

Americans with Disabilities Act

ADA Amendments Act



ADA = Civil Rights

What is the ADA?

- ▶ Americans with Disabilities Act, passed in 1990
- ▶ Federal CIVIL RIGHTS legislation that says it is illegal to discriminate against people with disabilities in employment, state and local government services, private businesses, telecommunications and transportation
- ▶ **Goal:** The full inclusion of people with disabilities in all aspects of American society

Why was the ADA needed?

Think back to before 1990...

- There were fewer curb cuts
- Many businesses were not accessible
- People with disabilities were rarely seen in advertisements and TV shows
- Interpreters were rarely used at public events
- People with disabilities were excluded from many activities due to barriers

In summary: Legislative timeline



1964—Civil Rights Act (did not include disability)

1968—Architectural Barriers Act (ABA)

1973—Rehabilitation Act (amended 1998—Section 508)

1975—Individuals with Disabilities in Education Act (IDEA)

1976—Higher Education Act Amendment (to include students with disabilities)

1986—Air Carrier Access Act

1988—Fair Housing Amendments Act

1990—Americans with Disabilities Act (ADA)

2008—ADA Amendments Act signed into law

Who is “covered” (must comply with) the ADA



- ▶ Entities with 15 or more employees
- ▶ Federal, State and Local Governments
- ▶ Private Employers
- ▶ Employment Agencies
- ▶ Labor Unions / Organizations
- ▶ Labor Management Committees

Exempt: Private clubs and religious organizations

The ADA (1990)



ADA disability definition based on the 1973 Rehabilitation Act

1. An individual who has a physical or mental impairment that substantially limits one or more major life activities
2. An individual who has a record of such an impairment
3. An individual who is regarded as having such an impairment

The ADA (1990)



A mental impairment is defined by the ADA as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Five Titles of the ADA

Title 1. Employment

Prohibits disability discrimination in all employment processes

Title 2. Accessibility in public entities

Physical and program accessibility in state/local govt. entities

Title 3. Accessibility in businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

Title 4. Telecommunications

Telephone and communications systems for the public

Title 5. Miscellaneous

Protection from retaliation



What is the ADAAA?

- ▶ Americans with Disabilities Act Amendments Act (ADAAA) 2008
- ▶ Overall purpose -- “To restore the intent and protections of the Americans with Disabilities Act of 1990”
- ▶ Effective January 1, 2009
- ▶ Regulations effective as of May 24, 2011

So why was the ADAAA passed?



U. S. Supreme Court rulings narrowed the definition of disability such that:

- ▶ Focus of attention more on whether the individual has a disability instead of on the alleged discrimination event
- ▶ The Supreme Court's decisions construed the term "disability" too narrowly resulting in fewer individuals included under its protections
- ▶ The EEOC's current regulation defining "substantially limits" as "significantly restricted" expresses too high a standard and is inconsistent with Congressional intent

How the ADAAA changed the definition of disability?



- ▶ Restored the definition (and protection) to the original intent of Congress in 1990
- ▶ Definition itself did not change
- ▶ Interpretation of the phrases in definition changed
 - ▶ Mitigating measures
 - ▶ Episodic conditions
 - ▶ Some impairments considered disability without extensive analysis
 - ▶ Broadened protections under “Regarded as”¹²

Remember this definition?

The ADA (1990)



ADA disability definition

based on the 1973 Rehabilitation Act

An individual who has a physical or mental impairment that substantially limits one or more major life activities

1. An individual who has a record of such an impairment
2. An individual who is regarded as having such an impairment

Expanded Definition of Disability under the ADAAA

- ▶ Now impairment need not prevent, significantly or severely restrict the performance of a major life activity.
- ▶ Now, disability “shall be construed in favor of broad coverage “ and “ should not require extensive analysis”

Major Goals of New Legislation

- ▶ To restore the ADA's broad protections as intended by Congress
- ▶ To reject the Supreme Court's view that "disability" should be determined taking into consideration the effects of mitigating measures
- ▶ To reject the Supreme Court's holding that the ADA requires a "demanding standard" for establishing coverage and requires that an impairment "severely restrict" major life activities

Statutory Changes to Definition of “Disability”

- ▶ “Substantially limited” redefined
- ▶ Major life activities include “major bodily functions”
- ▶ Effects of mitigating measures (other than ordinary eyeglasses or contact lenses) cannot be considered in determining “disability”
- ▶ Impairment that is episodic or in remission is a **disability** if it would be “substantially limiting” when active

Examples of Impairments That Will “Consistently Meet the Definition of Disability”

- ▶ Due to lower substantially limits standard, new mitigating measures rule, inclusion of major bodily functions as major life activities, and new episodic/in remission rule for some types of impairments, “the individualized assessment of the limitations on a person can be conducted quickly and easily” and they will “consistently meet the definition of disability”
- ▶ Examples include deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia

Examples of Impairments that May Be Disabling for Some Individuals But Not For Others

- ▶ Impairments such as asthma, back and leg impairments, carpal tunnel syndrome, and learning disabilities
- ▶ May require somewhat more analysis to determine whether they are substantially limiting for a particular individual
- ▶ Level of analysis still should not be extensive

Examples of Impairments that Usually Will Not Be Disabilities

Temporary, non-chronic impairments of short duration with little or no residual effects are usually not disabilities:

the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely

Major Life Activities

- ▶ Write down 5 different activities that you did this morning that involve a major life activity.

hint: Seeing and hearing are major life activities.

