

JURISDICTION	CITATION	STATUTORY DEFINITION	COMMENTS	CASE LAW
<p><b>United States -- Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, et seq.</b></p>	<p>42 U.S.C.A. §§ 12102(2), 12210(a), (b), 12211; 29 C.F.R. §§ 1630(i), (j)(1), (j)(3)(1).</p>	<p><u>Statute:</u></p> <p>The term “disability” means, with respect to an individual – (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.</p> <p>The term “disabled” or “disability” shall not apply to an individual solely because that individual is a transvestite. 42 U.S.C. § 12208. The term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, but may include an individual who is participating or who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or who has otherwise been rehabilitated successfully and is no longer engaging in such use, or who is incorrectly regarded as engaging in illegal drug use.</p> <p>For purposes of the definition of “disability,” homosexuality and bisexuality are not impairments and as such are not disabilities under this Act. The term “disability” shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.</p> <p><u>Regulations:</u></p> <p>Substantially limits means: Unable to perform a major life activity that the average person in the general population can perform; or Significantly restricted as to the condition, manner or duration under which an individual can perform</p>	<p>As has been extensively reviewed, this definition has been strictly construed to exclude many persons with disabilities from its coverage.</p>	<p>In <i>Sutton v. United Airlines</i>, 527 U.S. 471 (1999), the U.S. Supreme Court held that the phrase “substantially limits” requires that the individual be “presently – not potentially or hypothetically – substantially limited in order to demonstrate a disability.” Accordingly, the Supreme Court ruled in <i>Sutton</i> that individuals must be considered in their mitigated or treated state when deciding whether they are substantially limited. See also <i>Murphy v. United Parcel Serv., Inc.</i>, 527 U.S. 516 (1999); <i>Albertson’s, Inc., v. Kirkingburg</i>, 527 U.S. 555 (1999).</p> <p>The <i>Sutton</i> Court also limited the major life activity of “working.” In <i>Sutton</i>, the U.S. Supreme Court ruled that a substantial limitation in working requires a “significantly reduced” ability to work and found reasonable the EEOC’s regulation requiring a significant restriction in the ability to perform a class or broad range of jobs. According to the Court, the individual must be disqualified from “more than</p>

		<p>a particular major life activity as compared to the average person in the general population.</p> <p>Major life activities includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Substantially limited in the major life activity or working means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.</p>		<p>one type of job, a specialized job, or a particular job of choice.” Importantly, these standards are required not only when the person alleges an actual limitation in working, but also when the person alleges that she is regarded by an employer as limited in working. According to the Sutton Court ruled, “an employer is free to decide ... that some limiting, but not substantially limiting, impairments make individuals less than ideally suited for a job.”</p> <p>In <i>Toyota Motor Manufacturing v. Williams</i> (2002), the U.S. Supreme Court ruled that the phrase “substantial limitation in a major life activity” must be “interpreted strictly to create a demanding standard for qualifying as disabled,” and that “substantial limitation” means “prevent or severely restrict.” That case also limited the major life activity of “performing manual tasks” to those tasks that are of “central importance to most people’s daily lives.”</p>
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<b>Alabama</b>	Ala.Code 1975 § 24-8-3(6).	<p>The following words and phrases used in this chapter shall have the following respective meanings: ...</p> <p>(6) HANDICAP. With respect to a person: a. A physical or mental impairment which substantially limits one or more of the person's major life activities; b. A record of having such an impairment; or c. Being regarded as having an impairment. The term "handicap" excludes current, illegal use of or addiction to a controlled substance as defined by law.</p>	<p>State law tracks federal statutory language, but still reflects older terminology of "handicap" as opposed to "disability." The definition specifically excludes the current, illegal use of or addiction to a controlled substance as defined by law, other limitations enumerated in the federal statute are not included.</p>	<p>No state or federal court has as yet construed this definition.</p>
<b>Alaska</b>	Ak. Stat. § 18.80.300(12), (13).	<p>In this chapter: ...</p> <p>(12) "physical or mental disability" means (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities; (C) having (i) a physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation; (ii) a physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or (iii) none of the impairments defined in this paragraph but being treated by others as having such an impairment; or (D) a condition that may require the use of a prosthesis, special equipment for mobility, or service animal;</p> <p>(13) "physical or mental impairment" means (A) 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,</p>	<p>The Alaska Human Rights Act is modeled on federal law, but broadens the definition to include a condition that may require the use of a prosthesis, special equipment for mobility, or a service animal. No exclusions are specifically mentioned in the statute.</p>	<p>"Under Alaska law an employee need not be receiving medical treatment to be classified as disabled under the discrimination statute." <i>Hewitt v. Union Oil Co. of California, Inc.</i>, 44 Fed.Appx. 827, 828 (9th Cir. 2002) (unpublished).</p>

		digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; (B) mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities[.]		
<b>Arizona</b>	Ariz. Rev. Stat. 41-1461(2).	<p>In this article, unless the context otherwise requires: ...</p> <p>2. "Disability" means, with respect to an individual, except any impairment caused by current use of illegal drugs, any of the following: (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual. (b) A record of such a physical or mental impairment. (c) Being regarded as having such a physical or mental impairment.</p>	State definition incorporates federal statutory language, and excludes any impairment caused by the current use of illegal drugs.	<p>Because there is limited Arizona case law regarding discrimination under the Arizona Civil Rights Act, and the ACRA is modeled after federal discrimination statutes, Arizona courts look to federal law as persuasive authority. <i>Francini v. Phoenix Newspaper, Inc.</i>, 188 Ariz. 576, 582 (1996).</p> <p>The hurdles thus imposed can be steep for employees pursuing disability discrimination claims because of the state courts' strict interpretation of substantial impairment.</p> <p>"[A]n individual is not handicapped under the ACRA if his impairment [actual or perceived,] only interferes with his ability to perform a particular job for a particular employer." <i>Bogue v. Better-Bilt Aluminum Co.</i>, 179 Ariz. 22, 24 (1994).</p> <p>"To succeed on a claim under the Act, a plaintiff must demonstrate a <i>substantial</i> limitation, whether genuine or perceived." <i>Capitano v. State</i></p>

				<p><i>of Arizona</i>, 178 Ariz. 599, 602 (1993). (high frequency hearing loss from which plaintiff suffered did not qualify as “disability” or “handicap” under the Arizona Civil Rights Act.)</p> <p>“Because we find that the ACRA requires an impairment that 'substantially restricts or limits' general employability, trivial or minor impairments that do not affect an individual's general ability to secure, retain, or advance in employment do not qualify the individual as handicapped.” <i>Bogue</i> at 28.).</p>
<b>Arkansas</b>	Ark. Code Ann. 16-123-102(3).	<p>For the purposes of this subchapter:</p> <p>(3) “Disability” means a physical or mental impairment that substantially limits a major life function, but “disability” does not include: (A) Compulsive gambling, kleptomania, or pyromania; (B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or (C) Alcoholism[.]</p>	State law tracks “first prong” only of federal statutory language. Arkansas’ definition excludes the same conditions as the federal as those exempted from coverage under the ADA.	No state or federal court has as yet construed this definition.
<b>California</b>	Cal. Gov’t Code §§ 12926(h), (i), (k), (l), 12926.1 (as amended by AB 2222, aka the Prudence Kay Poppink Act, effective	<p>As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context: ...</p> <p>(h) “Medical condition” means either of the following: (1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.</p> <p>(2) Genetic characteristics. For purposes of this section,</p>	State law includes and exceeds federal statutory language. Neither “mental disability” nor “physical disability” definition includes sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the	<i>Colmenares v. Braemar Country Club, Inc.</i> , 29 Cal.4th 1019, 1027-28 (2003): “Of particular relevance here is that the FEHA in section 12926 used the term “limits,” not the federal law's “substantially limits” language, before and after its

	<p>January 1, 2001).</p>	<p>“genetic characteristics” means either of the following:  (A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder. (B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.</p> <p>(i) “Mental disability” includes, but is not limited to, all of the following:</p> <p>(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section: (A) “Limits” shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult. (C) “Major life activities” shall be broadly construed and shall include physical, mental, and social activities and working.</p> <p>(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.</p>	<p>current unlawful use of controlled substances or other drugs.</p>	<p>amendment by the Poppink Act. ... Not only did the Poppink Act of 2000 leave unchanged the “limits” test in the FEHA, it also amended other, non-FEHA, statutes to delete the term “substantial” from the limitation test these statutes had used since 1992. ... This pattern of Legislative action compels our conclusion that in 2000 the Legislature intended not to make a retroactive change, but only to clarify the degree of limitation required for physical disability under the FEHA.”</p> <p><i>See also Green v. State</i>, 42 Cal.4th 254, __ (2007): “California has prohibited employment discrimination based on physical handicap since 1973. ... In 1980, that prohibition and the definition of physical handicap to include ‘impairment of sight, hearing, or speech, or impairment of physical ability’ were incorporated into the newly enacted FEHA. ... In amending the FEHA in significant part, including replacing the former term “physical handicap” with the term “physical disability,” the Legislature stated: “It is the</p>
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	<p>(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.</p> <p>(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.</p> <p>(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).</p> <p>“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. ...</p> <p>(k) “Physical disability” includes, but is not limited to, all of the following:</p> <p>(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.</p> <p>(B) Limits a major life activity. For purposes of this section: (i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive</p>		<p>intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the [ADA] and to retain California law when it provides more protection for individuals with disabilities than the [ADA].” ... In 2000, the Legislature also declared: ‘Although the federal act provides a floor of protection, this state’s law has always, even prior to passage of the federal act, afforded additional protections.’” (Citations omitted.)</p> <p><i>See also E.E.O.C. v. United Parcel Service, Inc.</i>[Hogya], 424 F.3d 1060 (9th Cir. 2005) (finding that employees with monocular vision are limited in seeing and working and thus “disabled” under FEHA).</p> <p><i>Hogya</i> on whether employees limited in seeing: “Intervenors have explained that their monocular-ity-and, in particular, their inability to perform stereopsis [the process of depth perception]-makes a variety of close-range activities difficult for them. ... Judging depths at near distances is a significant aspect of the major life</p>
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		<p>devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult. (iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.</p> <p>(2) Any other health impairment not described in paragraph (1) that requires special education or related services.</p> <p>(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.</p> <p>(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.</p> <p>(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).</p> <p>(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.</p>		<p>activity of seeing. As the affidavits and testimony demonstrate, near-field depth perception is important to a number of activities that sight normally is used to perform. ... Intervenors demonstrated that seeing, and a variety of tasks for which seeing is commonly used, are made difficult for them because of their monocularity and consequent inability to perform stereopsis. FEHA requires no more.” 424 F.3d at 1071-72.</p> <p><i>Hogya</i> on whether employees limited in working: “FEHA’s definition of disability is broader because, among other things, it encompasses a limitation in a ‘particular employment,’ which must be something less than a ‘class of jobs’ or a ‘broad range of jobs.’ ... Plaintiffs demonstrated that they are limited in working as commercial delivery drivers, not only because they are excluded from working as full-time package car drivers for UPS, but also because they are excluded from any commercial driving position that requires DOT or state</p>
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	<p>(l) Notwithstanding subdivisions (i) and (k), if the definition of “disability” used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).</p> <p>The Legislature finds and declares as follows:</p> <p>(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (Public Law 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.</p> <p>(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.</p> <p>(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of “physical disability” and</p>		<p>certification. Thus, even if ‘particular employment’ is interpreted more broadly than ‘single position with a single employer,’ Plaintiffs’ monocularity limits their ability to work in the occupation of commercial delivery driver.” 424 F.3d at 1072-73.</p>
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		<p>“mental disability” under the law of this state require a “limitation” upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a “substantial limitation.” This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, “working” is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.</p> <p>(d) Notwithstanding any interpretation of law in <i>Cassista v. Community Foods</i> (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the Americans with Disabilities Act of 1990, (2) to require a “limitation” rather than a “substantial limitation” of a major life activity, and (3) by enacting paragraph (4) of subdivision (i) and paragraph (4) of subdivision (k) of Section 12926, to provide protection when an individual is erroneously or mistakenly believed to have any physical or mental condition that limits a major life activity.</p>		
<b>Connecticut</b>	<p>Conn. Gen. Stat. § 1-1f(a), (b), § 46a-8; § 46a-51(1), (13), (15), (19), (20), (60).</p>	<p>Section 46a-8: For the purposes of this chapter ...</p> <p>The term “person with a disability” means any person who has a physical, mental, emotional or other disability or dysfunction which constitutes a significant obstacle to such person’s ability to function normally in society and includes those persons defined as developmentally disabled under Public Law 94-103 and any subsequent amendments thereto. □</p>	<p>Connecticut did not amend its statutes to track the ADA. Thus, although the law requires an impairment, it has never required a “substantial limitation” of a “major life activity” to demonstrate disability. One of the most interesting aspects of the state’s detailed definition is that contained in § 46a-8, which</p>	<p>Unlike the ADA, the Connecticut Fair Employment Practices Act (CFEPA) provides no cause of action for discrimination on basis of perceived disability. Americans with Disabilities Act of 1990, Section 3(2)(C), so a plaintiff who wishes to proceed on a “regarded as”</p>

