



Direct Threat Defense

Note: This information does not constitute legal advice. The law is constantly changing and application of the ADA depends on the specific circumstances of each case. Consult an attorney when faced with legal issues.

What is a direct threat?

- Direct threat is a defense that employers may raise to a charge of employment discrimination against persons with disabilities.
- In some instances, a person's limitations may pose a direct threat to the health and safety of others in the workplace. Where there is no reasonable accommodation available that can negate that threat, employers may use the direct threat defense
- An employer may refuse to hire someone who would pose a direct threat to the health of safety of themselves and others in the workplace.

How is direct threat assessed?

- Whether an individual poses a direct threat cannot be based on speculation or stereotypes about disability. The assessment of whether an individual poses a direct threat must be based on medical knowledge and/or objective evidence. For example: Having a history of tuberculosis, a contagious disease, is not in of itself a direct threat to the health of others. A judgment of direct threat must be based on medically sound evidence.
- Factors that may be considered in assessing direct threat:
 1. The significance of the risk;

2. The nature and severity of the potential harm;
 3. The likelihood the potential harm will occur; and
 4. The imminence of the potential harm.
- Where there is a significant risk of substantial harm to health and safety, the employer must consider whether there is a reasonable accommodation that could eliminate or reduce the risk to less than a direct threat.
 - For example, adopting universal precautions – which an employer should already be implementing – may significantly reduce the risk of transmission of HIV.
 - Whether a person poses a direct threat must be considered on an individual basis and cannot be based on stereotypes or generalizations about an employee's medical condition.
 - An employer may also not make decisions based on fears or stereotypes of employees or clients. For example, an employer may not terminate a daycare worker who is HIV positive merely because parents might avoid sending their children to the daycare based on unfounded fears and stereotypes.
 - An example of a time when a disability posed a direct threat:
 1. A surgeon had bipolar disorder which caused him to lose focus during surgery and be unable to complete procedures. He posed a threat to the safety of patients and no reasonable accommodation was available because it was not practical to call in another specialized surgeon and a general surgeon could not perform the procedure.
 - An example of a time when disability did not pose a direct threat:
 1. A dental patient who had HIV was improperly refused treatment because her HIV did not pose a direct threat to the health or safety of others.