

Column: Walkup Talks Disability

The Americans With Disabilities Act

- Michael Walkup, Attorney at Law



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com, or he may be contacted at MJWalkup@Amertech.net, or at 866-880-HURT (4878).

Michael Walkup explains how the legal interpretation of the Americans with Disabilities Act actually creates the disabling events that keeps people with MCS out of the work place and force them onto public assistance.

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I get a lot of emails from people who are still trying to work and are attempting to get their employers to provide them with some type of accommodation for their chemical sensitivities.

Basically, they are trying to force a reluctant employer to do something that the employer is not willing to do and want to know if they can use the Americans With Disabilities Act, or the Federal counterpart.

Until very recently, this has not been a fruitful approach.

When the ADA was first passed, a lot of people were hopeful, or apprehensive depending on their situation, that it would revolutionize the workplace.

If you just read the language of the Act, it would seem to require employers to do all sorts of things to accommodate people, and might have a substantial impact on how

work injury claims are handled as well.

I remember being deluged with seminar offers in the early 90's about the ADA. Speakers went into dizzying detail about all of the provisions and their impact on employment law, workers compensation, and disability benefits. A lot of these were really thinly disguised marketing efforts by lawyers looking to get hired by employers. They put quite a scare into them.

Then the federal courts got a hold of the cases on appeal and basically shut down the entire Act by the restrictive way they interpreted it. I think they were trying to avoid having their already crowded dockets flooded by a wave of ADA cases.

But, the end result is that the law in its application was essentially gutted. The seminars mainly stopped as well. Employers no longer needed to worry and hire lawyers.

Under the ADA you have to file a complaint with the Federal Equal Employment Opportunity Commission (EEOC). They will try to informally resolve the matter and may schedule a conference or hold a hearing. The EEOC is also charged with handling all cases involving racial, gender, age, and other forms of discrimination prohibited by the Federal Civil Rights Act, and already had their hands full before the ADA came along.

As a practical matter, it is difficult to ask an employer to make an accommodation for someone with MCS/EI. An employer does not want to regulate the wearing of perfume by other employees, pull out the synthetic carpet, install windows that open, or change the chemicals the cleaning crew is using. Similarly, they may not feel comfortable with having an employee work solely from home. This, at least, seems

to be the way the EEOC has viewed it up to now.

There have recently been some minor language changes in the ADA pertaining to the definition of disability, so we will have to wait and see what effect that has on MCS/EI cases. There is also a recent Canadian study where they suggest a number of accommodations that employers could make (although they mention in the same study that the American rules are much more restrictive).

In the meantime, although I can work with clients in any part of the country on ADA issues, I also tell them that they may wind up having to quit and apply for disability. These are actually the reasons that people with MCS/EI are disabled. It's not that they can't do the job, it's that people won't cooperate, and these exposures can't be avoided outside of the home environment.

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