

Is an Individual with a Workers' Compensation Injury Protected Under the ADA?

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Companies operating in the logistics industry, whether it be as contractors for DHL, FedEx, Amazon, or the like, are all too familiar with the challenges of having a workforce that relies primarily on physical ability and the challenges associated with employees who suffer from injuries on the job that impact their ability to perform their job duties and potentially create unsafe working conditions. With physically demanding jobs comes the increased chance for accommodation requests under the Americans with Disabilities Act (ADA). When an employee is injured on the job, contractors are often quick to ensure they follow proper protocols for any potential workers' compensation claims. However, they often overlook the application of the Americans with Disabilities Act, which may cover the injured worker if the employee meets the definition of disability.

The ADA applies to employers with 15 or more employees. It prohibits employers from discriminating against qualified disabled individuals and requires that such employers provide reasonable accommodations that allow them to perform the essential functions of their job or to enjoy benefits and privileges of employment equal to those without a disability. An individual has a disability and is subject to protection if they have a physical or mental impairment that substantially limits major life activities. Crucially, the ADA does not require a showing of long-term effects to qualify, and short-term impairments are covered if they are considerably limiting.

Often, employers mistakenly believe that employees struggling with short-term impairments due to a workplace injury do not qualify for protection under the ADA and are too focused on the initial worker's compensation assessment to realize they also need to consider the implications of the ADA. If an employee asks for accommodation after a workplace injury, the ADA may apply, and the company must perform an individualized assessment to determine whether the individual meets the ADA definition of disabled, and if they do, assess what reasonable accommodations to grant based to help the employee perform their job duties. An accommodation request in the logistics industry can take many forms, including:

- requests for light duty, including limiting hours worked and weight lifted;
- requests for periodic unpaid leave or an alternative work schedule to attend physical therapy appointments;
- increased breaks; and
- reassignment to a less physically demanding position.

While an employer is not obligated to grant the exact accommodation an employee requests, it must assess the request and engage in the interactive process with the employee to determine the employee's limitations and needs, whether the accommodation requested is appropriate, and what other accommodations are needed.

Employers' obligations under the ADA are complex and fact specific. So complicated, in fact, that the U.S. Equal Employment Opportunity Commission's (EEOC) guidance is seventy-six pages long. Employers must have a clear and compliant ADA

policy that includes instructions for employees on pursuing an accommodation request.