Americans with Disabilities Act of 1990

Parts of this article (those related to documentation) need to be u Learn more

The **Americans with Disabilities Act of 1990** or **ADA** (42 U.S.C. § 12101) is a civil rights law that prohibits discrimination based on disability. It affords similar protections against discrimination to

Americans with disabilities as the Civil Rights Act of 1964,[1] which made discrimination based on race, religion, sex, national origin, and other characteristics illegal, and later sexual orientation. In addition, unlike the Civil Rights Act, the ADA also requires covered employers to provide reasonable accommodations to employees with disabilities, and imposes accessibility requirements on public accommodations.[2]

Americans with Disabilities Act of 1990	
Long title	An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability
Acronyms (colloquial)	ADA
Nicknames	Americans with Disabilities Act of 1989
Enacted by	the 101st United States Congress
Effective	July 26, 1990
Citations	

Public law	101-336
Statutes at Large	104 Stat. 327
Codification	
Titles amended	42 U.S.C.: Public Health and Social Welfare
U.S.C. sections created	42 U.S.C. ch. 126 § 12101 et seq.
Legislative history	

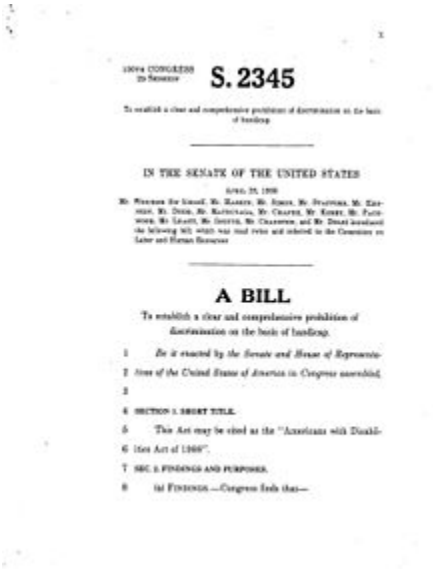
- **Introduced in the Senate as** S. 933 **by** Tom Harkin (D-IA) **on** May 9, 1988
- **Committee consideration by** Senate Labor and Human Resources
- **Passed the Senate on** September 7, 1989 (76–8 Roll call vote 173 , via Senate.gov)
- **Passed the House on** May 22, 1990 (unanimous voice vote)

• **Reported by the joint conference committee on** July 12, 1990; **agreed to by the House on** July 12, 1990 (377–28 Roll call vote 228 , via Clerk.House.gov) **and by the Senate on** July 13, 1990 (91–6 Roll call vote 152 , via Senate.gov) • **Signed into law by President** George H. W. Bush **on** July 26, 1990
Major amendments
ADA Amendments Act of 2008
United States Supreme Court cases
Bragdon v. Abbott *Olmstead v. L.C.* *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*

In 1986, the National Council on Disability had recommended the enactment of an

Americans with Disabilities Act (ADA) and drafted the first version of the bill which was introduced in the House and Senate in 1988. The final version of the bill was signed into law on July 26, 1990, by President George H. W. Bush. It was later amended in 2008 and signed by President George W. Bush with changes effective as of January 1, 2009.[3]

Disabilities included



100TH CONGRESS
2D SESSION

S. 2345

To establish a clear and comprehensive prohibition of discrimination on the basis of handicap.

IN THE SENATE OF THE UNITED STATES

JULY 25, 1988

Mr. WEICKER (for himself, Mr. HARKIN, Mr. KERRY, Mr. STAFFORD, Mr. KENNEDY, Mr. DODD, Mr. RAFFERTY, Mr. CHAFEE, Mr. KOHL, Mr. PACKWOOD, Mr. LEAHY, Mr. JEFFORDS, Mr. CRANSTON, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of handicap.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Americans with Disabilities Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

Americans with Disabilities Act of 1988, S. 2346, Page 1[4]

and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 514. SEPARABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

Thomas S. Foley
Speaker of the House of Representatives.

Dan Quayle
President of the United States and
President of the Senate, pro tempore.