Major Life Activities

These are basic activities that the average person in the general population can perform with little or no difficulty.

- ▶ Caring for Oneself
- ▶ Performing Manual Tasks
- ▶ Seeing
- ▶ Hearing
- ▶ Eating
- ▶ Sleeping
- ▶ Walking
- ▶ Standing
- ▶ Lifting
- ▶ Bending

Major Life Activities continued

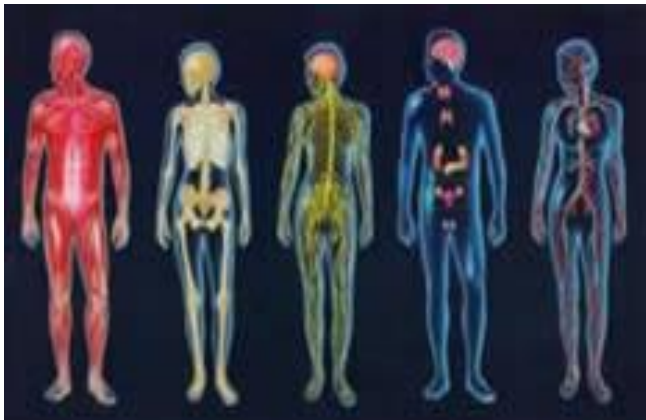
- ▶ Thinking
- ▶ Communicating
- ▶ Sitting
- ▶ Reaching
- ▶ Interacting with Others
- ▶ Working
- ▶ Breathing
- ▶ Learning
- ▶ Reading
- ▶ Concentrating
- ▶ Thinking
- ▶ Speaking

Under the ADAAA, 'major life activities' is expanded to include "major bodily functions."

- ▶ Immune system
- ▶ Normal cell growth
- ▶ Digestive
- ▶ Bowel
- ▶ Bladder
- ▶ Brain
- ▶ Circulatory
- ▶ Cardiovascular systems
- ▶ Neurological

Major Bodily Functions continued

- ▶ Respiratory
- ▶ Endocrine
- ▶ Lymphatic
- ▶ Musculoskeletal
- ▶ Special sense organs and skin
- ▶ Genitourinary
- ▶ Reproductive functions



New Standard

Episodic Disabilities:

- epilepsy
- hypertension
- multiple sclerosis
- asthma
- diabetes
- major depression
- bipolar disorder
- schizophrenia
- cancer

Considered a disability even in remission, if when active would be substantially limiting

Factors to Consider When Determining Whether a Person's Impairment Substantially Limits a Major Life Activity

- Its nature and severity
- How long it will last or is expected to last
- Its permanent or long term impact, or expected impact

Mitigating Measure

Any device, measure, or medication that reduces the effects of the disability

Mitigating Measures

Positive effects of mitigating measures (except for ordinary eyeglasses and contact lenses) are ignored in determining whether an impairment is substantially limiting.

ADA Title I - Employment

- ▶ An employer may not discriminate against an employee on the basis of disability in any aspect of the employment relationship.



Relationship or Association

- ▶ Individuals can not be discriminated against because they have a known association or relationship with an individual with a disability also are protected.

Title I ensures that qualified individuals with disabilities:

- ▶ Have comparable access to the employment process
- ▶ Are afforded an interactive process to determine reasonable accommodation
- ▶ Are provided access to all benefits of employment including access to related services (e.g., gym, transportation)



Qualified Individual with a Disability

A qualified individual with a disability means one who satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires, and who:

with or without reasonable accommodation can perform the essential functions of such position.

Essential Functions

The fundamental job duties of the employment position that the individual with a disability holds or desires

Exclusions from the Americans with Disabilities Act

- Illegal drug use
- Voyeurism and Gender Identity Disorders
- Compulsive gambling and Kleptomania

Reasonable Accommodation

- ▶ Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions.
- ▶ Reasonable accommodation also includes adjustments to assure that an individual with a disability has rights and privileges in employment equal to those of employees without disabilities

Examples of Reasonable Accommodation

- ▶ Restructuring a job
- ▶ Modifying work schedules
- ▶ Acquiring or modifying equipment
- ▶ Reassigning to a vacant position
- ▶ Providing qualified readers or interpreters
- ▶ Appropriately modifying examinations, training, or other programs

When is an employer required to make a reasonable accommodation?

- ▶ An employer is only required to accommodate a "known" disability of a qualified applicant or employee.
- ▶ Accommodations must be made on an individual basis
- ▶ If the individual does not request an accommodation, the employer is not obligated to provide one except where an individual's known disability impairs his/her ability to know of, or effectively communicate a need for, an accommodation that is obvious to the employer.

Undue Hardship

- ▶ Undue Hardship is an action that requires significant difficulty or expense in relation to the size of the employer, the resources available, and the nature of the operation.
- ▶ Undue hardship is determined on a case-by-case basis.
- ▶ If a particular accommodation would be an undue hardship, the employer must try to identify another accommodation that will not pose such a hardship.

Enforcement Posting

All Enforcement/Posting Notices must be accessible, as needed, to persons with visual and other reading disabilities.

We are all one illness, accident, or
injury away from being an Individual
with a Disability!

Questions?