	<p>For purposes of sections 3-10e, 4a-60, subdivision (12) of section 38a-816 and sections 46a-58, 46a-60, 46a-64, 46a-70 to 46a-73, inclusive, 46a-75, 46a-76 and 52-175a: ...</p> <p>(a) An individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees;</p> <p>(b) An individual is physically disabled if he has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or device.</p> <p>As used in section 4a-60a and this chapter:</p> <p>(1) "Blind" refers to an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees; ...</p> <p>(13) "Mental retardation" means mental retardation as defined in section 1- 1g; ...</p> <p>(15) "Physically disabled" refers to any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or hearing impairment or reliance on a wheelchair or other remedial appliance or</p>	<p>defines disability as a condition "which constitutes a significant obstacle to an individual's ability to function in society." The statute contains neither the "record of" prong nor the "regarded as" prong of the ADA.</p> <p>Connecticut General Statute 46a-60 of the Connecticut General Statutes Annotated outlines discriminatory employment practices prohibited under state law.</p>	<p>theory may assert it only under the ADA. <i>Pare v. City of Bristol</i>, 386 F.Supp.2d 43, 49, n.3 (D.Conn. 2005).</p> <p>"Connecticut courts review federal precedent concerning employment discrimination for guidance in enforcing [the state's] antidiscrimination statutes." <i>Conte v. New Haven Bd. of Educ.</i>, 2003 WL 21219371, 4, n.4, (Conn.Super.), quoting <i>Levy v. Commission on Human Rights &amp; Opportunities</i>, 236 Conn. 96, 103 (1996).</p> <p>"Section 46a-60 protects employees from discrimination based on, inter alia, mental disability. Section 46a-51(20) explicitly defines mental disability within the context of section 46a-60 discrimination. Therefore, in this case, "Connecticut is the final arbiter of its own laws"; <i>Johnson v. Manson</i>, 196 Conn. 309, 319, (1985), cert. denied, 474 U.S. 1063, reh. denied, 475 U.S. 1061 (1986); and this court need not refer to federal courts' interpretations of a federal statute to determine who is a qualified individual with respect to section 46a-60.</p>
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		<p>device; ...</p> <p>(19) "Learning disability" refers to an individual who exhibits a severe discrepancy between educational performance and measured intellectual ability and who exhibits a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in a diminished ability to listen, speak, read, write, spell or to do mathematical calculations;</p> <p>(20) "Mental disability" refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders".</p>		<p>As a result, because the plaintiff alleges that she is an employee with a mental disability, as defined in section 46a-51(20), the plaintiff has sufficiently alleged a cause of action under CFEPA for failure to provide a reasonable accommodation." <i>Conte</i>, WL 21219371, at 4.</p>
<b>Delaware</b>	19 Del. Code § 722(3)(4)	<p>As used in this subchapter, unless the context otherwise requires: ...</p> <p>(3) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in subdivision (4) of this section.</p> <p>(4) "Handicapped person" means any person who: a. Has a physical or mental impairment which substantially limits 1 or more major life activities; b. Has a record of such an impairment; or c. Is regarded as having such an impairment. As used in this subdivision the term:</p> <p>1. "Major life activities" means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.</p> <p>2. "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or</p>	<p>State law tracks both ADA language and regulatory language of the Rehabilitation Act of 1973. "Substantial limitation" must be related to employability Definition excludes any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.</p>	<p>No state or federal court has as yet construed this definition.</p>

		<p>physical impairment that substantially limits major life activities.</p> <p>3. “Is regarded as having an impairment” means: (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) does not have a physical or mental impairment but is treated as having such an impairment. This term is intended to be interpreted in conformity with the federal Rehabilitation Act of 1973, [FN1] as amended, and, consistent with § 728 of this title, shall be further defined by the Secretary through regulation to clarify and delimit its scope following adequate public notice and comment. Enforcement of this subchapter by persons qualifying for protection solely under subdivision of this section shall be deferred until the issuance of the Secretary's final regulation.</p> <p>4. “Substantially limits” means that the impairment so affects a person as to create a likelihood that such person will experience difficulty in securing, retaining or advancing in employment because of a handicap.</p> <p>5. “Handicapped person” shall not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.</p>		
<b>District of Columbia</b>	D.C. Code § 2-1401.02(5a)	<p>The following words and terms when used in this chapter have the following meanings: ...</p> <p>(5a) “Disability” means a physical or mental impairment that substantially limits one or more of the major life</p>	District ordinance tracks federal statutory language.	No federal court has as yet construed this definition.

		activities of an individual having a record of such an impairment or being regarded as having such an impairment.		
<b>Florida</b>	Fla. Stat. 760.22(7)(a)(b)	As used in sections 760.20-760.37, the term: ...  (7) "Handicap" means (a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; (b) A person has a developmental disability as defined in section 393.063.	State law tracks federal statutory language. Definition is contained in the housing provisions of the Florida Statute -- no definition in included in employment provisions (section 760.10).	<p>"While the [Florida Civil Rights Act] does not define the word "handicap," the Fifth District has looked to the Fair Housing Act which gives the term ... the following meaning: A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment. ..." <i>Razner v. Wellington Regional Medical Center, Inc.</i>, 837 So.2d 437,440 (Fla.App. 4 Dist.,2002)</p> <p>"When reviewing a claim of adverse employment action based on handicap discrimination, courts construe the Act in accordance with the Americans with Disabilities Act ... and related regulations." <i>Greene v. Seminole Elec. Co-op., Inc.</i> 701 Do.2d 646,647 (Fla.App. 5 Dist., 2007) (reversing lower court ruling that the FCRA only applied to individuals with actual handicaps, not</p>

				those with perceived disabilities, and holding that morbid obesity can be an “impairment” that “substantially limits ... [the] major life activity” of working if the employer so regards the obesity.)
<b>Georgia</b>	Ga. Code Ann. § 34-6A-2(1)(3)(5)(7)(8)	<p>As used in this chapter, the term: ...</p> <p>(1) “Disability” means any condition or characteristic that renders a person an individual with disabilities but shall not include addiction to any drug or illegal or federally controlled substance nor addiction to the use of alcohol.</p> <p>(3) “Individual with disabilities” means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities and who has a record of such impairment. The term “individual with disabilities” shall not include any person who is addicted to the use of any drug or illegal or federally controlled substance nor addiction to the use of alcohol. ...</p> <p>(5) “Major life activities” means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. ...</p> <p>(7) “Physical or mental impairment” means: (A) Any physiological disorder or condition or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or (B) Mental retardation and specific learning disabilities.</p>	State law generally tracks federal statutory language, but does not include a “regarded as” prong. Substantial limitation must be related to employability. Definition excludes addiction to any drug or illegal or federally controlled substance or addiction to the use of alcohol.	<p>The Georgia Supreme Court has held that Georgia’s definition is narrow than that of the ADA.</p> <p>“The language of the [Georgia Equal Employment for the Handicapped Code] is similar to that of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.” <i>Hennly v. Richardson</i>, 264 Ga. 355, 357 (1994).</p> <p>“The fact that the necessary qualifications for satisfying the definition of “handicapped individual” in the Georgia Code are set forth in the conjunctive rather the disjunctive, as is the case with the federal statute, and the fact that under Georgia law a person who is regarded as being handicapped even though he is not actually physically or mentally handicapped is not handicapped for purposes of</p>

		<p>(8) “Substantially limits” means that the impairment so affects a person as to create a likelihood that such person will experience difficulty in securing, retaining, or advancing in employment because of a disability.</p>		<p>this statute, indicates that the definition under Georgia law is not as broad as that under federal law. <i>Hennly</i>, 264 at 357, n.2</p> <p>Further, the state’s court of appeals has held that Georgia’s definition embraces significantly fewer mental conditions than its federal counterpart.</p> <p>“Appellant maintains this definition [34-6A-2(7)] of mental impairment is open-ended and ambiguous so as to require the court’s construction, and that when the rules of construction are applied and expert testimony is adduced the definition can be read to include claustrophobia and depression as mental impairments. We disagree, as we find the statute clearly and unambiguously manifests the General Assembly’s intent to exclude emotional and mental disorders of the type experienced by Richard Bowers from the coverage of the GEEHC. Contrary to his argument, OCGA § 34-6A-2(7) clearly limits the definition of “ mental</p>
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				<p>impairment” to any 'physiological disorder or condition or anatomical loss affecting' certain body systems or '[m]ental retardation and specific learning disabilities.” <i>Bowers v. Estep</i>, 204 Ga.App. 615, 619 (Ga.App., 1992).</p> <p>“The American Psychiatric Association characterizes claustrophobia as a simple phobia, which is a form of anxiety disorder, not a physiological disorder or condition. Diagnostic and Statistical Manual of Mental Disorders, § 300.29, pp. 243-245 (3d ed. rev. 1987). Depression is defined as a mood disorder that is not due to any other physical or mental disorder. <i>Id.</i> at 213. Neither disorder can be identified as either mental retardation or a learning disability.” <i>Id.</i></p>
<b>Hawaii</b>	Haw. Rev. Stat. §489-2	<p>As used in this chapter: ...</p> <p>“Disability” means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The term does not include alcohol or drug use that impairs a person's activities or threatens the property or safety of others.</p>	State law tracks federal statutory language. Definition excludes alcohol or drug use that impairs a person's activities or threatens the property or safety of others.	No state or federal court has as yet construed this definition.