APPROVED
JUL 26 1990

George Bush

Americans with Disabilities Act of 1990, Page 52[5]

One Hundred First Congress of the United States of America

AT THE SECOND SESSION

An Act

Americans with Disabilities Act of 1990, Page 1[5]

ADA disabilities include both mental and physical medical conditions. A condition does not need to be severe or permanent to be a disability.[6] Equal Employment Opportunity Commission regulations provide a list of conditions that should easily be concluded to be disabilities:

deafness, blindness, an intellectual disability (formerly termed mental retardation), partially or completely missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, attention deficit hyperactivity disorder, Human Immunodeficiency Virus (HIV) infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.[7] Other mental or physical health conditions also may be disabilities, depending on what the individual's symptoms would be in the

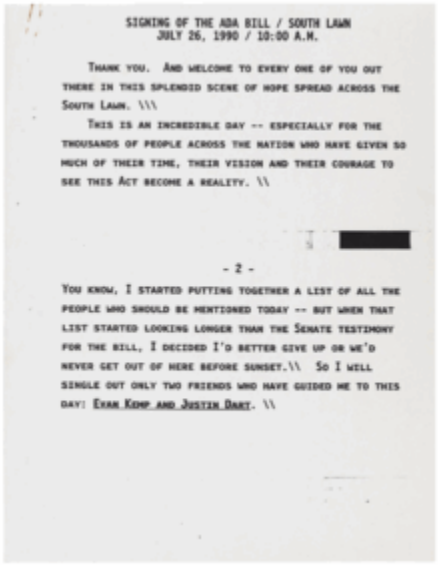
absence of "mitigating measures" (medication, therapy, assistive devices, or other means of restoring function), during an "active episode" of the condition (if the condition is episodic).[7]

Certain specific conditions that are widely considered anti-social, or tend to result in illegal activity, such as kleptomania, pedophilia, exhibitionism, voyeurism, etc. are excluded under the definition of "disability" in order to prevent abuse of the statute's purpose.[8][9] Additionally, gender identity or orientation is no longer considered a disorder and is also excluded under the definition of "disability".[9][10]

Titles

Title I—employment

See also US labor law and 42 U.S.C. §§ 12111 –12117 .



SIGNING OF THE ADA BILL / SOUTH LAWN
JULY 26, 1990 / 10:00 A.M.

THANK YOU. AND WELCOME TO EVERY ONE OF YOU OUT THERE IN THIS SPLENDID SCENE OF HOPE SPREAD ACROSS THE SOUTH LAWN. \\\

THIS IS AN INCREDIBLE DAY -- ESPECIALLY FOR THE THOUSANDS OF PEOPLE ACROSS THE NATION WHO HAVE GIVEN SO MUCH OF THEIR TIME, THEIR VISION AND THEIR COURAGE TO SEE THIS ACT BECOME A REALITY. \\

- 2 -

YOU KNOW, I STARTED PUTTING TOGETHER A LIST OF ALL THE PEOPLE WHO SHOULD BE MENTIONED TODAY -- BUT WHEN THAT LIST STARTED LOOKING LONGER THAN THE SENATE TESTIMONY FOR THE BILL, I DECIDED I'D BETTER GIVE UP OR WE'D NEVER GET OUT OF HERE BEFORE SUNSET.\\ SO I WILL SINGLE OUT ONLY TWO FRIENDS WHO HAVE GUIDED ME TO THIS DAY: EVAN KEMP AND JUSTIN DART. \\

Speech cards used by President George H. W. Bush at the signing ceremony of the Americans with Disabilities Act (ADA) on July 26, 1990[11]

The ADA states that a "covered entity" shall not discriminate against "a qualified individual with a disability".[12] This applies to job application procedures, hiring, advancement and discharge of employees, job training, and other terms, conditions, and privileges of employment. "Covered entities" include employers with 15 or more employees, as well as employment agencies, labor organizations, and joint labor-management committees.[13] There are strict limitations on when a covered entity can ask job applicants or employees disability-related questions or require them to undergo medical examination, and all

medical information must be kept confidential.[14][15]

Prohibited discrimination may include, among other things, firing or refusing to hire someone based on a real or perceived disability, segregation, and harassment based on a disability. Covered entities are also required to provide reasonable accommodations to job applicants and employees with disabilities.[16] A reasonable accommodation is a change in the way things are typically done that the person needs because of a disability, and can include, among other things, special equipment that allows the person to

perform the job, scheduling changes, and changes to the way work assignments are chosen or communicated.[17] An employer is not required to provide an accommodation that would involve undue hardship (significant difficulty or expense), and the individual who receives the accommodation must still perform the essential functions of the job and meet the normal performance requirements. An employee or applicant who currently engages in the illegal use of drugs is not considered qualified when a covered entity takes adverse action based on such use.[18]

There are many ways to discriminate against people based on disabilities, including psychological ones. Anyone known to have a history of mental disorders can be considered disabled. Employers with more than 15 employees must take care to treat all employees fairly and with any accommodations needed. Even when an employee is doing a job exceptionally well, she or he is not necessarily no longer disabled; employers must continue to follow all policies for the disabled.

