# Control Issues

Your health’s back. Now you may lose your disability protection

July 1, 1997 By Laurence R. Helfer

---

A sea change in the perception of HIV is under way. It’s well known by now that three-drug protease cocktails dramatically improve the health of many who, just yesterday it seems, were gravely ill. But less widely reported is the effect these drugs may have on the Americans with Disabilities Act (ADA), the law that prohibits discrimination on the basis of disability. Anyone worried about keeping a job, obtaining health care or accessing government programs should know how to help ensure the act continues to make HIV-based bias illegal.

The issue is, should a disability be measured with or without considering whether the person’s illness can be controlled by medication? The Equal Employment Opportunity Commission (EEOC), the government agency charged with interpreting the ADA, believes that disability status should be determined “without regard to mitigating measures such as medicines.” Early federal court decisions agreed, based on the view that HIV infection leads to progressive illness and death. But in the last year, several judges have changed course, arguing that a drug-controlled illness is not a disability if it does not limit major life activities. Under these rulings, plaintiffs with diabetes, high blood pressure and vision problems have failed to qualify as disabled. But other courts still respect the EEOC interpretation, and the Supreme Court will likely soon decide to resolve the conflict.

Although no court has considered this issue as it applies to HIV, the new, stricter reading raises a red flag. Now that the protease drugs can reduce virus to undetectable levels, employers may also try to argue that without HIV in the blood, there is no illness or disability. There are a number of ways that HIV positive people who believe they have been discriminated against can fight back. HIV is not (yet) a drug-controlled illness like diabetes: The new treatments are still in their infancy, and whether their effects will last remains unknown. For some people, the drugs pack little or no anti-HIV punch, or cause intolerable side effects. As a result, people on protease who continue to have OIs or side effects that limit their activities will not be barred from bringing a lawsuit.

But what if the cocktail makes symptoms vanish? One way around the problem is to show past AIDS-related disability. The ADA protects not only the currently disabled but those who have a history of impairment yet are not currently ill. So if the drugs work their magic, a record of past illness may itself be enough to claim ADA protection. Even some conservative federal judges stress the act’s focus on the “intermittent manifestation” of OIs rather than on HIV infection per se.

The ADA also protects people who do not meet the definition of disability but are “regarded as” disabled and discriminated against as a result. This aspect of the statute is designed to dispel baseless stereotypes about illness and disease that harm in the same way as racism and sexism. If an employer, health care professional or government official treats an asymptomatic HIV positive person as if he or she is disabled, all ADA remedies for illegal discrimination apply with full force.

Like many features of the post-protease environment, the legal landscape remains fluid. But as the courts continue to debate the issue, and the drugs’ long-term effects become clearer, one thing is certain: HIV positive people, whatever their health status, should know their rights under the ADA and use every available argument to battle bias.

---

© 2026 Smart + Strong All Rights Reserved.
http://beta.docker.poz.com/article/Control-Issues-14166-2452