

Americans with Disabilities Act as Amended (ADAAA) Regulations Summary of Changes

Comparison of the ADA (as construed by the courts) and the ADA Amendments Act (ADAAA)*

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the first major revision to the Americans with Disabilities Act (ADA) of 1990, was effective on January 1, 2009. Equal Employment Opportunity Commission's (EEOC) final regulations to implement the equal employment provisions of the ADAAA are effective May 24, 2011. The law effectively overturned several court decisions and parts of EEOC regulations that limited the Act's coverage. The legislation and final regulations redefine "disability" so that more individuals receive protection under the law. As a result, the focus for employers has shifted from determining whether an impairment qualifies as a disability to determining if a reasonable accommodation is required or whether discrimination occurred.

Issue	ADA (as construed by the courts)	ADAAA <u>Final Regulations</u>
<i>Scope of the Definition of Disability</i>	<ul style="list-style-type: none"> • The ADA defined a "disability" as a physical or mental impairment that substantially limits a major life activity of an individual, a record of such impairment, or being regarded as having such impairment. • The Supreme Court narrowly defined disability in the ADA based, in part, on the Congressional findings that "some 43,000,000 Americans have one or more physical or mental disabilities." • The courts construed this definition to exclude a range of individuals from coverage including those with: diabetes, epilepsy, cancer, muscular dystrophy, and artificial limbs. 	<ul style="list-style-type: none"> • Retains same three-prong definition of disability (actual disability, record of disability, and regarded as disabled). • States that the definition of disability shall be construed in favor of broad coverage of individuals, to the maximum extent permitted by the ADA. • Provides rules to identify disabling impairments that do not require extensive analysis or application of principles. • Identifies examples of specific impairments that should easily be concluded to be disabilities (e.g., deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia).

<p>Mitigating Measures</p>	<ul style="list-style-type: none"> • The Supreme Court narrowed the group of people covered under the ADA by ruling that mitigating measures (such as medication or devices) were to be taken into account in determining whether a person was substantially limited in a major life activity. 	<ul style="list-style-type: none"> • Provides that the determination of whether an impairment substantially limits a disability shall be made without regard to the effects of mitigating measures, such as medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, or oxygen therapy equipment. • Makes an exception for “ordinary eyeglasses or contact lenses,” which may be taken into account.
<p>“Substantially Limits”</p>	<ul style="list-style-type: none"> • Required an individual assessment to determine whether an impairment “substantially limits” a major life activity. • The Supreme Court held that an impairment “substantially limits” a “major life activity” if it “prevents or severely restricts the individual” from performing the activity. • The Supreme Court further concluded that the terms “substantially limits” and “major life activity” must be “interpreted strictly to create a demanding standard for qualifying as disabled.” 	<ul style="list-style-type: none"> • Retains requirement for an individualized assessment. • Provides that an impairment does not need to prevent or severely or significantly restrict a major life activity to be consider “substantially limiting.” • Requires that the term “substantially limits” be construed broadly in favor of expanded coverage to the maximum extent permitted by the ADA.
<p>The “Major Life Activity” Requirement</p>	<ul style="list-style-type: none"> • The Supreme Court held that a “major life activity” must be an activity “of central importance to most people’s daily lives.” • EEOC regulations defined “major life activity” as including such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working • The ADA was interpreted to require, for an individual to show substantial limitation in the area of working, that the person demonstrate inability to perform a broad range or class of jobs. 	<ul style="list-style-type: none"> • Added the following to the non-exhaustive list of major life activities: standing, sitting, reaching, lifting, bending, speaking, breathing, reading, concentrating, thinking, communicating, and interacting with others. • Specifies that “major life activity” includes “the operation of major bodily functions” such as: the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. • Specifies that operation of a major bodily function includes the operation of an individual organ within a body system.

<p><i>Episodic Conditions and Multiple Major Life Activities</i></p>	<ul style="list-style-type: none"> • The ADA was interpreted to require that: <ul style="list-style-type: none"> ➤ Individuals must be limited in more than one major life activity to have a disability. ➤ Episodic or intermittent impairments, such as epilepsy or post-traumatic stress disorder, are not covered under the law. 	<ul style="list-style-type: none"> • Specifies that an impairment that substantially limits one major life activity need not also limit other life activities in order to be considered a disability. • Clarifies that an impairment that is episodic or in remission is a disability, if the impairment would substantially limit a major life activity when active.
<p><i>Regarded as Having a Disability</i></p>	<ul style="list-style-type: none"> • The ADA covered people who were “regarded as” having impairments that substantially limit one or more major life activities. 	<ul style="list-style-type: none"> • Provides that an individual can establish coverage under the “regarded as” prong by showing that he or she was subjected to an action prohibited by the ADA, based on an actual or perceived impairment, <i>regardless of whether the impairment limits a major life activity.</i> • Clarifies that individuals covered under the “regarded as” definition are not entitled to reasonable accommodation. • Clarifies that an individual is not “regarded as” impaired because of a transitory or minor impairment. Defines “transitory impairment” as one with an actual or expected duration of 6 months or less.
<p><i>Regulatory Authority</i></p>	<ul style="list-style-type: none"> • The Supreme Court has held that “no agency has been delegated authority to interpret the term “disability” through regulations.” 	<ul style="list-style-type: none"> • The EEOC issued the final regulations through the authority expressly granted in the ADAAA and assumes responsibility for enforcement.

* Excerpts taken from a document courtesy of the Georgetown Law Federal Legislation and Administrative Clinic