Part of Title I was found unconstitutional by the United States Supreme Court as it

pertains to states in the case of *Board of Trustees of the University of Alabama v. Garrett* as violating the sovereign immunity rights of the several states as specified by the Eleventh Amendment to the United States Constitution. The Court determined that state employees cannot sue their employer for violating ADA rules. State employees can, however, file complaints at the Department of Justice or the Equal Employment Opportunity Commission, who can sue on their behalf.[19]

Title II—public entities (and public transportation)

Access sign

Title II prohibits disability discrimination by all public entities at the local level, e.g., school district, municipal, city, or county, and at state level. Public entities must comply with Title II regulations by the U.S. Department of Justice. These regulations cover access to all programs and services offered by the entity. Access includes physical access described in the ADA Standards for Accessible Design and

programmatic access that might be obstructed by discriminatory policies or procedures of the entity.

Title II applies to public transportation provided by public entities through regulations by the U.S. Department of Transportation. It includes the National Railroad Passenger Corporation (Amtrak), along with all other commuter authorities. This section requires the provision of paratransit services by public entities that provide fixed-route services. ADA also sets minimum requirements for space layout in order to facilitate wheelchair securement on public transport.[20]

Title II also applies to all state and local public housing, housing assistance, and housing referrals. The Office of Fair Housing and Equal Opportunity is charged with enforcing this provision.

Title III—public accommodations (and commercial facilities)

The ADA sets standards for construction of accessible public facilities. Shown is a sign indicating an accessible fishing platform at Drano Lake, Washington.

Under Title III, no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation. Public accommodations include most places of lodging (such as inns and hotels), recreation, transportation, education, and dining, along with stores, care providers, and places of public displays.

Under Title III of the ADA, all new construction (construction, modification or alterations) after the effective date of the ADA (approximately July 1992) must be fully compliant with the Americans With Disabilities Act Accessibility Guidelines (ADAAG)[11] found in the Code of Federal Regulations at 28 C.F.R., Part 36, Appendix *A*.

Title III also has applications to existing facilities. One of the definitions of "discrimination" under Title III of the ADA is a "failure to remove" architectural barriers in existing facilities. See 42 U.S.C. § 12182(b)(2)(A)(iv) . This means

that even facilities that have not been modified or altered in any way after the ADA was passed still have obligations. The standard is whether "removing barriers" (typically defined as bringing a condition into compliance with the ADAAG) is "readily achievable", defined as "...easily accomplished without much difficulty or expense".

The statutory definition of "readily achievable" calls for a balancing test between the cost of the proposed "fix" and the wherewithal of the business and/or owners of the business. Thus, what might be "readily achievable" for a sophisticated

and financially capable corporation might not be readily achievable for a small or local business.

There are exceptions to this title; many private clubs and religious organizations may not be bound by Title III. With regard to historic properties (those properties that are listed or that are eligible for listing in the National Register of Historic Places, or properties designated as historic under state or local law), those facilities must still comply with the provisions of Title III of the ADA to the "maximum extent feasible" but if following the usual standards would "threaten to destroy the

historic significance of a feature of the building" then alternative standards may be used.

Under 2010 revisions of Department of Justice regulations, newly constructed or altered swimming pools, wading pools, and spas must have an accessible means of entrance and exit to pools for disabled people. However, the requirement is conditioned on whether providing access through a fixed lift is "readily achievable". Other requirements exist, based on pool size, include providing a certain number of accessible means of entry and exit, which are outlined in Section 242 of the

standards. However, businesses are free to consider the differences in the application of the rules depending on whether the pool is new or altered, or whether the swimming pool was in existence before the effective date of the new rule. Full compliance may not be required for existing facilities; Section 242 and 1009 of the 2010 Standards outline such exceptions.[21]

Service animals

The ADA provides explicit coverage for service animals.[22][23] Guidelines have been developed not only to protect

persons with disabilities but also to indemnify businesses from damages related to granting access to service animals on their premises. Businesses are allowed to ask if the animal is a service animal and ask what tasks it is trained to perform, but they are not allowed to ask the service animal to perform the task nor ask for a special ID of the animal. They cannot ask what the person's disabilities are. A person with a disability cannot be removed from the premises unless either of two things happen: the animal is out of control and its owner cannot get it under control (e.g. a dog barking uncontrollably in a restaurant), or the animal is a direct

threat to people's health and safety. Allergies and fear of animals would not be considered a threat to people's health and safety, so it would not be a valid reason to deny access to people with service animals. Businesses that prepare or serve food must allow service animals and their owners on the premises even if state or local health laws otherwise prohibit animals on the premises. In this case, businesses that prepare or serve food are not required to provide care or food for service animals, nor do they have to provide a designated area for the service animal to relieve itself. Lastly, people that require service dogs cannot be charged an

extra fee for their service dog or be treated unfairly, for example, being isolated from people at a restaurant. People with disabilities cannot be treated as "less than" other customers. However, if a business normally charges for damages caused by the person to property, the customer with a disability will be charged for his/her service animal's damages to the property.

