protected according to the guidelines listed under the Rehabilitation Act of 1973. The Rehabilitation Act can be thought of as a precursor to the ADA that initially applied only to organizations that received federal funding. The ADA moves beyond federal employees and stipulates that no covered entity shall discriminate against a qualified individual with a disability during job application procedures, hiring, advancement, discharge, compensation, or training.²

Because the ADA is a broad document and includes somewhat nebulous terminology such as "substantially limits" and "reasonable accommodations," a bipartisan law enforcement agency known as the EEOC handles many issues related to how the policies of the ADA are enforced. The EEOC is charged with the responsibility of enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 years or older), *disability*, or genetic information. The EEOC also serves as a resource for those

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