<p><b>Idaho</b></p>	<p>Idaho Code § 67-5902(15)</p>	<p>In this chapter, unless the context otherwise requires: ...</p> <p>“Disability” means a physical or mental condition of a person, whether congenital or acquired, which constitutes a substantial limitation to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person with a disability is one who (a) has such a disability, or (b) has a record of such a disability, or (c) is regarded as having such a disability.</p>	<p>State law generally tracks federal statutory language, but requires “substantial limitation to that person,” rather than of a major life activity. Disability must be clinically “demonstrable” by medically accepted diagnostic techniques.”</p>	<p>Courts interpret the standards for disability under the ADA and the [Idaho Human Rights Act (IHRA)] identically. Accordingly, when the Court refers to one statute, its reference impliedly includes the other. <i>Ward v. Sorrento Lactalis, Inc.</i>, 392 F.Supp.2d 1187, 1190 (D.Idaho, 2005); <i>Davenport v. Idaho Dept. of Env. Quality</i> 496 F.Supp. 2d 861, 870 (D.Idaho 2006) (noting that the purpose of the Idaho HRA is to provide for execution within the state of the policies embodied in Titles I and III of the ADA.)</p>
<p><b>Illinois</b></p>	<p>775 Ill. L.C.S. 5/1-103(I); <i>cf</i> 56 Ill. Admin. Code § 2500.20(b); 2500.30</p>	<p>When used in this Act, unless the context requires otherwise, the term: ...</p> <p>(I) Handicap. “Handicap” means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:</p> <p>(1) For purposes of Article 2 [Employment] is unrelated to the person's ability to perform the duties of a particular job or position and, pursuant to Section 2- 104 of this Act, a person's illegal use of drugs or alcohol is not a handicap;</p>	<p>Law does not require a substantial limitation of a major life activity, and by its own terms is “not confined to ... conditions which are grave or extreme.” However, law expressly excludes conditions which are “transitory and insubstantial,” and which are “not significantly debilitating or disfiguring.”</p> <p>To be covered, condition must be “determinable” by recognized diagnostic techniques.</p> <p>In the employment context, a</p>	<p>“[I]nfection with HIV is a determinable physical characteristic resulting from a disease which has been held to be a qualifying condition under civil rights laws.” <i>Raintree Health Care Center v. Illinois Human Rights Com'n</i>, 173 Ill.2d 469, 672 N.E.2d 1136 (Ill. 1996).</p> <p>“The plain language of the statute clearly states that a person is handicapped if he/she has ‘a determinable physical or mental characteristic ... which may</p>

		<p>(2) For purposes of Article 3 [Real Estate], is unrelated to the person's ability to acquire, rent or maintain a housing accommodation;</p> <p>(3) For purposes of Article 4 [Financial Services], is unrelated to a person's ability to repay;</p> <p>(4) For purposes of Article 5 [Public Accommodations], is unrelated to a person's ability to utilize and benefit from a place of public accommodation.</p> <p>Section 2500.20 What Constitutes a Handicap</p> <p>The following paragraphs ... interpret the various clauses within the definition [set forth in Section 1-103(I)]</p> <p>b) Determinable Physical or Mental Characteristic:</p> <p>1) The definition is not confined to only those physical and mental conditions which are grave or extreme in nature. However, it is interpreted as excluding: A) conditions which are transitory and insubstantial, and B) conditions which are not significantly debilitating or disfiguring.</p> <p>2) To be covered, a condition must be "determinable" by recognized clinical or laboratory diagnostic techniques.</p> <p>Section 2500.30 Who is Protected Against Handicap Discrimination</p> <p>a) Section 1-103(I) of the Act provides that a person is protected against discrimination if he/she: 1) is currently afflicted with a condition which constitutes a "handicap", or 2) has a history of affliction with such a condition; or 3) is perceived by an employer, employment agency or labor organization as being or having been so afflicted.</p> <p>b) An individual has a "history" of a handicapping</p>	<p>person's illegal use of drugs or alcohol is not considered a handicap.</p> <p>Although law protects only those workers whose conditions are "unrelated to the person's ability to perform the duties of a particular job or position," this language has been construed to require that the assessment be done following accommodation.</p> <p>An earlier version of the law required a "severe barrier upon the ability of an individual to perform major life functions." <i>See Lyons v. Heritage House Restaurants, Inc.</i>, 89 Ill.2d 163, 168, 170, 432 N.E.2d 270 (Ill. 1982) (finding uterine cancer not protected where plaintiff failed to allege that her cancer "substantially hindered her" in major life activities, and citing federal Rehabilitation Act regulations).</p> <p>Amendments in 1980 changed the definition and eliminated the reference to limitations on major life activities. <i>See id.</i> at 165 ("It should be noted that after the conduct in question here occurred the Equal Opportunities for the Handicapped Act was replaced by the Illinois Human</p>	<p>result from disease.' ... This Human Rights Act definition of a "handicapped" person has been interpreted to include an employee diagnosed with HIV (<i>Raintree Health Care Center v. Illinois Human Rights Comm'n</i>, 173 Ill.2d 469, 220 Ill.Dec. 124, 672 N.E.2d 1136 (1996)); an employee who suffered from dysmenhorrea due to endometriosis (<i>Illinois Bell Telephone v. Human Rights Comm'n</i>, 190 Ill.App.3d 1036, 138 Ill.Dec. 332, 547 N.E.2d 499 (1989)); and an employee who had a history of heart disease, but had recovered (<i>Kenall Manufacturing Co. v. Illinois Human Rights Comm'n</i>, 152 Ill.App.3d 695, 105 Ill.Dec. 520, 504 N.E.2d 805 (1987))." <i>Lake Point Tower, Ltd. v. Illinois Human Rights Com'n</i>, 291 Ill.App.3d 897, 904-06, 684 N.E.2d 948 (Ill. App. 1997) (upholding administrative determination that non-Hodgkins lymphoma was handicap).</p> <p><i>See also Anderson v. Modern Metal Products</i>, 305 Ill.App.3d 91, 98, 711 N.E.2d 464 (Ill.App. 1999) (upholding administrative determination</p>
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		<p>condition if he/she is restored or recovered from a prior affliction or if the individual's symptoms are in remission. The mentally restored, those who have had heart attacks or cancer, and persons with orthopedic findings may be examples; they are protected against discrimination which is based upon their medical histories. The "perception" of a handicapping condition may occur with regard to an individual who has been misdiagnosed, misclassified, or erroneously viewed as one who is or has been so afflicted; such an individual similarly is protected against discrimination based upon that erroneous perception. Such a perception may also occur in connection with a person whose current non-disabling condition, e.g. hypertension, is viewed as creating the potential for future disability.</p>	<p>Rights Act (Ill.Rev.Stat., 1980 Supp., ch. 68, par. 1-101 et seq.), which uses a substantially different definition. It is clear that any conduct occurring hereafter will be governed by that act."); <i>see also Lake Point Tower, Ltd. v. Illinois Human Rights Com'n</i>, 291 Ill.App.3d 897, 684 N.E.2d 948 (Ill. App. 1997) (reviewing statutory history).</p>	<p>that complainant's myofascial pain syndrome was transitory in nature and not a handicap).</p> <p><i>See also Illinois Dept. of Corrections v. Illinois Human Rights Com'n</i>, 298 Ill.App.3d 536, 699 N.E.2d 143 (Ill. App. 1998) (evidence supports Commission's finding that shoulder condition was a determinable physical characteristic resulting from an injury).</p> <p>"With many claims of physical handicap, it is relatively easy to identify the cause of the handicapping condition. If someone is deaf, blind, cannot walk or speak, or suffers from a well known disease such as cancer, asthma, or renal failure, it is apparent that the person so afflicted has a condition which rises to the level of a physical handicap and thus is entitled to protection under the Act." <i>In the Matter of Francisco R. Carlin v. Edsal Manufacturing Co.</i>, Ill. Hum. Rts. Comm'n, Charge No. 1992CN3428; <i>In the Matter of Sheila Jackson v. Evanston Hospital Corp.</i>, Ill. Hum. Rts. Comm'n, Charge No. 1991CN2519.</p>
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<p><b>Indiana</b></p>	<p>Burns Ind. Code Ann. § 22-9-5-6(a)(b)</p>	<p>(a) As used in this chapter, “disability” means with respect to an individual:</p> <p>(1) a physical or mental impairment that substantially limits at least one of the major life activities of the individual; (2) a record of an impairment described in subdivision (1); or (3) being regarded as having an impairment described in subdivision (1).</p> <p>(b) As used in this subsection, “illegal use of drugs” means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act. The term does not include the use of a drug taken under the supervision of a licensed health care professional or another use authorized by the Controlled Substances Act (21 U.S.C. 812) or other provisions of federal law. For purposes of this chapter, an individual shall not be considered disabled solely because the individual is currently engaging in the illegal use of drugs. However, this subsection does not exclude as an individual with a disability an individual who:</p> <p>(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;</p> <p>(2) is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or</p> <p>(3) is erroneously regarded as engaging in the illegal use of drugs but is not engaging in the illegal use of drugs.</p> <p>It is not a violation of this chapter for a person or other entity covered by this chapter to adopt or administer reasonable policies or procedures, including but not</p>	<p>State definition tracks federal statutory language, and exclusions mirror those found in Title III.</p>	<p>No state or federal court has as yet construed this definition.</p>
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		<p>limited to drug testing, designed to ensure that an individual described in subdivision (1) or (2) is no longer engaging in the illegal use of drugs. Nothing in this section shall be construed to encourage, prohibit, restrict, or authorize testing for the illegal use of drugs.</p> <p>(c) Notwithstanding subsection (b), an individual shall not be denied health services or services provided in connection with drug rehabilitation on the basis of the current illegal use of drugs if the individual is otherwise entitled to those services.</p> <p>(d) For purposes of this chapter, an individual shall not be considered disabled solely on the basis of the following:</p> <ol style="list-style-type: none"> <li>(1) Homosexuality.</li> <li>(2) Bisexuality.</li> <li>(3) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.</li> <li>(4) Compulsive gambling, kleptomania, or pyromania.</li> <li>(5) Psychoactive substance use disorders resulting from current illegal use of drugs (as defined in section 14 of this chapter).</li> </ol>		
<b>Iowa</b>	Iowa Admin. Code rs. 161--8.26(216, 2-5); Iowa Code § 216.2(5) (“substantial disability”).	<p>§ 161—8.26(216): Disability discrimination in employment: (1) The term “substantially handicapped person” shall mean any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.</p> <p>8.26(2) The term “physical or mental impairment” means:</p> <ol style="list-style-type: none"> <li>a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological;</li> </ol>	State law tracks federal statutory language, but definition refers only to disability discrimination in employment. Administrative code broadly defines both physical and mental impairments. Physical impairments include “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:	No state or federal court has as yet construed this definition.