Auxiliary aids

The ADA provides explicit coverage for auxiliary aids.[24]

Auxiliary aids and services are items, equipment or services that assist in effective communication between a person who has a hearing, vision or speech disability and a person who does not.[25]

ADA says that a public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps

would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense. The term "auxiliary aids and services" includes:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing

aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Brailled materials and

displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

Captions are considered one type of auxiliary aid. Since the passage of the ADA, the use of captioning has expanded.

Entertainment, educational, informational, and training materials are captioned for deaf and hard-of-hearing audiences at the time they are produced and distributed. The Television Decoder Circuitry Act of 1990 requires that all televisions larger than 13 inches sold in the United States after July 1993 have a special built-in decoder that enables viewers to watch closed-captioned programming. The Telecommunications Act of 1996 directs the Federal Communications Commission (FCC) to adopt rules requiring closed captioning of most television programming. The FCC’s rules on closed

captioning became effective January 1, 1998.[26]

Title IV—telecommunications

Title IV of the ADA amended the landmark Communications Act of 1934 primarily by adding section 47 U.S.C. § 225 . This section requires that all telecommunications companies in the U.S. take steps to ensure functionally equivalent services for consumers with disabilities, notably those who are deaf or hard of hearing and those with speech impairments. When Title IV took effect in the early 1990s, it led to the installation of

public teletypewriter (TTY) machines and other TDD (telecommunications devices for the deaf). Title IV also led to the creation, in all 50 states and the District of Columbia, of what was then called dual-party relay services and now are known as Telecommunications Relay Services (TRS), such as STS relay. Today, many TRS-mediated calls are made over the Internet by consumers who use broadband connections. Some are Video Relay Service (VRS) calls, while others are text calls. In either variation, communication assistants translate between the signed or typed words of a consumer and the spoken words of others. In 2006,

according to the Federal Communications Commission (FCC), VRS calls averaged two million minutes a month.

Title V—miscellaneous provisions

Title V includes technical provisions. It discusses, for example, the fact that nothing in the ADA amends, overrides or cancels anything in Section 504.[27] Additionally, Title V includes an anti-retaliation or coercion provision. The *Technical Assistance Manual* for the ADA explains this provision:

> *III-3.6000 Retaliation or coercion. Individuals who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. The prohibition against retaliation or coercion applies broadly to any individual or entity that seeks to prevent an individual from exercising his or her rights or to retaliate against him or her for having exercised those rights … Any form of retaliation*

> *or coercion, including threats, intimidation, or interference, is prohibited if it is intended to interfere.*

History

The ADA has roots in Section 504 of the Rehabilitation Act of 1973.[28]

Drafting

THE WHITE HOUSE

April 21, 1989

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER
DAVID Q. BATES

SUBJECT: Development of Administration Disability Policy

The President has long favored improving opportunities for disabled Americans. Last year, he said, "I share your goal of integrating disabled Americans fully and equally into the mainstream of American life .... We are working to increase the economic and personal independence of disabled Americans."

This memorandum is to bring you up to date on the work underway to respond to the President's interest in this issue.

Since this issue has such widespread impacts in both the public and private sectors, it is extraordinarily important that Administration policy be developed carefully, but expeditiously. Many members of Congress are also intensely interested, and we need to insure that we have their thinking and views as we develop policy on this issue.

In order better to coordinate the development of Administration disability policy, Attorney General Thornburgh has established a Domestic Policy Council Working Group on Disability Policy. It has representatives from many departments and agencies, including Evan Kemp, from the Equal Employment Opportunity Commission. The working group is presently preparing a detailed work plan including Administration disability policy principles to guide the refining of specific policy initiatives.

It is vital that thorough analysis and coordination with affected groups be undertaken as part of this process. The following assignments have been made:

- The Office of Management and Budget is coordinating agency and departmental evaluations of proposed changes involving activities that relate to their departments. Those evaluations include the Departments of Commerce, Transportation, and Housing and Urban Development, and the Federal Communications Commission.
- The Council of Economic Advisers will perform analyses of the economic impacts of potential policy and program changes on the public and private sectors.

