Navigating the Workplace with Invisible Disabilities

Kimberley Spire-Oh, Esq.
and
Jaime Sagona, M.A.
What are invisible disabilities?

- Epilepsy
- ADHD
- Asperger’s
- Autoimmune Diseases
- Traumatic Brain Injuries
- Some learning disabilities
- Depression, anxiety, OCD
- Diabetes
- HIV/AIDS
- Some visual and hearing impairments
- Sleep disorders...

Any disability that is not immediately apparent to others.
Prevalence

10% of the population is estimated to have invisible disabilities.
Symptoms of Invisible Disabilities

- Debilitating pain
- Difficulty concentrating
- Dizziness
- Fatigue
- Cognitive dysfunction
- Learning differences
- Emotional dysregulation
- Brain injury
What is a Disability?

Not all medical conditions are considered disabilities.

Under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, a disability is a physical or mental impairment that substantially limits a major life activity.
Having a disability does not mean a person is unable to achieve a full and meaningful life.
Invisible Disabilities and Employment

- Most people with invisible disabilities are able to work in a variety of types of jobs and careers.
- Neither the symptoms nor the treatments for them prevent most people from being productive employees.
Invisible Disabilities and Employment

Some people with invisible disabilities may need accommodations on the job to assist them in working to their full potential.
Invisible Disabilities, Employment, and Discrimination

- Stigma
- Lack of Understanding
- Fear
- Perception of additional costs
- Liability concerns
- Belief that the person is not actually disabled
Invisible Disabilities and Unemployment

Because *Invisible Disabilities* comprise such a large and loosely-defined group, there are no statistics covering the whole range of invisible disabilities.
Generally, individuals with disabilities had a 34% employment rate in 2013.

In 2008 it was documented that the unemployment rate for people with epilepsy was between 13% to 25%, and could be as high as 34%.
Causes of Unemployment

- Discrimination
- Too sick/unwell to work
- Lack of supports
- Loss of morale/motivation
Barriers You May Encounter

- Fear
- Concern about safety risks
- Lack of knowledge about condition
- Expectation of greater costs (accommodation, insurance)
- Lack of necessary accommodation if condition not disclosed
- Resentment from managers or coworkers
- Lowered expectations for person with disability
Possible Resentment

- From supervisors that they have to provide accommodations for you.
- From coworkers who have to rotate shifts while you don’t.
- From other employees if you receive more breaks or time off.
Risks of Nondisclosure

- May overload yourself and worsen your condition if you do not request necessary accommodations
- May be discounted or poorly evaluated if there are any areas where your performance is impacted by your disability
- Won’t have legal protections against discrimination
Protections

- The **Americans with Disabilities Act (ADA)** and its amendments, as well as **Section 504 of the Rehabilitation Act**, protect workers with invisible disabilities.
Americans with Disabilities Act

- Protects qualified individuals
- Prohibits discrimination
- Requires employers to provide reasonable accommodations to otherwise qualified employees/candidates.
Section 504 of the Rehabilitation Act

- Works in coordination with the ADA, but applies to programs and activities that receive federal funding.
- The same requirements exist under both laws in terms of who is protected and what protections are offered.
Legal Protections

**Key Terms:**
- Otherwise qualified
- Major job functions
- Reasonable accommodations
- Undue burden

- Limitation: Does not apply to employers with less than 10 employees (but related municipal ordinances may extend protection)
Otherwise Qualified

Employees must be able to perform the **major job duties** and have the required qualifications for the position.
Reasonable Accommodations

- Modifications to application process to allow individuals with invisible disabilities to be considered for jobs

- Job accommodations made to allow individuals with invisible disabilities to enjoy equal benefits and privileges of employment
Interactive Accommodation Process

- Both employee and employer involved.
- Identify “effective” accommodations
- Medical documentation and recommendations
Effects of Invisible Disabilities on Workers