	<p>musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or</p> <p>b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.</p> <p>8.26(3) The term “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.</p> <p>8.26(4) The term “has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.</p> <p>8.26(5) The term “is regarded as having an impairment” means: a. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation; b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or c. Has none of the impairments defined to be “physical or mental impairments,” but is perceived as having such an impairment.</p> <p>§ 216.2(5): When used in this chapter, unless the context otherwise requires:...</p> <p>“Disability” means the physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired</p>	<p>neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.” Mental impairments include “any mental or psychological disorder,” including emotional or mental illness.</p>	
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		immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome- related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “disability” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.		
<b>Kansas</b>	Kan. Stat. Ann. § 44-1002(j)	<p>When used in this act: ...</p> <p>“Disability” means, with respect to an individual:</p> <p>(j) “Disability” means, with respect to an individual:</p> <p>(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of.</p> <p>Disability does not include current, illegal use of a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. 802), in housing discrimination. In employment and public accommodation discrimination, “disability” does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. 812), when the covered entity acts on the basis of such use.</p>	State law tracks federal statutory language. Individuals with current or past controlled substance abuse or alcohol abuse problems and those excluded from coverage by the ADA are excluded from coverage under the Kansas Act Against Discrimination.	A Kansas State Court of Appeal reviewed the Kansas Act Against Discrimination’s (KAAD) definition of disability in <i>Seaman Unified School District v. Kansas Commission on Human Rights</i> 26 Kan. App. 2d 521 (1999) (review denied). In that case, the Kansas court, relying heavily on the <i>Sutton</i> decision, held that “corrective and mitigating measures should be considered when determining whether an individual is substantially limited in a major life activity” under the KAAD. <i>Id.</i>
<b>Kentucky</b>	Ky. Rev. Stat. § 12.450(1)	As used in KRS 12.450 to 12.465, unless the context requires otherwise: ...	State law tracks federal statutory language. Definition excludes persons with current or past	“Because the essential elements of an ADA claim and a claim under Kentucky's civil

		(1) "Disability" means, with respect to an individual: (a) A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; (b) A record of such an impairment; or (c) Being regarded as having such an impairment. (2) Persons with current or past controlled substance abuse or alcohol abuse problems and persons excluded from coverage by the Americans with Disabilities Act of 1990 shall be excluded from the definition set out in subsection (1) of this section.	controlled substance or alcohol abuse problems and those excluded from ADA coverage.	rights statute are the same, the state claim is addressed implicitly with the federal analysis." <i>Howard Baer, Inc. v. Schave</i> , 127 S.W.3d 589, 592 (Ky .2003).
<b>Louisiana</b>	La. Rev. Stat. § 23:322(3)	For the purposes of this Part, the following terms shall have the following meanings ascribed to them: ...  "Disabled person" means any person who has a physical or mental impairment which substantially limits one or more of the major life activities, or has a record of such an impairment, or is regarded as having such an impairment.	State law tracks federal statutory language.	Louisiana courts generally follow federal case law in interpreting the state's employment discrimination, and the state's law is modeled on the ADA. <i>See generally Varner v. Blessey Enterprises, Inc.</i> , 942 So.2d 1147 (La.App. 5 Cir., 2006).  However, the state has taken novel steps to distinguish disability on the basis of a workplace injury with disability arising out of another source. In <i>Cox v. Glazer Steel Corp.</i> , 606 So.2d 518 (La.1992), the Supreme Court of Louisiana held that an employee who had previously settled a claim for an industrial accident could sue his former employer for discrimination against the handicapped. The court reasoned that the two statutory schemes have different bases.

				<p>“The compensation principle excludes the concept of employer fault. <i>Guidry v. Frank Guidry Oil Co.</i>, 579 So.2d 947 (La.1991). However, the Civil Rights Act for Handicapped Persons is fault-based legislation, intended to prevent discrimination, prejudice and intolerance.” <i>Id.</i> at 519-20. Further, the court concluded that the purposes of the two laws also were different. “The worker’s compensation law provides compensation for accidental industrial injury or death. Guaranteeing civil job rights for the handicapped is intended to assure the handicapped equal employment opportunity. The two pieces of legislation are directed at distinct problems.” <i>Id.</i> at 520.</p>
<b>Maine</b>	5 M.R.S. § 4553-A	<p>"Physical or mental disability" means:</p> <p>A. A physical or mental impairment that:</p> <p>(1) Substantially limits one or more of a person's major life activities;</p> <p>(2) Significantly impairs physical or mental health; or</p> <p>(3) Requires special education, vocational rehabilitation or related services;</p> <p>B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar</p>	<p>Maine's definition of disability is determined without regard to ameliorative effects of mitigating measures.</p> <p>“Significantly impairs” as it relates to physical or mental health is limited to those conditions which have an actual or expected duration of more than six months, and impair</p>	<p>In <i>Whitney v. Wal-Mart Stores, Inc.</i>, 2006 ME 37 (2006), the Maine Supreme Court addressed the following two questions about the state’s disability definition, certified by the U.S. District Court for the District of Maine and arising out from <i>Whitney v. Wal-Mart Stores, Inc.</i>, 370 F. Supp. 2d 323 (D. Me. 2005):</p>

		<p>disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;</p> <p>C. With respect to an individual, having a record of any of the conditions in paragraph A or B; or</p> <p>D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A or B.</p>	<p>health to a significant extent as compared to what is ordinarily experienced in the general population.</p>	<p>(1) "Does the Maine Human Rights Act definition of 'physical or mental disability' found at 5 M.R.S.A. § 4553(7-A) require a showing of a substantial limitation on a major life activity as does its federal analogue, 42 U.S.C. § 12102(2)(A)?" and (2) "Is Section 3.02(C) of the regulations adopted by the Maine Human Rights Commission, defining a 'physical or mental impairment,' invalid because it requires a showing of a substantial limitation on a major life activity?"</p> <p>The court answered questions as follows: (1) No. (2) Yes. After examining the history of the statute, the court concluded that the MHRA does not incorporate the ADA requirement that the impairment substantially limit a major life activity.</p> <p>"The definition of "physical or mental disability" in section 4553(7A) includes three categories of covered conditions. Under the first category, a person is covered if he or she has "any disability, infirmity, malformation,</p>
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				<p>disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness.” [<i>Rozanski v. A-P-A Transport, Inc.</i>, 512 A.2d 335, 340 (Me. 1986) (quoting 5 M.R.S.A. § 4553(7-A) (1979)). The second category is “the physical or mental condition of a person that constitutes a substantial disability as determined by a physician or, in the case of mental disability, by a psychiatrist or psychologist . . . .” 5 M.R.S. § 4553(7-A). The third category is “any other health or sensory impairment that requires special education, vocational rehabilitation or related services.” <i>Id.</i> Although it is possible for an individual to have a condition that meets all three categories, <i>Rozanski</i> establishes that meeting all of them is not a prerequisite for coverage . . . regardless of the “substantial disability” language in section 4553(7-A).”</p>
<b>Maryland</b>	Md. Ann. Code Art. 49B, § 15(g) (“any physical	49B, §15(g) For purposes of this subtitle: .  The term “disability” means any physical disability, infirmity, malformation or disfigurement which is caused	Maryland did not amend its statutes to track the ADA. Its regulations incorporate certain federal law concepts, but include	<i>See University of Maryland at Baltimore v. Boyd</i> , 93 Md.App. 303, 316-17, 612 A.2d 305 (Md.App. 1992)

	<p>disability” and “any mental impairment or deficiency”); Code of Md. Reg. (COMAR) § 14.03.02.03</p>	<p>by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impediment or physical reliance on a seeing eye dog, wheelchair, or other remedial appliance or device; and any mental impairment or deficiency as, but not limited to, retardation or such other which may have necessitated remedial or special education and related services.</p> <p>COMAR 14.03.02.02: Definitions:</p> <p>A. In this chapter, the following terms have the meanings indicated.</p> <p>B. Terms Defined. ...</p> <p>6) "Disability" means, with respect to an individual:</p> <p>(a) Epilepsy, infection with the human immunodeficiency virus, paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impediment, physical reliance on a seeing eye dog, wheelchair, or other remedial appliance or device, or mental retardation or other mental impairment or deficiency which necessitates remedial or special education and related services;</p> <p>(b) A physical or mental impairment, other than those enumerated in §B(6)(a) of this regulation, that is caused by bodily injury, birth defect, or illness, which substantially limits one or more of an individual's major life activities;</p> <p>(c) A record of a physical or mental impairment as set forth in §B(6)(a) or (b) of this regulation, including having a history of, or being misclassified as having, such an</p>	<p>a list of <i>per se</i> disabilities and reject <i>Sutton</i>'s mitigating measures rule.</p>	<p>(upholding Commission finding that a skin condition known as pseudofolliculitis barbae (PFB) was disability).</p> <p><i>See Office of Occupational Medicine and Safety v. Baltimore Community Relations Com'n</i>, 88 Md.App. 420, 594 A.2d 1237 (Md. App. 1991) (upholding administrative determination in favor of firefighter rejected from employment based on “potential future handicap” from bone spur and attendant arthritis).</p> <p>“The handicap discrimination laws were narrowly tailored by the legislature to protect ‘otherwise qualified handicapped persons’ from discrimination. The definition of handicap has been interpreted to include only those disabilities or perceived disabilities which seriously impair a person's ability to perform life's tasks, but which would not affect an individual's ability to perform certain jobs. The discrimination laws were not enacted to protect persons who are either not handicapped or who are not qualified for a job</p>
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		<p>impairment;</p> <p>(d) Being regarded as having a physical or mental impairment as set forth in §B(6)(a) or (b) of this regulation, including one that:</p> <p>(i) Does not substantially limit major life activities, if the individual is treated by a covered entity as having such a limitation; or</p> <p>(ii) Substantially limits major life activities as a result of the attitude of the covered entity or of others towards the impairment; or</p> <p>(e) Being treated by a covered entity as having an impairment, even if there is no physical or mental impairment.</p> <p>(7) "Major life activities" includes, but is not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, driving a vehicle, socializing, and engaging in procreation and recreation.</p> <p>COMAR § 14.03.02.03: Verification of a Disability.</p> <p>A. The Commission may require the complainant to sign a waiver for the Commission to obtain verification of the existence, nature, and extent of the complainant's disability from a physician or other health care provider, based on medically accepted clinical or laboratory diagnostic techniques.</p> <p>B. The determination of whether an individual has a physical or mental impairment, or is substantially limited in a major life activity, or both, shall be made on a case-by-case basis and without regard to the mitigating effects</p>		<p>by reason of failure to meet bona fide occupational qualifications.” <i>Mass Transit Admin. v. Maryland Com'n on Human Relations</i>, 68 Md.App. 703, 515 A.2d 781 (Md.App. 1986) (reversing Commission’s finding of perceived disability discrimination on behalf of bus driver applicant with high blood pressure).</p>
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		of any remedial appliance or device.		
<b>Massachusetts</b>	Mass. Ann. Laws Ch. 151B, §1(17)	<p>As used in this chapter: ...</p> <p>The term “handicap” means (a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment, but such term shall not include current, illegal use of a controlled substance as defined in section one of chapter ninety-four C.</p>	State law tracks federal statutory language, but “mitigating measures” should not be considered in determining whether an individual has a “handicap” under Massachusetts antidiscrimination law.	<p>“Massachusetts’ courts have generally defined ‘handicap’ more broadly than have federal courts in defining ‘disability.’ A central case in an inquiry involving the impact of corrective or mitigating measures is <i>Dahill v. Police Dept. of Boston</i> 434 Mass 233 (2001).</p> <p>The state’s non-discrimination from the ADA in at least the two critical respects we have discussed, it is not appropriate to follow the Federal jurisprudence in this case.” <i>Dahill</i> at 243.</p> <p>The <i>Dahill</i> court addressed the discrepancies between Massachusetts handicap statutes and the federal definition of disability set forth in the ADA. When faced directly with the question of whether an individual who brings a claim pursuant to the state's handicap statutes, the Court analyzed whether a claim brought under G.L. c. 151B, § 4(16) has a “handicap” as defined by G.L. c. 151B, § 1(17) if the person's impairment has been or can be</p>

