

12.4 ADA—Physical or Mental Impairment

The first element of the ADA claim that the plaintiff must prove is that the plaintiff has a recognized disability under the ADA. A “disability” under the ADA is [a physical or mental impairment] [a record of physical or mental impairment] [being regarded as having a physical or mental impairment] that substantially limits one or more of the major life activities of such individual.

The terms “disability” and “physical or mental impairment” include [[(1) any physiological disorder, or condition,] [cosmetic disfigurement, or anatomical loss] affecting one or more of the following body systems: [neurological,] [musculoskeletal,] [special sense organs,] [respiratory (including speech organs),] [cardiovascular,] [reproductive,] [digestive,] [genito-urinary,] [hemic and lymphatic,] [skin and endocrine][;] [or] [(2) any mental or psychological disorder such as] [intellectual disability,] [organic brain syndrome,] [emotional or mental illnesses,] [and] [learning disabilities]].

Comment

Some form of this instruction should be given when a claim involves a theory of actual or record disability. Whether this instruction or a modified version should be given when a claim involves only a theory that the plaintiff was “regarded as” having a disability may require further analysis. *See Nunies v. HIE Holdings, Inc.*, 908 F.3d 428, 434 (9th Cir. 2018).

See 42 U.S.C. § 12102(1). The definition of disability in the first paragraph is taken from § 12102(1)(A)-(C). The definition of physical or mental impairment in the second paragraph is taken from 29 C.F.R. § 1630.2(h)(1)-(2).

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