Development of George H.W. Bush Administration Disability Policy. White House Memo. April 21, 1989.[29]

In 1986, the National Council on Disability (NCD), an independent federal agency, issued a report, Towards Independence, in which the Council examined incentives and disincentives in federal laws towards increasing the independence and full integration of people with disabilities into

our society. Among the disincentives to independence the Council identified was the existence of large remaining gaps in our nation's civil rights coverage for people with disabilities. A principal conclusion of the report was to recommend the adoption of comprehensive civil rights legislation, which became the ADA.[30]

The idea of federal legislation enhancing and extending civil rights legislation to millions of Americans with disabilities gained bipartisan support in late 1988 and early 1989. In early 1989 both Congress and the newly-inaugurated Bush White House worked separately, then jointly, to

write legislation capable of expanding civil rights without imposing undue harm or costs on those already in compliance with existing rules and laws.[31]

Lobbying

Over the years, key activists and advocates played an important role in lobbying members of the U.S. Congress to develop and pass the ADA, including Justin Whitlock Dart Jr., Patrisha Wright and others.

Ms. Wright is known as "the General" for her work in coordinating the campaign to

enact the ADA.[32][33] She is widely considered the main force behind the campaign lobbying for the ADA.[34]

Support and opposition

Support

About the importance of making employment opportunities inclusive, Shirley Davis, director of global diversity and inclusion at the Society for Human Resource Management, said: "People with disabilities represent a critical talent pool that is underserved and underutilized".[35]

Opposition from religious groups

The debate over the Americans with Disabilities Act led some religious groups to take opposite positions.[36] The Association of Christian Schools International opposed the ADA in its original form,[37] primarily because the ADA labeled religious institutions "public accommodations" and thus would have required churches to make costly structural changes to ensure access for all.[38] The cost argument advanced by ACSI and others prevailed in keeping religious institutions from being labeled as "public accommodations".[27]

Church groups such as the National Association of Evangelicals testified against the ADA's Title I employment provisions on grounds of religious liberty. The NAE believed the regulation of the internal employment of churches was "... an improper intrusion [of] the federal government."[36]

Opposition from business interests

Many members of the business community opposed the Americans with Disabilities Act. Testifying before Congress, Greyhound Bus Lines stated that the act had the potential to "deprive

millions of people of affordable intercity public transportation and thousands of rural communities of their only link to the outside world." The US Chamber of Commerce argued that the costs of the ADA would be "enormous" and have "a disastrous impact on many small businesses struggling to survive."[39] The National Federation of Independent Businesses, an organization that lobbies for small businesses, called the ADA "a disaster for small business."[40] Pro-business conservative commentators joined in opposition, writing that the Americans with Disabilities Act was "an expensive headache to millions" that

would not necessarily improve the lives of people with disabilities.[41]

"Capitol Crawl"

Shortly before the act was passed, disability rights activists with physical disabilities coalesced in front of the Capitol Building, shed their crutches, wheelchairs, powerchairs and other assistive devices, and immediately proceeded to crawl and pull their bodies up all 100 of the Capitol's front steps, without warning.[42] As the activists did so, many of them chanted "ADA now", and "Vote, Now". Some activists who remained

at the bottom of the steps held signs and yelled words of encouragement at the "Capitol Crawlers". Jennifer Keelan, a second grader with cerebral palsy, was videotaped as she pulled herself up the steps, using mostly her hands and arms, saying "I'll take all night if I have to." This direct action is reported to have "inconvenienced" several senators and to have pushed them to approve the act. While there are those who do not attribute much overall importance to this action, the "Capitol Crawl" of 1990 is seen by some present-day disability activists in the United States as a central act for encouraging the ADA into law.[43]

Final passage

President Bush signs the Americans with Disabilities Act into law

Senator Tom Harkin (D-IA) authored what became the final bill and was its chief sponsor in the Senate. Harkin delivered part of his introduction speech in sign language, saying it was so his deaf brother could understand.[44]

George H. W. Bush, on signing the measure on July 26, 1990,[45] said:

> *I know there may have been concerns that the ADA may be too vague or too costly, or may lead endlessly to litigation. But I want to reassure you right now that my administration and the United States Congress have carefully crafted this Act. We've all been determined to ensure that it gives flexibility, particularly in terms of the timetable of implementation;*

> *and we've been committed to containing the costs that may be incurred.... Let the shameful wall of exclusion finally come tumbling down.*[46]

Remarks on the Signing of the Americans with Disabilities Act (July 26, 1990)

George H. W. Bush's July 26, 1990, Remarks on the Signing of the Americans with Disabilities Act

Problems playing this file? See media help.

