

Enrolled
House Bill 2111

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

CHAPTER

AN ACT

Relating to determination of substantial limitation to major life activity; amending ORS 659A.104.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 659A.104 is amended to read:

659A.104. (1) An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the individual meets any one of the following criteria:

(a) The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) The individual has a record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph, an individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) The individual is regarded as having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph:

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(2) Activities and functions that are considered major life activities for the purpose of determining if an individual has a disability include but are not limited to:

- (a) Caring for oneself;
- (b) Performing manual tasks;
- (c) Seeing;
- (d) Hearing;
- (e) Eating;
- (f) Sleeping;
- (g) Walking;
- (h) Standing;
- (i) Lifting;
- (j) Bending;
- (k) Speaking;

- (L) Breathing;
- (m) Learning;
- (n) Reading;
- (o) Concentrating;
- (p) Thinking;
- (q) Communicating;
- (r) Working;
- (s) Socializing;
- (t) Sitting;
- (u) Reaching;
- (v) Interacting with others;
- (w) Employment;
- (x) Ambulation;
- (y) Transportation;
- (z) Operation of a major bodily function, including but not limited to:
 - (A) Functions of the immune system;
 - (B) Normal cell growth; and
 - (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and
- (aa) Ability to acquire, rent or maintain property.

(3) An individual is substantially limited in a major life activity if the individual has an impairment, had an impairment or is perceived as having an impairment that [*materially*] restricts one or more major life activities of the individual **as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.** An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual. An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active. **Nonetheless, not every impairment will constitute a disability within the meaning of this section.**

(4) When determining whether an impairment substantially limits a major life activity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

- (a) Medication;
- (b) Medical supplies, equipment or appliances;
- (c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;
- (d) Prosthetics, including limbs and devices;
- (e) Hearing aids, cochlear implants or other implantable hearing devices;
- (f) Mobility devices;
- (g) Oxygen therapy equipment or supplies;
- (h) Assistive technology;
- (i) Reasonable accommodations or auxiliary aids or services; or
- (j) Learned behavioral or adaptive neurological modifications.

(5) Nothing in subsection (4)(c) of this section authorizes an employer to use qualification standards, employment tests or other selection criteria based on an individual's uncorrected vision unless the standard, test or other selection criteria, as used by the employer, are shown to be job-related for the position in question and is consistent with business necessity.

Passed by House March 25, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 2, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State