				<p>alleviated by the use of corrective devices or other mitigating measures.</p> <p>"The department urges that we be guided by the decision of the United States Supreme Court in <i>Sutton v. United Air Lines, Inc.</i>, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450 (1999), where the Court concluded that, under the ADA, "if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures-both positive and negative-must be taken into account when judging whether that person is 'substantially limited' in a major life activity and thus 'disabled.'" 434 Mass 233, 242 (2001).</p> <p>"There are sound reasons why our interpretation of the Massachusetts statute diverges from the Court's interpretation of similar language in the Federal statute. <i>Ibid.</i></p> <p>"First, the Supreme Court attributed little weight to guidelines issued by the Equal Employment Opportunity Commission (EEOC) that "the</p>
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			<p>determination of whether an individual is substantially limited in a major life activity [should] be made without regard to mitigating measures [under the ADA]. <i>Ibid.</i></p> <p>"Second, in the preamble to the Federal legislation, Congress had estimated that forty-three million Americans have disabilities. This number would have been far larger, the Supreme Court reasoned, if Congress had intended the ADA to cover people with "corrected physical limitations." The Massachusetts statute, in contrast, contains no such estimate of the number of people in the Commonwealth with handicaps, nor does it contain any analogous provision suggesting that the Legislature intended to exclude from coverage the many persons with significant, but correctable, impairments. <i>Ibid.</i> at 243</p> <p>"We are not persuaded that our decision today will open the floodgates of litigation, as the department fears. Our interpretation of G.L. c. 151B, § 1(17), heralds no change in</p>
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				Massachusetts jurisprudence: since 1983, when the Legislature made the relevant amendment to G.L. c. 151B, judges and litigants in Massachusetts have assumed that a person with a significant physical or mental impairment met the threshold definition of “handicap,” whether the person used corrective devices or took other mitigating measures." <i>Ibid.</i>
<b>Michigan</b>	Mich. C. L. S. § 37.1103(d)	<p>“Disability” means 1 or more of the following:</p> <p>(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. (B) For purposes of article 3, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service. (C) For purposes of article 4, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution. (D) For purposes of article 5, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent, or maintain property.</p> <p>(ii) A history of a determinable physical or mental</p>	<p>State law reflects federal statutory language, but instead of impairment, definition requires “determinable physical or mental characteristic” that substantially limits one or more major life activities.</p> <p>Statutory definition amended in 1990 to require that the physical or mental characteristic in question substantially limit one or more major life activities of the individual.</p>	<p>Like the ADA, the PWDCRA generally protects only against discrimination based on physical or mental disabilities that substantially limit a major life activity of the disabled individual, but that, with or without accommodation, do not prevent the disabled individual from performing the duties of a particular job. <i>Peden v. City of Detroit</i>, 470 Mich. 195, 204-05, 680 N.W.2d 857 (2004).</p> <p>To establish a disability under MCL 37.1103(d), plaintiff was required to prove “(1) that [he] was regarded as having a determinable physical or mental characteristic, (2) that the perceived characteristic was regarded as substantially</p>

		<p>characteristic described in subparagraph (i).</p> <p>(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i).</p>		<p>limiting one or more of [his] major life activities, and (3) that the perceived characteristic was regarded as being unrelated either to [his] ability to perform the duties of [his] particular job or position or to [his] qualifications for employment or promotion.” <i>Michalski v. Bar-Levav</i>, 463 Mich. 723, 735; 625 NW2d 754 (2001) (reversing court of appeals decision finding that plaintiff with asymptomatic MS was protected).</p> <p>In <i>Chmielewski v. Xermac, Inc.</i>, 457 Mich. 593, 580 N.W.2d 817 (1998), the Michigan Supreme Court rejected then-effective EEOC guidance regarding mitigating measures, and endorsed the view later adopted by the United States Supreme Court in the Sutton trilogy, stating “We find the reasoning of those federal courts that have rejected the EEOC guidelines to be persuasive and that this reasoning applies to our interpretation of the HCRA.” <i>Id.</i> at 605 (affirming jury instruction and verdict finding plaintiff dependent upon antirejection medication for liver transplant nondisabled).</p>
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<b>Minnesota</b>	Minn. Stat. § 363A.03(12)	<p>For purposes of this chapter, the words defined in this section have the meanings ascribed to them:</p> <p>"Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.</p>	State law tracks generally federal statutory language, but impairment(s) must <i>materially</i> limit a major life activity.	No state or federal court has as yet construed this definition.
<b>Mississippi</b>	Miss. Code Ann. §§ 25-9-149, 43-6-15, 43-33-723; State Personnel Board Policy and Procedures Manual, § 7.30 (Equal Employment Opportunity).	<p>It is the intent of the legislature that no person seeking employment in state service, ... or employed in state service, ... shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap.</p> <p>No person shall be refused employment in state services, the service of political subdivisions of the state, in public schools, or any other employment supported in whole or in part by public funds, by reason of his being blind, visually handicapped, deaf, or otherwise physically handicapped, unless such disability shall materially affect the performance of the work required by the job for which such person applies.</p> <p>A person with a disability is considered to be an individual with a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.</p>	Other than reference to "blind, visually handicapped, deaf, or otherwise physically handicapped," no definition in state code. State personnel board manual tracks federal statutory language. Law covers public or publicly funded employment only.	No state or federal court has as yet construed this definition.
<b>Missouri</b>	Mo. Rev. Stat. § 213.010(4)	<p>As used in this chapter, the following terms shall mean: ...</p> <p>"Disability", a physical or mental impairment which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment, which with or</p>	State law tracks federal statutory language, but Missouri Human Rights Act excludes from definition the current, illegal use of or addiction to a controlled substance.	No state or federal court has as yet construed this definition.

		<p>without reasonable accommodation does not interfere with performing the job, utilizing the place of public accommodation, or occupying the dwelling in question. For purposes of this chapter, the term “disability” does not include current, illegal use of or addiction to a controlled substance as such term is defined by section 195.010, RSMo; however, a person may be considered to have a disability if that person:</p> <p>(a) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of, and is not currently addicted to, a controlled substance or has otherwise been rehabilitated successfully and is no longer engaging in such use and is not currently addicted;</p> <p>(b) Is participating in a supervised rehabilitation program and is no longer engaging in illegal use of controlled substances; or</p> <p>(c) Is erroneously regarded as currently illegally using, or being addicted to, a controlled substance.</p>		
<b>Montana</b>	Mont. Code Ann. § 49-2-101(19)	<p>As used in this chapter, unless the context requires otherwise, the following definitions apply: ...</p> <p>(a) “Physical or mental disability” means: (i) a physical or mental impairment that substantially limits one or more of a person's major life activities; (ii) a record of such an impairment; or (iii) a condition regarded as such an impairment.</p> <p>(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that</p>	State law tracks federal statutory language.	<p>“Because the [Montana Human Rights Act] is closely modeled after federal anti-discrimination statutes such as the ADA, this Court consistently considers federal court interpretations when we interpret the provisions of the MHRA.” <i>Pannoni v. Board of Trustees</i>, 321 Mont. 311, 318 (2004).</p> <p>In making disability determinations, Montana</p>

		would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.		<p>courts rely on the EEOC Interpretive Guidelines of the ADA. 382-383 <i>Adamson v. Pondera County</i>, 319 Mont. 378, 382 (2004); <i>Butterfield v. Sidney Public Schools</i> 306 Mont. 179, 183 (2001).</p> <p>“Whether a person is disabled under the Act cannot be decided as a matter of law, but rather requires a factual determination to be made on a case-by-case basis.” <i>Montana Human Rights Act, Reeves v. Dairy Queen, Inc.</i> 287 Mont. 196,206 (Mont.,1998). “To require all diseases to be labeled as disabling or nondisabling would deny to persons with newly discovered or misunderstood diseases the protections provided by the Act until a court or legislature could reach the issue.” <i>Id.</i> (rejecting lower court determination that an employee who experienced high blood pressure was not disabled because “[n]o statute, administrative rule, or any precedent within Montana has previously established high blood pressure as a physical disability.”)</p>
<b>Nebraska</b>	Rev. Stat. Neb.	For purposes of the Nebraska Fair Employment Practice	State law tracks federal statutory	No state or federal court has as