ADA Amendments Act, 2008

The ADA defines a covered disability as a physical or mental impairment that substantially limits one or more major life activities, a history of having such an impairment, or being regarded as having such an impairment. The Equal Employment Opportunity Commission (EEOC) was charged with interpreting the 1990 law with regard to discrimination in employment. The EEOC developed regulations limiting an individual's impairment to one that "severely or significantly restricts" a major life activity. The ADAAA directed the EEOC to amend its regulations and replace "severely or

significantly" with "substantially limits", a more lenient standard.[47]

On September 25, 2008, President George W. Bush signed the ADA Amendments Act of 2008 (ADAAA) into law. The amendment broadened the definition of "disability", thereby extending the ADA's protections to a greater number of people.[48] The ADAAA also added to the ADA examples of "major life activities" including, but not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating,

thinking, communicating, and working" as well as the operation of several specified *major bodily functions*.[48] The act overturned a 1999 US Supreme Court case that held that an employee was not disabled if the impairment could be corrected by mitigating measures; it specifically provides that such impairment must be determined without considering such ameliorative measures. It also overturned the court restriction that an impairment which substantially limits one major life activity must also limit others to be considered a disability.[48] In 2008, the United States House Committee on Education and Labor stated that the

amendment "makes it absolutely clear that the ADA is intended to provide broad coverage to protect anyone who faces discrimination on the basis of disability."[49] Thus the ADAAA led to broader coverage of impaired employees.

25th anniversary, 2015

As of 2015 the ADA had improved access to public services, the built environment (e.g., crosswalks with curb cuts and accessible pedestrian signals), understanding of the abilities of people with disabilities, established a right to equal access to public services and has

demonstrated the contributions which people with disabilities can make to the economy. Disparities have remained in employment, earned income, Internet access, transportation, housing, and educational attainment and the disabled remain at a disadvantage with respect to health and health care.[50]

On July 20, 2015, the White House held a reception to celebrate the 25th anniversary of the ADA. The introductory remarks were given by Haben Girma, a deafblind disability rights lawyer and advocate.[51] Among the guests was Alice Wong, a

disability rights activist who came via telepresence robot.[52]

Web Content Accessibility Guidelines, 2019

In October, 2019, the Supreme Court declined to resolve a circuit split as to whether websites are covered by the ADA. The Court turned down an appeal from Domino's Pizza and let stand a U.S. 9th Circuit Court of Appeals ruling which held that the Americans With Disabilities Act protects access not just brick-and-mortar public accommodations, but also to the

websites and apps of those businesses.[53]

Reaction

Criticism

Employment

The ADA has been criticized on the grounds that it decreases the employment rate for people with disabilities[54] and raises the cost of doing business for employers, in large part due to the additional legal risks, which employers avoid by quietly avoiding hiring people with disabilities. Some researchers believe that

the law has been ineffectual.[55] Between 1991 (after the enactment of the ADA) and 1995, the employment rate of men with disabilities dropped by 7.8% regardless of age, educational level, or type of disability, with the most affected being young, less-educated and mentally disabled men.[56] Despite the many criticisms, a causal link between the ADA and declining disabled employment over much of the 1990s has not been definitively identified.[57]

In 2001, for men of all working ages and women under 40, Current Population Survey data showed a sharp drop in the employment of disabled workers, leading

at least two economists to attribute the cause to the Act.[58] By contrast, a study in 2003 found that while the Act may have led to short term reactions by employers, in the long term, there were either positive or neutral consequences for wages and employment.[59] In 2005 the rate of employment among disabled people increased to 45% of the population of disabled people.[60]

"Professional plaintiffs"

Since enforcement of the act began in July 1992, it has quickly become a major component of employment law. The ADA

allows private plaintiffs to receive only injunctive relief (a court order requiring the public accommodation to remedy violations of the accessibility regulations) and attorneys' fees, and does not provide monetary rewards to private plaintiffs who sue non-compliant businesses. Unless a state law, such as the California Unruh Civil Rights Act,[61] provides for monetary damages to private plaintiffs, persons with disabilities do not obtain direct financial benefits from suing businesses that violate the ADA.

The attorneys' fees provision of Title III does provide incentive for lawyers to

specialize and engage in serial ADA litigation, but a disabled plaintiff does not obtain financial reward from attorneys' fees unless they act as their own attorney, or as mentioned above, a disabled plaintiff resides in a state that provides for minimum compensation and court fees in lawsuits. Moreover, there may be a benefit to these "private attorneys general" who identify and compel the correction of illegal conditions: they may increase the number of public accommodations accessible to persons with disabilities. "Civil rights law depends heavily on private enforcement. Moreover, the inclusion of penalties and damages is the driving force

that facilitates voluntary compliance with the ADA."[62] Courts have noted:

> *As a result, most ADA suits are brought by a small number of private plaintiffs who view themselves as champions of the disabled. For the ADA to yield its promise of equal access for the disabled, it may indeed be necessary and desirable for committed individuals to bring serial litigation advancing the time when public*

> *accommodations will be compliant with the ADA.*[63]

Play media

California Governor Gavin Newsom speaking about the ADA on the 30th anniversary in 2020.

