

The ADAAA of 2008

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ADA Amendments Act of 2008

- Signed into law on Sept. 25, 2008
- Effective on Jan. 1, 2009
- Purpose: Restore intent of the original Americans with Disabilities Act and overturn 4 U.S. Supreme Court decisions that narrowed the interpretation of the ADA

Original ADA – July 1990

■ Employer Challenges

- Law dealt with abstracts and concepts rather than bright line rules
- Coverage so imprecise that it led to charges by persons with temporary or minor conditions

■ Employee Challenges

- Being disabled enough to be protected, but not so disabled as to be unqualified and unprotected, was a near-impossible needle to thread
- Employers won 90% of cases (often dismissed on summary judgment without a trial)

ADAAA Purposes

- **Change the focus of ADA cases to whether the Employer met its obligations rather than whether the employee was truly “disabled”**
- Have EEOC change regulations for a less demanding standard for “substantially limiting”
- Remove original ADA’s overly limiting introductory statements about “43,000,000” disabled Americans that are a “discrete and insular minority.”

1. Definition of Disability

- Retains 3 categories
 - Having an actual physical or mental impairment that substantially limits one or more major life activities
 - Having a record of such an impairment
 - Being regarded as having such an impairment*
- Requires broad application for who is covered by these categories

1. Definition of Disability

- Episodic impairments, or impairments in remission = Disability if the impairment would substantially limit a major life activity when the impairment is active.
- Modifies the 3rd Category – Regarded As
 - Regarded as having an actual or perceived physical or mental impairment--whether or not the impairment limits or is perceived to limit a major life activity (Overrules *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999))
 - Does not apply to minor **and** transitory (expected or does last 6 months or less) impairments
 - Does not require Reasonable Accommodation

2. Substantially Limits

- Overruled Case Law Re: Mitigating Measures
 - *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) (substantial limitation is determined after taking into account mitigating measures)
 - *Murphy v. UPS*, 527 U.S. 516 (1999)
 - *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555 (1999)
 - Exceptions: Ordinary eyeglasses/contacts
- Overruled Case Law Re: Degree of Limitation
 - *Toyota Motor Mfg, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
- Substantial Limit on one major life activity is sufficient
- Directs EEOC to revise regulations on “substantially limits”

3. Major Life Activity

- Adds List of MLAs to the Statute – Includes new ones not in current Regulations
- Adds the Operation of MBFs (Major Bodily Functions) as MLAs

4. Reasonable Accommodations

- Clarifies: No obligation to Reasonably Accommodate a “Regarded As” Disability as you must do for an actual disability

5. Qualified

- Burden to prove the individual with a disability is “qualified” for the job remains on the Employee/Applicant

6. Reverse Discrimination

- Clarifies that no claims for reverse disability discrimination are allowed under the ADA

To-Do List

1. Review existing policies to be sure definitions included in them are in concert with the new definitions in the ADAAA
2. Focus on Reasonable Accommodations.
 - a. Consider a separate R.A. policy (including procedures)
 - b. Reconsider previously denied R.A. requests in light of ADAAA's changes
 - c. Revise training to cover R.A. in more depth

To-Do List

3. Review training for compliance with ADAAA – including “Regarded As” concerns
4. Review and update Job Descriptions (esp. essential functions)
5. Stay alert for new EEOC Regulations on ADAAA
6. Anticipate more complaints, litigation, and costs for disability and R.A. issues