	Ann. § 48-1102(9)	Act, unless the context otherwise requires: ...  (9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.	language. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, problem gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.	yet construed this definition.
<b>Nevada</b>	Nev. Rev. Stat. Ann. § 613.310(1)	As used in NRS 613.310 to 613.435, inclusive, unless the context otherwise requires: ...  “Disability” means, with respect to a person: (a) A physical or mental impairment that substantially limits one or more of the major life activities of the person; (b) A record of such an impairment; or (c) Being regarded as having such an impairment.	State law tracks federal statutory language.	No state or federal court has as yet construed this definition.
<b>New Hampshire</b>	N.H. Rev. Stat. Ann. § 354-A:2(IV)	In this chapter: ...  “Disability” means, with respect to a person: (a) A physical or mental impairment which substantially limits one or more of such person's major life activities; (b) A record of having such an impairment; or (c) Being regarded as having such an impairment. Provided, that “disability” does not include current, illegal use of or addiction to a controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802 sec. 102).	State law tracks federal statutory language, and definition excludes the current illegal use or addiction to a controlled substance.	No state or federal court has as yet construed this definition.
<b>New Jersey</b>	N.J. Stat. § 10:5-5 (q)	“Handicapped” means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy,	New Jersey is one of the four states that never amended its statute to conform to the ADA.	“Unlike the ADA, the New Jersey Law Against Discrimination (NJLAD) was

		and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, psychological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Handicapped shall also mean suffering from AIDS or HIV infection.	Its definition incorporates only the first prong of federal statutory language.	intended to cover more than just 'severe' disabilities," <i>Taylor v. Virtual Health, Inc.</i> , 2007 WL 1827094, page 4, citing <i>Olson v. General Electric Astrospace</i> , 966 F.Supp. 312, 315 (D.N.J.1997)  "[A]ccordingly, [it] does not require that the handicap substantially limit a major life activity. In fact, the New Jersey Supreme Court has held that the statutory definition of "handicapped" is "very broad in its scope." <i>Taylor</i> at 5, citing <i>Clowes v. Terminix Int'l, Inc.</i> , 109 N.J. 575, 593, (1988).
<b>New Mexico</b>	N.M. Stat. Ann. § 28-1-2(M)	As used in the Human Rights Act [Chapter 28, Article 1 NMSA 1978]:  "Disability" means, with respect to a person: (a) A physical or mental impairment that substantially limits one or more of the major life activities of the person; (b) A record of such an impairment; or (c) Being regarded as having such an impairment.	State law tracks federal statutory language.	No state or federal court has yet construed New Mexico's statute, relying instead on federal courts' interpretation of the ADA as a guide for analyzing state claims. "The New Mexico state courts have concurrent jurisdiction with federal courts to hear and decide claims brought under the ADA. <i>Weaver v. N.M. Human Servs. Dep't</i> , 123 N.M. 705 (1997).
<b>New York</b>	NY CLS Exec § 292 (21); Human Rights	Disability is: (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a	New York is one of the four states that never amended its statute to conform to the ADA.	The definition of disability is broader under the Human Rights Law than it is under the

	Law, Art. 15, § 292(21)	<p>normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment . . .”</p> <p>Definition also includes “a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.”</p>		<p>Americans with Disabilities Act. <i>Jones v. Govt. Employees Ins. Co., Inc.</i> 2006 WL 1229136, page 5</p> <p>“The requirement that an employee must be able to perform job duties “in a reasonable manner” is the equivalent of the third element of an ADA claim, which requires a plaintiff to show that he or she is a “qualified individual with a disability.” <i>Shannon v. New York City Transit Auth.</i>, 332 F.3d 95, 103 (2d Cir.2003).</p> <p>“Under the ADA, a plaintiff is not a “qualified individual with a disability” unless he is capable of performing the essential functions of his job, with or without reasonable accommodation. 42 U.S.C. § 12111(8). Thus, the HRL requires an inquiry into whether the plaintiff was qualified to perform the essential functions of the job, with or without reasonable accommodation. <i>JONES</i> at 5.</p>
<b>North Carolina</b>	N.C. Gen. Stat. § 168A-3(7a)-(7d); (9a)	<p>As used in this Chapter, unless the context otherwise requires: ...</p> <p>“Person with a disability” means any person who (i) has a</p>	State law tracks federal statutory language. Definition excludes sexual preferences; active alcoholism or drug addiction or	To fall under the protections of the ADA and North Carolina Persons with Disabilities Protection Act,

		<p>physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.</p> <p>As used in this subdivision, the term:</p> <p>a. “Physical or mental impairment” means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.</p> <p>b. “Major life activities” means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.</p> <p>c. “Has a record of such an impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.</p> <p>d. “Is regarded as having an impairment” means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments</p>	<p>abuse; and any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.</p>	<p>(NCPDPA), an employee must prove he is disabled by showing that his condition is either permanent or long-term. In <i>Leeks v. Cumberland County Mental Health Developmental Disability And Substance Abuse Facility</i>, 154 N.C.App. 71, (2002), the court held that petitioner, an assistant at a group home for emotionally disturbed and dangerous youths, failed to prove that the depression and sleep disorder that emerged as problems after he was assigned to the night shift did not qualify as “physical or mental impairments” requiring accommodation from his employer because there was no showing that either condition was permanent or long-term..</p> <p>But just a year later, the North Carolina Court of Appeals rejected the notion that a person must be qualified to perform a job without reasonable accommodation in order to be designated as a “qualified person with a disability” meriting reasonable accommodation.</p> <p>“Respondent asserts that the</p>
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		<p>defined in paragraph a. of this subdivision but is treated as having such an impairment.</p> <p>§ 168A-3(9a):</p> <p>A “qualified person with a disability” means, with regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation.</p>	<p>clause 'with or without reasonable accommodation' [in 168A-3(9a)] requires the person to be capable of performing the job both with and without accommodations. Under this reading an employee would have to be capable of performing the job duties without reasonable accommodations. Once the employee had satisfactorily performed the job without accommodation, the employee would be a “qualified person with a disability.” We reject this interpretation. The plain language of the statute requires the disabled person be able to satisfactorily perform the job, either “with or without” reasonable accommodation. Therefore to be classified as a “qualified person with a disability” the employee must be capable of performing the job duties with reasonable accommodations.” <i>Campbell v. North Carolina Dept. of Transp., Div. of Motor Vehicles</i>, 155 N.C.App. 652, 663 (2003). (ordering reinstatement of a clerk at a state agency whose severe asthma, which included near-death asthmatic episode in a hospital emergency room,</p>
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				made it impossible for her to continue working in a dusty file area -- employee did not lose her be provided with reasonable accommodations to her disability by rejecting employer's proposed accommodation that employee wear a face mask and use a confining HEPA filter while at the office.)
<b>North Dakota</b>	N.D. Cent. Code § 14-02.4-02(4)	In this chapter, unless the context or subject matter otherwise requires: ...  “Disability” means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.	State law tracks federal statutory language.	The North Dakota Human Rights Act shares not only the language of the ADA, but also its interpretation. “Because of the similarities between the NDHRA and the ADA, the Court will look to federal law for guidance. “ 396 F.Supp. 1067, 1079 (D..N.Dak., 2005).
<b>Ohio</b>	Ohio Rev. Code Ann. § 4112.01A(13)	“Disability” means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.	Current state tracks federal statutory language.  It is interesting to note how the statute was modified in the early 1990s after the adoption of the ADA. The prior statute, which is still used to decide cases where the adverse employment action at issue occurred prior to the adoption of the current text of § 4112.01A(13), reads as follows:  [An] employee is disabled if she has a medically diagnosable,	No state or federal court has as specifically construed the current definition.

			<p>abnormal condition which is expected to continue for a considerable length of time, whether correctable or uncorrectable by good medical practice, which can reasonably be expected to limit the person's functional ability, including, but not limited to, seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, sitting, rising, any related function, or any limitation due to weakness and significantly decreased endurance, so that [s]he can not perform his everyday routine living and working without significantly increased hardship and vulnerability to what are considered the everyday obstacles and hazards encountered by the nonhandicapped.</p>	
<b>Oklahoma</b>	Okla. Stat. § 1451(6)	<p>“Handicap” means a mental or physical impairment that substantially limits at least one major life activity, when there is a record of such an impairment, or the individual is regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance. For purposes of this act, “an individual with a handicap” or “handicap” does not apply to an individual because of sexual orientation or the sexual preference of the individual or because that individual is a transvestite.</p>	<p>State law parallels statutory definition. The definition excludes those who currently use or are addicted to any drug or illegal or federally controlled substance, and does not apply to sexual orientation or sexual preferences of an individual or because that individual is a transvestite.</p>	<p>No state or federal court has as yet construed this definition.</p>
<b>Oregon</b>	Or. Rev. Stat. §	174.107(1): As used in the statute laws of this state:	State law tracks federal statutory	Contrary to <i>Sutton</i> , the Oregon

	<p>174.107(1); § 659A.100(1)(2)</p>	<p>“[D]isabled person” means any person who: (a) Has a physical or mental impairment which substantially limits one or more major life activities; (b) Has a record of such an impairment; or (c) Is regarded as having such an impairment.</p> <p>As used in ORS 659A.100 to 659A.145, unless the context requires otherwise:</p> <p>(1) “Disabled person” means an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.</p> <p>(2) As used in subsection (1) of this section:</p> <p>(a) “Major life activity” includes but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.</p> <p>(b) “Has a record of such an impairment” means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.</p> <p>(c) “Is regarded as having such an impairment” means that the individual:</p> <p>(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer or supervisor as having such a limitation;</p> <p>(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of others toward such impairment; or</p>	<p>language.</p>	<p>Court of Appeals has held that the determination of whether or not a condition constitutes a “substantial limitation” should be made without regard to available mitigating measures. <i>Washburn v. Columbia Forest Products, Inc.</i>, 197 Or.App. 104, (2005). However, the Oregon Supreme Court recently has rejected this interpretation. “The statutory definition of “substantially limits” makes clear that determining the applicability of Oregon's disability law requires an individualized assessment. In other words, the statutory scheme requires a determination whether the identified impairment “renders” an individual unable to perform a major life activity or significantly restricts the condition, manner, or duration under which that major life activity can be performed. In our view, that means that the legislature did not intend to categorize an impairment as substantially limiting if, for example, medication could ameliorate the effects of impairment such that the individual would be capable of performing the otherwise affected major life activity,”</p>
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		<p>(C) Has none of the impairments described in subparagraph (A) or (B) of this paragraph, but is treated by an employer or supervisor as having a mental or physical impairment that substantially limits one or more major life activities.</p> <p>(d) “Substantially limits” means:</p> <p>(A) The impairment renders the individual unable to perform a major life activity that the average person in the general population can perform; or</p> <p>(B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.</p>		<p><i>Washburn v. Columbia Forest Products, Inc.</i>, 340 Or. 469, 478 (2006). “To read the phrase “substantially limits” differently would ignore the fact that an impairment may be disabling for some individuals but not others, depending on factors such as the particular stage or seriousness of a disease or disorder, the side-effects of any medication taken to treat it, or the effects of collateral conditions that, in combination, could render one particular impairment disabling.” <i>Id.</i> “That approach would require the court to evaluate persons with similar impairments according to general group characteristics, rather than as individuals. <i>Id.</i> at 479.</p>
<b>Pennsylvania</b>	Penn. Stat. 954 (p. 1)	<p>As used in this act unless a different meaning clearly appears from the context: ...</p> <p>The term “handicap or disability” with respect to a person, means: a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of having such an impairment; or being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802).</p>	State law tracks federal statutory language. Definition does not include current, illegal use of or addiction to a controlled substance.	<p>“The [Pennsylvania Human Rights Act] and ADA are interpreted in a co-extensive manner. This is because the PHRA and ADA deal with similar subject matter and are grounded on similar legislative goals.” <i>Imler v. Hollidaysburg American Legion Ambulance Svc</i>/ 731 A.2d 169, 173 (Pa.Super., 1999), quoting <i>Kelly v. Drexel University</i>,</p>

				<p>907 F.Supp. 864, 874 (E.D.Pa.,1995).</p> <p>“Courts of this Commonwealth may look to federal court decisions when interpreting the PHRA, even though those decisions are not binding on state courts.” <i>Imler</i>, 731 A.2d at 173-74.</p> <p>“Thus, we use as guidance the decisions of the federal courts to assist in the interpretation of the PHRA.” <i>Imler</i>, 731 A.2d at 174</p>
<b>Rhode Island</b>	§ 42-87-1	<p>1) “Disability” means any impairment as defined in subdivision (8); provided, however, that whether a person has a disability shall be determined without regard to the availability or use of mitigating measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids.</p> <p>(2) “Discrimination” includes those acts prohibited on the basis of race by 42 U.S.C. §§ 1981, 1983 and those on the basis of disability by 29 U.S.C. § 794, and those on the basis of disability by 42 U.S.C. § 12101 et seq., and those on the basis of disability by chapter 5 of title 28.</p> <p>(3) “Has a record of an impairment” means has a history of or has been misclassified as having a physical or mental impairment that substantially limits one or more major life activities.</p> <p>(4) “Is regarded as having an impairment” means:</p> <p>(i) Has a physical or mental impairment that does not</p>	State law tracks federal statutory language. Determination of disability under the Rhode Island Civil Rights of Individuals with Handicaps Act (RICRIHA) must be made without regard to the availability or use of mitigating measures.	No state or federal court has as yet construed this definition.