- Memory/Cognitive Abilities
- Time Management
- Stress Management
- Driving
- Balance/Climbing
- Fatigue
- Photosensitivity/Sensory Issues
- Absenteeism
- Personal care after seizures
Examples of Accommodations for Cognitive Impairments

- Cognitive Impairments: memory, time management, stress management
- Provide the employee directory with pictures
- Divide large assignments into several small tasks
- Provide written/oral instructions
- Modify work schedule
Examples of Accommodations for Motor Impairments

- Motor Impairments: driving, balancing/climbing, fatigue, safety
- Allow telework from home
- Use rolling safety ladders
- Use anti-fatiguing matting on floor
- Adjust work week
Accommodations for Attendance and Personal Care

- Flexible Schedule
- Work a straight shift instead of rotating shifts
- Provide a private space to regain composure and perform self-care tasks
Examples Accommodations for Sensory Impairments

- Sensory Impairments: photosensitivity, difficulty seeing/hearing/communicating
- Use a monitor glare guard
- Provide alternate light sources
Additional Accommodations

- Training refreshers, memory aids
- Breaks
- Executive functioning supports
- Work schedule adjustment/Telework
- Removal of non-essential functions, such as climbing ladders
- Special guardrails, safety equipment
- Assistance animals
Undue Burden

- Financial or administrative burden that could threaten the business
- But potential sources of outside funding are considered
Hardship Considerations

- Nature and cost of the accommodation;
- Overall financial resources of the facility;
- Overall financial resources of the employer (if the facility involved is part of a larger entity);
- The type of operation of the employer;
- The impact of the accommodation on the operation of the facility.
Invisible Disabilities in the Workplace

There are limits to the questions employers are allowed to ask during the interview process, and all must be related in some way to the ability of the candidate to perform the job.
Invisible Disabilities in the Workplace

- Employees with *invisible disabilities* do not have to disclose their diagnosis unless they are using it as the basis to request an accommodation. There are pros and cons to disclosing and to keeping your condition secret.

- Employers must keep employee health information that is disclosed confidential and only make it available to staff who need to know.
Pros to Disclosure

- Gives you protection against discrimination.
- Gives you the ability to ask for accommodations if you need them.
- Gives you protection in case your disability affects your job performance.
- In case your disability becomes apparent, it does not look like you were withholding information.
Cons to Disclosure

- Potential for discrimination
- Could change interaction with peers and supervisors.
- It could be used against you.
When to Disclose

- Unless you need accommodation during the hiring process, withhold it until a job offer is made because you don’t want it to be part of the hiring decision.
- Disclose before a drug test if you think any medications you may be taking may affect the results.
How to Disclose

- Request a private meeting with a manager or someone in human resources.
- The more confident, well-informed, and relaxed you are, the more reassured your employer will be.
How to Disclose

- Prepare what you are going to say ahead of time.
- Practice the disclosure discussion with someone you trust.
- Always keep it positive!
What to Disclose

- Make sure to explain the condition that you have and how it affects (and doesn’t affect) you.

- Explain what your condition looks like and what you might need.
What to Disclose

- General information about your condition
- Why you are disclosing your condition
- How your condition affects your ability to perform key job tasks
What to Disclose

- Types of accommodations that have worked for you in the past
- Types of accommodations you anticipate needing
Invisible Disabilities and Working

- Dealing with lack of public knowledge/stigma
- Educating people that you work with
- Establishing routines and learning to avoid triggers that exacerbate your condition
- Dealing with the side effects of treatments
- Adaptations and coping mechanisms for some of the limitations
Missing Work and Your Rights

- Some people with *invisible disabilities* are able to work without interruption.
- Other people may miss work because of doctor’s appointments, changes in medications, or illness.
Missing Work and Your Rights

- Some people with *invisible disabilities* are afraid that they will lose their jobs if they take time off.
- It just may take some advanced planning to insure you are protected when you are absent.
Family and Medical Leave Act (FMLA)

