



Invisible Disabilities, Lawyers, and the Law

June 12, 2025

ACBA Committee for Diversity and Inclusion

“They don’t look disabled...”



Defining an “Invisible Disability”

- Invisible disabilities are a subset of disabilities.
- Invisible disabilities are not immediately apparent, and require the individual to self-disclose their disability.
- Such individuals are often faced with the double burden of self-disclosure and education.



Just a Few Examples

- Chronic pain and physical health conditions (e.g., fibromyalgia, arthritis, Crohn's disease, multiple sclerosis, endometriosis, chronic migraine, diabetes, epilepsy, lupus)
- Learning and cognitive differences (e.g., dyslexia, ADHD, autism spectrum disorders)
- Mental health disorders and conditions (e.g., depression, bipolar disorder, PTSD)

Invisible Disability

History of the term:

"Invisible Disability: This term seems to have originated during the early

part of the twentieth century and was used both in the U.S. and in England

in part to address the concerns of the men returning from WWI who

suffered from what was then termed *shell shock*. The term Invisible

Disability seems to have been used concurrently with *Invisible Handicap*."

accommodations. There does not seem to be one clear and identifiable document in which the term was first used.

There is one interesting reference to an educational textbook because, while it uses the term *invisible handicap* in the title, it clearly means *invisible disability*: "What serious handicap could school children have that the teacher does not even suspect, and the parents and school authorities hotly deny?" (n. p.).⁵

definition; rather, *invisible disabilities* are those that are not seen or known by others.

because it refers specifically to what it is not, indeed, this is often one of the keys of lexicography: determining the definition of what something *is* by what it *is not* and in this case a definition of *invisible disability* may be as simple as being the disability that is not seen.

At the same time, there is a strong and consistent focus on defining those who are either hard of hearing, who have such conditions as tinnitus, or

of accommodations—that prevent people from living active

¹ See, for example, *Workers and the Guild of St. John of Beverly* in England, which assists the deaf but is also mentioned how one man in particular was attempting to assist workers attain employment and be assisted with sensitivity by employers. Likewise, Mary LaDane writes in *Securing Employment for the Handicapped* (1927) that it is important to be aware of potential employer liability for those with invisible handicaps. See also the *Proceedings of the Annual Convention of the American Legion of California* in 1942, which is concerned with recognizing the special and particular needs of those who have lost their hearing or have become disabled in other ways.

² The article in the *Volta Review* is concerned with the Guild of St. John of Beverly in England, which assists the deaf but is also mentioned how one man in particular was attempting to assist workers attain employment and be assisted with sensitivity by employers. Likewise, Mary LaDane writes in *Securing Employment for the Handicapped* (1927) that it is important to be aware of potential employer liability for those with invisible handicaps. See also the *Proceedings of the Annual Convention of the American Legion of California* in 1942, which is concerned with recognizing the special and particular needs of those who have lost their hearing or have become disabled in other ways.

³ See again Shaw's thesis for the history and development of the term.

⁴ Here are several references: Grace Emeline Murphy, *Your Deafness is Not Evil* (New York: Barnhart, 1954); the following book is a fascinating and comprehensive book (for its time) on medical, social, and legal dealings with a variety of disabilities, both visible and invisible, including mental conditions as well as deafness: Harry Archibald Pattison, ed. *The Handicapped and Their Rehabilitation* (Springfield, IL: Charles C. Thomas, 1957).

25%

“While it’s estimated that over 1 in 4 Americans live with a disability, according to a recent report from the National Association of Law Placement, only about 1.4% of law firm lawyers self-identified as having a disability.”

Clare Peterson, “Let’s Talk: The Invisibility of Disability in the Legal Profession”, Bar Leader, Vol. 46, July 29, 2024

The Burden of Self-Disclosure



Reasons to Disclose

- Authenticity and leadership
- Stronger relationships with coworkers
- Access to accommodations and resources
- Increased work quality and effective workflow



Reasons Not to Disclose

“In 2023, SHRM research revealed that nearly half (47 percent) of employees with invisible disabilities have not disclosed their conditions to their employers. The survey also found that:

- Workers with nonapparent disabilities believe that if they do reveal their conditions, their co-workers will scrutinize their behavior, think they are unable to fulfill their work responsibilities or talk about them behind their back.
- Workers with invisible disabilities are nearly twice as likely to feel frequently excluded at work (15 percent) compared to those without a nonapparent disability (8 percent).
- ***People who have disclosed their condition are two to three times more likely than their co-workers and supervisors to report experiencing incivility***—including rudeness, disrespect or insensitive behavior.”

Matt Gonzales, “Supporting Invisible Disabilities in the Workplace”, SHRM, October 27, 2023, *available at* <https://www.shrm.org/topics-tools/news/all-things-work/invisible-disabilities> (last accessed February 1, 2025).



Legal Protections and Requirements

Americans with Disabilities Act

Workplace Accommodations

School Accommodations



Americans with Disabilities Act (ADA)

Who is protected by the ADA?

- A person with a physical or mental impairment that substantially limits one or more major life activities.
- A person with a history or record of such an impairment (e.g., cancer in remission).
- A person who is ***perceived*** by others as having such an impairment (e.g., scars from a severe burn, speech impediments perceived as intellectual impairment).



Americans with Disabilities Act (ADA)

Examples of *major life activities*:

- Actions like eating, sleeping, speaking, and breathing
- Movements like walking, standing, lifting, and bending
- Cognitive functions like thinking and concentrating
- Sensory functions like seeing and hearing
- Tasks like working, reading, learning, and communicating
- The operation of major bodily functions like circulation, reproduction, and individual organs



Americans with Disabilities Act (ADA)

2008 ADAAA Rules of Construction

- “Disability” is to be construed in favor of broad coverage and to the maximum extent permitted.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- Whether an impairment substantially limits a major life activity shall be made without taking into account mitigating measures (except glasses and contact lenses).

Are people with invisible disabilities protected by the ADA? **Yes.**



Workplace Accommodations

- Asking job candidates about ability to perform duties
- Asking employees about ability to perform duties
- Defining reasonable accommodations at work
- “Undue hardship” and how it acts as a limitation on accommodations
- Benefits to employees to obtaining reasonable accommodations
- Benefits to employers to provide reasonable accommodations



School Accommodations

- The Individuals with Disabilities Education Act (IDEA) of 1975 applies to all public educational institutions and private institutions which receive government funding
- Defining reasonable accommodations in a school setting
- “Undue hardship” limitation also applies
- Individualized Education Program (IEP)



How to Create an Inclusive Workplace

- Educate your employees about invisible disabilities.
- Leverage Employee Resource Groups (ERGs).
- Use inclusive language.
- Implement assistive technologies.
- Be familiar with -- and be prepared for -- the reasonable accommodation process.
- How to ask questions.

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Upcoming CLEs relating to
invisible disabilities.

- **Fall CLE** on Parenting Children with Invisible Disabilities, sponsored by the Committee for Diversity and Inclusion and the Women in Law Division
- **Spring CLE** on Navigating Mental Health in the Workplace, sponsored by the Committee for Diversity and Inclusion and the Labor and and Employment Committee



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