However, in states that have enacted laws that allow private individuals to win monetary awards from non-compliant businesses (as of 2008, these include California, Florida, Hawaii, and Illinois), "professional plaintiffs" are typically found.

At least one of these plaintiffs in California has been barred by courts from filing lawsuits unless he receives prior court permission.[61] Through the end of fiscal year 1998, 86% of the 106,988 ADA charges filed with and resolved by the Equal Employment Opportunity Commission, were either dropped or investigated and dismissed by EEOC but not without imposing opportunity costs and legal fees on employers.[56]

Case law

There have been some notable cases regarding the ADA. For example, two major

hotel room marketers (Expedia.com and Hotels.com) with their business presence on the Internet were sued because its customers with disabilities could not reserve hotel rooms, through their websites without substantial extra efforts that persons without disabilities were not required to perform.[64] These represent a major potential expansion of the ADA in that this, and other similar suits (known as "bricks vs. clicks"), seeks to expand the ADA's authority to cyberspace, where entities may not have actual physical facilities that are required to comply.

Green v. State of California

Green v. State of California, No. S137770 (Cal. Aug. 23, 2007)[65] was a case in which the majority of the Supreme Court in California was faced with deciding whether the employee suing the state is required to prove he is able to perform "essential" job duties, regardless of whether or not there was "reasonable accommodation," or if the employer must prove the victim was unable to do so. The court ruled the burden was on the employee, not the employer, and reversed a disputed decision by the courts. Plaintiff attorney David Greenberg[66] brought forth

considerations of the concept that, even in the state of California, employers do not have to employ a worker who is unable to perform "essential job functions" with "reasonable accommodation." Forcing employers to do so "would defy logic and establish a poor public policy in employment matters."

National Federation of the Blind v. Target Corporation

National Federation of the Blind v. Target Corporation[67] was a case where a major retailer, Target Corp., was sued because their web designers failed to design its

website to enable persons with low or no vision to use it.[68]

Board of Trustees of the University of Alabama v. Garrett

Board of Trustees of the University of Alabama v. Garrett[69] was a United States Supreme Court case about Congress's enforcement powers under the Fourteenth Amendment to the Constitution. It decided that Title I of the Americans with Disabilities Act was unconstitutional insofar as it allowed private citizens to sue states for money damages.

Barden v. The City of Sacramento

Barden v. The City of Sacramento, filed in March 1999, claimed that the City of Sacramento failed to comply with the ADA when, while making public street improvements, it did not bring its sidewalks into compliance with the ADA. Certain issues were resolved in Federal Court. One issue, whether sidewalks were covered by the ADA, was appealed to the 9th Circuit Court of Appeals, which ruled that sidewalks were a "program" under ADA and must be made accessible to persons with disabilities. The ruling was later appealed to the U.S. Supreme Court,

which refused to hear the case, letting stand the ruling of the 9th Circuit Court.[70][71]

Bates v. UPS

Bates v. UPS (begun in 1999) was the first equal opportunity employment class action brought on behalf of Deaf and Hard of Hearing (d/Deaf/HoH) workers throughout the country concerning workplace discrimination. It established legal precedence for d/Deaf/HoH Employees and Customers to be fully covered under the ADA. Key findings included

1. UPS failed to address communication barriers and to ensure equal conditions and opportunities for deaf employees;
2. Deaf employees were routinely excluded from workplace information, denied opportunities for promotion, and exposed to unsafe conditions due to lack of accommodations by UPS;
3. UPS also lacked a system to alert these employees as to emergencies, such as fires or chemical spills, to ensure that they would safely evacuate their facility; and

4. UPS had no policy to ensure that deaf applicants and employees actually received effective communication in the workplace.

The outcome was that UPS agreed to pay a $5.8 million award and agreed to a comprehensive accommodations program that was implemented in their facilities throughout the country.

Spector v. Norwegian Cruise Line Ltd.

Spector v. Norwegian Cruise Line Ltd.[72] was a case that was decided by the United States Supreme Court in 2005. The

defendant argued that as a vessel flying the flag of a foreign nation it was exempt from the requirements of the ADA. This argument was accepted by a federal court in Florida and, subsequently, the Fifth Circuit Court of Appeals. However, the U.S. Supreme Court reversed the ruling of the lower courts on the basis that Norwegian Cruise Lines was a business headquartered in the United States whose clients were predominantly Americans and, more importantly, operated out of port facilities throughout the United States.