- Certain individuals with disabilities who work for employers who have 50 or more employees within a 75-mile radius may be entitled to up to 12 weeks of unpaid medical leave per 12 months.
- Must have worked for employer for at least 1250 hours in past 12 months.
- Must provide medical documentation.
Complaints regarding disability discrimination in the workplace can be directed to the Equal Employment Opportunity Commission (EEOC)

- Charge may be filed up to 180 days after incident (Federal employees have 45 days to contact counselor)
- Complaints may also be filed for retaliation against someone engaged in advocacy on behalf of someone with a disability or for discrimination against family members of someone with disability
Programs to Employ People with Invisible Disabilities

State Division of Vocational Rehabilitation
http://www.rehabworks.org/

Sample services:

- Medical and Psychological Assessment
- Vocational Evaluation and Planning
- Career Counseling and Guidance
- Training and Education After High School
- Job-Site Assessment and Accommodations
- Job Placement and Coaching
- On-the-Job Training
- Supported Employment
- Assistive Technology and Devices
- Time-Limited Medical and/or Psychological Treatment
The Epilepsy Foundation received a $350,000 three-year grant from the U.S. Dept. of Labor in 2002.

The grant was to train people with epilepsy in high demand technology skills.

The project was conducted in Camden, NJ, Mobile, AL, Rockford, IL, and Kansas City, MO.
In Florida

- Division of Vocational Rehabilitation, Florida Department of Education
  http://www.rehabworks.org/
- Florida Epilepsy Services
  http://www.epilepsyservices.com/
People with invisible disabilities can have a productive and fulfilling work life.

They need to be aware of what they need to be successful.

They need to self-advocate.
Resource Websites

- Brain Injury Association of America, http://www.biausa.org/
Resource Websites

- Children and Adults with Attention-Deficit Hyperactivity Disorder (CHADD), http://www.chadd.org/Advocacy/Employment.aspx
Employment Resources

- CareerSource
  http://www.floridajobs.org/onestop/onestop dir/
- Vocational Rehabilitation,
  http://www.rehabworks.org/
- University of Washington, Disabilities, Opportunities, Internetworking, and Technology (DO-IT),
  http://www.washington.edu/doit/resources/popular-resource-collections/invisible-disabilities
Contact Information

If you would like more information, please feel free to contact us:

Kimberley Spire-Oh, Esq.
2749 Exchange Court
West Palm Beach, FL 33409
(561) 307-9620
kimberley@ksolawfirm.com

Jaime Sagona, M.A.
(407) 319-3049
Jaime.Sagona@gmail.com
Citations

- Disability Statistics: https://www.disabilitystatistics.org/reports/acs.cfm?statistic=2
- Family Medical Leave Act: http://www.dol.gov/whd/fmla/
- Foundation Gets U.S. Labor Department Grant to Train People with Epilepsy in Technology-Based Job Skills http://www.benderconsult.com/articles/foundation-gets-us-labor-department-grant-train-people-epilepsy-technology-based-job-skills
Citations, continued

- **Unemployment Statistics**
  
  http://books.google.com/books?id=6Kq4Zt2KOpcC&pg=PA2253&lpg=PA2253&dq=epilepsy+employment+statistics&source=bl&ots=qG03sNNNY_&sig=e9Jpim5YCKmssnJ0lr0WazzPxHA&hl=en&sa=X&ei=8kfMUtqHEufgsAT5roKwDQ&ved=0CFcQ6AEwBA#v=onepage&q=epilepsy%20employment%20statistics&f=false

- **Reasonable Accommodations**
  
  Source: The Epilepsy Foundation
  
  http://old.epilepsyfoundation.org/living/wellness/employment/accommodation.cfm#.U0Cy_SiwVGg
  
  Source: Job Accommodation Network,
  
  http://askjan.org/media/epilepsy.html

- **Hardship Considerations**
  
Citations, continued

- Cons to Disclosure
  http://www.epilepsyfoundation.org/livingwithepilepsy/employmenttopics/disclosing.cfm

- How to Disclose
  http://www.epilepsyfoundation.org/resources/employmenttopics.cfm