Invisible Disabilities, Lawyers, and the Law

June 12, 2025 ACBA Committee for Diversity and Inclusion

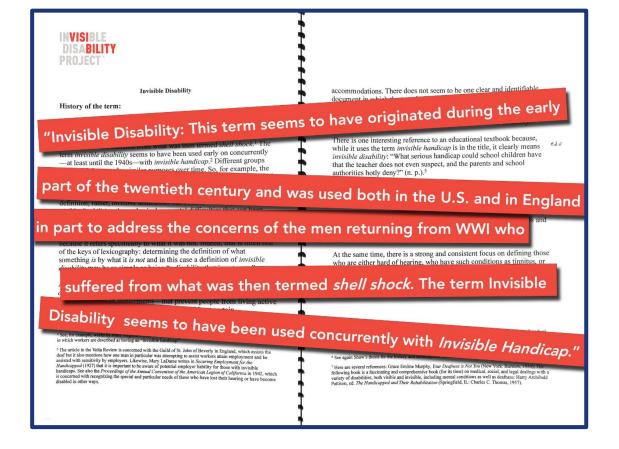
"They don't look disabled..."

Defining an "Invisible Disability"

- Invisible disabilities are a subset of disabilities.
- Invisible disabilities are not immediately apparent, and require the individual to selfdisclose 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)



Reproduced from the Invisible Disability Project, available at https://www.invisibledisabilityproject.org/speak-your-power/invisible-disability-history (last accessed February 1, 2025).

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.

"They don't look disabled..."

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

Presenters



Sarah Itzkoff, Esq. sarah.itzkoff@alleghenycounty.us She/Her



Ian Michel, Esq. ian.s.michel@gmail.com He/Him



Sima Lotfi, Esq. slotfi@bomcip.com She/Her



Danielle Mundekis, SHRM-CP danielle.mundekis@klgates.com She/Her