	<p>substantially limit major life activities but that is treated as constituting a limitation; or</p> <p>(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or</p> <p>(iii) Has none of the impairments defined in subdivision (8) of this section but is treated as having an impairment.</p> <p>(5) “Major life activities” means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.</p> <p>(6) “Otherwise qualified” means:</p> <p>(i) With respect to employment, a person with a disability who, with reasonable accommodations, can perform the essential functions of the job in question;</p> <p>(ii) With respect to the rental of property, a person with a disability who, personally or with assistance arranged by the person with a disability, is capable of performing all of the responsibilities of a tenant as contained in § 34-18-24;</p> <p>(iii) With respect to any other program or activity, a person with a disability who meets the essential eligibility requirements for participation in, or receipt of, benefits from the program or activity; and</p> <p>(iv) The fact that an individual has applied for, received or continues to receive private insurance or government assistance based upon his or her disability shall not be determinative as to whether the individual is otherwise qualified as defined herein, nor shall it constitute an estoppel or otherwise serve as a basis to deny the individual the protections of this chapter.</p>		
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		<p>(7) “Person with a disability” means any person who:</p> <p>(i) Has a physical or mental impairment which substantially limits one or more major life activities; or</p> <p>(ii) Has a record of an impairment; or</p> <p>(iii) Is regarded as having an impairment.</p> <p>(8) “Physical or mental impairment” means 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 any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.</p>		
<b>South Carolina</b>	S.C. Code Ann. § 1-13-30(N)	<p>The following words and phrases used herein shall be construed as follows: ...</p> <p>“Disability” means with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of an impairment; or (3) being regarded as having an impairment.</p> <p>The definition of “disability” must be interpreted in a manner consistent with federal regulations promulgated pursuant to the Americans with Disabilities Act of 1990, as amended, Public Law 101-336.</p>	State definition tracks federal statutory language, and courts must interpret the definition in a manner consistent with federal regulations promulgated pursuant to the ADA.	No state or federal court has as yet construed this definition.
<b>South Dakota</b>	S.D. Cod. Laws § 20-13-1(4)	Terms used in this chapter mean: ...	State tracks federal statutory language. Use or addiction to	South Dakota has little law on point, and no state court has

		<p>“Disability,” a physical or mental impairment of a person resulting from disease, injury, congenital condition of birth, or functional disorder which substantially limits one or more of the person's major life functions; a record of having such an impairment; or being regarded as having such an impairment which: (a) For purposes of §§ 20-13-10 to 20-13-17, inclusive, is unrelated to an individual's ability to perform the major duties of a particular job or position, or is unrelated to an individual's qualifications for employment or promotion; (b) For purposes of §§ 20-13-20 to 20-13-21.1, inclusive, is unrelated to an individual's ability to acquire, rent or maintain property; (c) For purposes of §§ 20-13-22 to 20-13-25, inclusive, is unrelated to an individual's ability to utilize and benefit from educational opportunities, programs and facilities at an educational institution.</p> <p>This term does not include current illegal use of or addiction to marijuana as defined in subdivision 22-42-1(7) or a controlled substance as defined in subdivision 22-42-1(1); an individual shall not be considered to have a disability solely because that individual is a transvestite.</p>	<p>marijuana or a controlled substance and transvestism are excluded from coverage.</p>	<p>construed the language of the state statute.</p> <p>A federal court recently commented on one aspect of the federal law: “The ADA’s protections for employees versus contractors. “[T]he ADA protects ‘employees’ but not independent contractors.” <i>Wojewski v. Rapid City Regional Hosp., Inc.</i> 394 F.Supp.2d 1134, 1139 D.S.D.,2005. (Physician suffering from Bipolar Type I Depression had no standing to challenge the termination of his privileges at a hospital, because despite the terms of his appointment, the hospital did not pay him for his services -- he billed patients directly for his services and patients paid him directly for his work.)</p>
<b>Tennessee</b>	Tenn. Code Ann. § 4-21-102(9)	<p>As used in this chapter, unless the context otherwise requires: ...</p> <p>(A) “Disability” means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102:</p> <p>(i) A physical or mental impairment that substantially limits one (1) or more of such person's major life activities</p> <p>(ii) A record of having such an impairment; or</p>	<p>State law definition tracks federal language. Section (A) of the statute defines disability under Tennessee law as a mental or physical disability as defined and covered by the ADA. Although substance abuse is the only condition specifically excluded from the state’s definition, all federal exclusions are incorporated by reference to</p>	<p>Despite the similarity in language between the Tennessee Human Rights Act and the ADA, the Tennessee Supreme Court has stated that it is neither bound by nor restricted by federal law when interpreting state's own anti-discrimination laws. <i>Barnes v. Goodyear Tire and Rubber Co.</i>, 48 S.W.3d 698, 705</p>

		<p>(iii) Being regarded as having such an impairment;</p> <p>(B) “Handicap” does not include current, illegal use of, or addiction to, a controlled substance.</p>	<p>the ADA.</p>	<p>(Tenn., 2000).</p> <p>Tennessee courts have suggested that being well enough to show up for work constitutes a major life activity. “An impairment that results in inability to appear for work limits major life activity by disqualifying one from a broad class of jobs for purposes of Tennessee Human Rights Act (THRA) <i>Barnes v. Goodyear Tire and Rubber Co.</i>, 48 S.W.3d 698, 706 (Tenn., 2000).</p> <p>Further, records of absenteeism may be relevant when addressing an employee’s ongoing qualification to perform specific job for purposes of Tennessee Handicap Act (THA) claim; an employee who does not come to work cannot perform any of his job functions, essential or otherwise. <i>Barnes</i>, 48 S.W.3d at 705.</p>
<b>Texas</b>	Tex. Lab. Code § 21.002(6)	<p>In this chapter: ...</p> <p>Disability means, with respect to an individual, a mental or physical impairment that that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an</p>	<p>State law tracks federal statutory language. Definition excludes a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or a</p>	<p>While the US Supreme Court in <i>Sutton</i> stated that calling “working” a major life activity was a circular designation, Texas courts have been generally consistent in</p>

		<p>impairment.</p> <p>The term does not include:</p> <p>(A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or</p> <p>(B) a currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person’s employment.</p>	<p>currently communicable disease or infection , that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person’s employment.</p> <p>The Legislature in 1993 fully incorporated the ADA definition of the term “disability” into Chapter 21. <i>NME Hosps., Inc. v. Rennels</i>, 994 S.W.2d 142, 144 (Tex.1999).</p>	<p>construing employment as a major life activity, with limitations. The disability at issue must be significant and long-term, and the duty to provide reasonable accommodation kicks in only if a disability is actual, not ‘regarded as’.</p> <p>“The intent of the [Texas Commission on Human Rights] Act was to protect those impaired to the point that they might not be able to participate in the social or economic life of the state, achieve independence, or become gainfully employed without this protection. The legislature obviously was not concerned with minor physical or mental defects.” <i>Columbia Plaza Medical Center of Fort Worth Subsidiary, L.P. v. Szurek</i>, 101 S.W.3d 161, 166 (Tex.App., 2003).</p> <p>“The duty to provide reasonable accommodations ... arises only when the individual is [actually] disabled; no such duty arises when the individual merely is “regarded as”“ being disabled.” <i>Cannizzaro v. Neiman Marcus, Inc.</i>, 979 F.Supp.</p>
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			<p>465, 475 (N.D.Tex.1997).</p> <p>Factors to consider in determining whether individual is substantially limited in major life activity of working for purposes of disability discrimination claim include, but are not limited to: (1) geographical area to which person has reasonable access; (2) job from which individual has been disqualified because of impairment, and number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which individual is also disqualified because of impairment; and (3) number and types of other jobs not utilizing similar training, knowledge, skills, or abilities, within that geographical area from which individual is also disqualified because of impairment.”</p> <p><i>Haggar Apparel Co. v. Leal</i>, 100 S.W. 303, 309 (Tex.Ct.App 2002).</p> <p>“If an individual's ability to correct an impairment must be considered, it seems clear that the individual's likelihood of recovery from a temporary impairment must also be</p>
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				<p>considered.” <i>Columbia</i>, 101 S.W.3d at 167.</p> <p>But see <i>Davis v. City of Grapevine</i>, 188 S.W.3d 748, 760 (Tex.App. 2006). “Only if there is no evidence of impairment to the other major life functions is an impairment to working considered in Americans with Disabilities Act (ADA) action.”</p>
<b>Utah</b>	Utah Code Ann. § 34A-5-102(5)	<p>As used in this chapter: ...</p> <p>“Disability” means a physical or mental disability as defined and covered by the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.</p>	State definition is based solely on the definition of disability set forth in the ADA.	No state or federal court has as yet construed this definition.
<b>Vermont</b>	Vt. Stat. Ann. § 495d(5)(8)	<p>For the purposes of this subchapter: ...</p> <p>“Individual with a disability” means any natural person who:</p> <p>(A) has a physical or mental impairment which substantially limits one or more major life activities;</p> <p>(B) has a history or record of such an impairment; or</p> <p>(C) is regarded as having such an impairment.</p> <p>“Physical or mental impairment” means:</p> <p>(A) 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,</p>	State law tracks federal statutory language, but “substantial limitation” must be related to employability.	<p>Within the context of employability, Vermont has drawn a distinction between temporary or long-term disabilities, but has distinguished “long-term” from permanent.</p> <p>“ ‘Substantially limits’ means the degree that the impairment affects an individual’s employability. A handicapped individual who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.” <i>Potvin</i></p>

