

12.5 ADA—Work as a Major Life Activity

When the major life activity under consideration is that of working, the plaintiff must prove, by a preponderance of the evidence, that the plaintiff was substantially limited in [his] [her] [*other pronoun*] ability to work 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 to be considered substantially limiting. Factors that you may consider include the condition, manner, or duration under which the plaintiff performs the work as compared to most people in the general population.

Comment

See *Weaving v. City of Hillsboro*, 763 F.3d 1106, 1112 (9th Cir. 2014) (discussing the ADAA’s relaxed standard for determining whether a plaintiff is substantially limited in engaging in a major life activity). The ADA lists working as a major life activity. 42 U.S.C. § 12102(2)(A). The definition of “substantially limited” is taken from 29 C.F.R. § 1630.2(j)(1)(ii). The factors are taken from 29 C.F.R. § 1630.2(j)(4).

“Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual’s impairment substantially limits a major life activity.” *Id.* § 1630.2(j)(4)(ii). The focus is not necessarily on what a disabled individual can achieve. For example, “someone with a learning disability may achieve a high level of academic success but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.” *Id.* § 1630.2(j)(4)(iii).

This instruction may be modified according to the major life activity alleged by the plaintiff.

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