		<p>including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;</p> <p>(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;</p> <p>(C) the term “physical or mental impairment” includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.</p> <p>(8) “Substantially limits” means the degree that the impairment affects an individual’s employability. An individual with a disability who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.</p>		<p><i>v. Champlain Cable Corp.</i>, 165 Vt. 504, 508 (1996)</p> <p>“The duration of an impairment is relevant to whether an impairment is substantially limiting. Temporary injuries ... are not considered substantially limiting. See <i>id.</i> Pt. 1630 app. Plaintiff’s impairment, however, lasted for at least five months, and was the result of a long-term illness that required three separate surgeries. We cannot say, as a matter of law, that plaintiff’s disability was too fleeting to be covered by [Vermont’s Fair Employment Practices Act.]” <i>Potvin.</i>, 165 Vt . at 509.</p>
<b>Virginia</b>	Va. Code Ann. § 51.5-3	<p>As used in this title ...</p> <p>“Person with a disability” means any person who has a physical or mental impairment that substantially limits one or more of his major life activities or has a record of such impairment and that:</p> <p>1. For purposes of § 51.5-41, is unrelated to the individual’s ability to perform the duties of a particular job or position, or is unrelated to the individual’s qualifications for employment or promotion;</p> <p>2. For purposes of § 51.5-42, is unrelated to the individual’s ability to utilize and benefit from educational opportunities, programs, and facilities at an educational</p>	State law tracks federal statutory language, but contains no “regarded as” prong.	<p>“The [Virginians with Disabilities Act] employs the same standards of liability as the ADA. ... Additionally, the VDA provides only a one-year period from the “occurrence of any violation of rights” within which the aggrieved party may file suit.” <i>Taylor v. Wal-Mart Stores, Inc.</i>, 376 F.Supp.2d 653, 662 (E.D.Va.,2005).</p>

		<p>institution;</p> <p>3. For purposes of § 51.5-44, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service;</p> <p>4. For purposes of § 51.5-45, is unrelated to the individual's ability to acquire, rent, or maintain property.</p> <p>“Physical impairment” means any physical condition, anatomic loss, or cosmetic disfigurement that is caused by bodily injury, birth defect, or illness.</p>		
<b>Washington</b>	<p>Wash. § 49.60.180; Wash. Admin. Code § 162-22-020(1)(2)(3)</p>	<p>§ 49.60.180: “The presence of a sensory, mental, or physical disability” includes, but is not limited to, circumstances where a sensory, mental, or physical condition: (a) Is medically cognizable or diagnosable; (b) Exists as a record or history; (c) Is perceived to exist whether or not it exists in fact.</p> <p>§ 162-22-020: In this chapter the following words are used in the meaning given, unless the context clearly indicates another meaning:</p> <p>(1) “Disability” is short for the statutory term “the presence of any sensory, mental, or physical disability,” except when it appears as part of the full term.</p> <p>(2) “The presence of a sensory, mental, or physical disability” includes, but is not limited to, circumstances where a sensory, mental, or physical condition:</p> <p>(a) Is medically cognizable or diagnosable;</p> <p>(b) Exists as a record or history;</p> <p>(c) Is perceived to exist whether or not it exists in fact.</p>	<p>Washington is another of the four states that never amended its statute to conform to the ADA. State law includes “record of” and “regarded as” clauses of federal definition, but instead of a “substantial limitation”, the law requires only that a disability must be “medically cognizable or diagnosable” in order to fall within the state’s protections.</p>	<p>Historically, plaintiffs bringing suit under the Washington Law Against Discrimination have had an easier time establishing disability, needing to prove only the presence of a sensory, mental, or physical disability, not one which substantially limits a major life activity. This approach was exemplified in <i>Pulcino v. Federal Express Corp.</i>, 141 Wn.2d 629, 641 &amp; n.3 (2000) (“We recognize that the Americans with Disability Act of 1990’s (ADA) definition of “disability” is narrower.”) and in <i>Hill v. BCTI Income Fund-I</i>, 23 P.3d 440, 452 (2001) (“While the Legislature did not define “disability,” it authorized the Human Rights Commission ... to adopt and</p>

		<p>A condition is a “sensory, mental, or physical disability” if it is an abnormality and is a reason why the person having the condition did not get or keep the job in question, or was denied equal pay for equal work, or was discriminated against in other terms and conditions of employment, or was denied equal treatment in other areas covered by the statutes. In other words, for enforcement purposes a person will be considered to be disabled by a sensory, mental, or physical condition if he or she is discriminated against because of the condition and the condition is abnormal.</p> <p>(3) An “able worker with a disability” is a person whose disability does not prevent the proper performance, with or without reasonable accommodation, of the particular job in question.</p>	<p>promulgate rules and regulations to carry out the statute's provisions.”) However, in 2006, the Supreme Court of Washington rebuffed this more generous definition. In <i>McClarty v. Totem Elec.</i>, 157 W.2d 214 (2006), the court abandoned the state's long-time definition of disability, holding that the Human Rights Commission's regulation, 162-22-020, was not a rational and sensible interpretation, and court would adopt the definition in the federal Americans with Disabilities Act of 1990. “Disability” means the ‘inability to do something.’ ... Specifically, it includes ‘a physical or mental illness, injury, or condition that incapacitates in any way.’ Given this definition, a disability discrimination claimant should be required “to show that his condition substantially limited his ability to perform” something before he is deemed disabled under the WLAD.” <i>McClarty</i>, 157 W.2d at 225-226. “WAC 166-22-020(2) is not a rational and sensible interpretation of the term “disability” as it is used in the</p>
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				<p>WLAD, and we reject it in favor of a definition better supported by the WLAD's text, the legislature's intent and our jurisprudence." <i>Id.</i> at 228.</p> <p>"[To] provide a single definition of "disability" that can be applied consistently throughout the WLAD, we adopt the definition of disability set forth in the federal ADA.<i>Id.</i></p> <p>Nonetheless, despite the Washington Supreme Court's strong language in <i>McClarty</i>, WAC § 162-22-020(2) remains unchanged.</p>
<b>West Virginia</b>	W.Va. Code § 5-11-3(m)	<p>The term "disability" means: ...</p> <p>(1) A mental or physical impairment which substantially limits one or more of such person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;</p> <p>(2) A record of such impairment; or</p> <p>(3) Being regarded as having such an impairment. For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such persons from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.</p>	State law tracks federal definition. Individuals excluded from coverage include those whose current use of or addiction to alcohol or drugs prevents them from performing the duties of their jobs or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.	<p>Although the wording of West Virginia's statute mirrors the ADA, the state adopted the three prongs of the federal law in 1989. However, the state courts' interpretations of the law have been maverick.</p> <p>The West Virginia Supreme Court has rejected the principle that a disability must be long-term or permanent to be protectable under the state's Human Rights Act. "It is difficult to find coherence, common sense, or persuasive force in a legal position that would strip the protection of the law against disability</p>

			<p>discrimination from an employee with a disability that requires the employee to miss work for a week-or indeed, logically extended, even for a day!□.” <i>Haynes v. Rhone-Poulenc, Inc.</i>, 206 W.Va. 18, 27-28 (1999).</p> <p>The court has also articulated its intent that the state’s law be interpreted more expansively than the ADA. “West Virginia law, in terms of whether a person is a “person with a disability within the meaning of the law,” ... who has standing to assert a claim under the protection of our disability discrimination law, has gone from a narrower definition to a broader definition” over the last 10 years. <i>Stone v. St. Joseph’s Hospital of Parkersburg</i>, 208 W.Va. 91, 102 (2000).</p> <p>“The 'exclusion-from-only-one-job' rationale . . . has been relied upon in some federal cases to deny threshold protected status as a matter of law to a range of persons with fairly substantial impairments.” <i>Id.</i> at 103</p> <p>“[I]f a person is prohibited</p>
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				<p>from establishing threshold “protected status” as a person with a disability within the meaning of the law, an employer may inflict any sort of (otherwise legal) discriminatory conduct or acts on the person – no matter how unfair, arbitrary, stereotyped, bigoted, or unrelated to business necessity that those acts or conditions may be – and the person will have no standing to complain of or remedy the discrimination. And it should also be remembered that establishing the “protected person” status . . . in no way guarantees that a claim of disability discrimination will succeed. All other elements of a claim . . . must be shown before a person is entitled to any relief.” <i>Id.</i> at 104.</p>
<b>Wisconsin</b>	<p>Wis. Stat. § 111.32 (employment discrimination); Wis. Stat. § 106.50(g) (housing discrimination)</p>	<p>§ 111.32 When used in this subchapter: ...</p> <p>“Individual with a disability” means an individual who: (a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work; (b) Has a record of such an impairment; or (c) Is perceived as having such an impairment.</p> <p>§ 106.50(g) In this section: ...</p> <p>“Disability” means a physical or mental impairment that</p>	<p>State law tracks federal statutory language.</p>	<p>Although the language of Wisconsin’s statute and the ADA is identical, a recent district court case expressly delineated the difference between the state and federal laws:</p> <p>“The goals of the ADA and the Wisconsin Fair Employment Law in regards</p>

		substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment.		to the rights and protections of employees with disabilities are essentially the same. However, the definitions of a person with a disability, although very similar between the WFEA and the ADA, are obviously not identical. Under the WFEA, the impairment must affect the individual's "capacity to work," whereas under the ADA the impairment must limit "one or more of the major life activities" of the individual. Further, there is a distinction in the degree of the impairment. Under the WFEA, the impairment must make "achievement unusually difficult or limit[ ]" the [individual's] capacity for work" whereas under the ADA the impairment must "substantially limit" the life activities of the individual." <i>Fair v. Basic Metals, Inc.</i> , slip copy, 2007 WL 1847282, p 4. (U.S.D.C., E.D. Wisc. 2007).
<b>Wyoming</b>	Rules of Practice and Procedure Before the Wyoming Fair Employment Commission (WFEC)	Rules of Practice and Procedure, Ch. X, § 3: ... a) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.  (b) "Physical or mental impairment" means any mental	WFEC definitional guidelines track federal statutory definition; however, state statute pertains specifically to employment and references reasonable accommodation.	Unlike the ADA, Wyoming's law does not exclude drug addiction and alcoholism from its definition of disability.  "Drug addiction and alcoholism are "physical or mental impairments" ... and

	<p>Concerning Handicap Discrimination Complaints Filed Pursuant to the Fair Employment Practices Act of 1965 as Amended, Ch. X, § 3 (adopting federal definition); Wyo. Stat. § 27-9-105 (no definition).</p>	<p>retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.</p> <p>§ 27-9-105: As used in this section: ...</p> <p>“Qualified disabled person” means a disabled person who is capable of performing a particular job, or who would be capable of performing a particular job with reasonable accommodation to his disability.</p>		<p>therefore employees addicted to drugs and/or alcohol are handicapped if their impairment substantially limits one of their major life activities and have a record of such impairment or are regarded as having such an impairment.” <i>World Mart, Inc. v. Ditsch</i>, 855 P.2d 1228, 1233 (1993).</p>
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