Olmstead v. L.C.

Olmstead v. L.C.[73] was a case before the United States Supreme Court in 1999. The two plaintiffs, L.C. and E.W., were institutionalized in Georgia for diagnosed mental retardation and schizophrenia. Clinical assessments by the state determined that the plaintiffs could be appropriately treated in a community setting rather than the state institution. The plaintiffs sued the state of Georgia and the institution for being inappropriately treated and housed in the institutional setting rather than being

treated in one of the state's community-based treatment facilities.

The Supreme Court decided under Title II of the ADA that mental illness is a form of disability and therefore covered under the ADA, and that unjustified institutional isolation of a person with a disability is a form of discrimination because it "...perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." The court added, "Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts,

work options, economic independence, educational advancement, and cultural enrichment."

Therefore, under Title II no person with a disability can be unjustly excluded from participation in or be denied the benefits of services, programs or activities of any public entity.[73]

Michigan Paralyzed Veterans of America v. The University of Michigan

This was a case filed before The United States District Court for the Eastern

District of Michigan Southern Division on behalf of the Michigan Paralyzed Veterans of America against University of Michigan – Michigan Stadium claiming that Michigan Stadium violated the Americans with Disabilities Act in its $226-million renovation by failing to add enough seats for disabled fans or accommodate the needs for disabled restrooms, concessions and parking. Additionally, the distribution of the accessible seating was at issue, with nearly all the seats being provided in the end-zone areas. The U.S. Department of Justice assisted in the suit filed by attorney Richard Bernstein of The Law Offices of Sam Bernstein in

Farmington Hills, Michigan, which was settled in March 2008.[74] The settlement required the stadium to add 329 wheelchair seats throughout the stadium by 2010, and an additional 135 accessible seats in clubhouses to go along with the existing 88 wheelchair seats. This case was significant because it set a precedent for the uniform distribution of accessible seating and gave the DOJ the opportunity to clarify previously unclear rules.[75] The agreement now is a blueprint for all stadiums and other public facilities regarding accessibility.[76]

Paralyzed Veterans of America v. Ellerbe Becket Architects and Engineers

One of the first major ADA lawsuits, *Paralyzed Veterans of America v. Ellerbe Becket Architects and Engineers* (PVA 1996) was focused on the wheelchair accessibility of a stadium project that was still in the design phase, MCI Center (now known as Capital One Arena) in Washington, D.C. Previous to this case, which was filed only five years after the ADA was passed, the DOJ was unable or unwilling to provide clarification on the distribution requirements for accessible

wheelchair locations in large assembly spaces. While Section 4.33.3 of ADAAG makes reference to lines of sight, no specific reference is made to seeing over standing patrons. The MCI Center, designed by Ellerbe Becket Architects & Engineers, was designed with too few wheelchair and companion seats, and the ones that were included did not provide sight lines that would enable the wheelchair user to view the playing area while the spectators in front of them were standing. This case[77][78] and another related case[79] established precedent on seat distribution and sight lines issues for

ADA enforcement that continues to present day.

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams,[80] was a case in which the Supreme Court interpreted the meaning of the phrase "substantially impairs" as used in the Americans with Disabilities Act. It reversed a Sixth Court of Appeals decision to grant a partial summary judgment in favor of the respondent, Ella Williams, that qualified her inability to perform manual job-related tasks as a disability. The Court

held that the "major life activity" definition in evaluating the performance of manual tasks focuses the inquiry on whether Williams was unable to perform a range of tasks central to most people in carrying out the activities of daily living. The issue is not whether Williams was unable to perform her specific job tasks. Therefore, the determination of whether an impairment rises to the level of a disability is not limited to activities in the workplace solely, but rather to manual tasks in life in general. When the Supreme Court applied this standard, it found that the Court of Appeals had incorrectly determined the presence of a disability because it relied

solely on her inability to perform specific manual work tasks, which was insufficient in proving the presence of a disability. The Court of Appeals should have taken into account the evidence presented that Williams retained the ability to do personal tasks and household chores, such activities being the nature of tasks most people do in their daily lives, and placed too much emphasis on her job disability. Since the evidence showed that Williams was performing normal daily tasks, it ruled that the Court of Appeals erred when it found that Williams was disabled.[80][81] This ruling is now, however, no longer good law—it was invalidated by the ADAAA. In

fact, Congress explicitly cited *Toyota v. Williams* in the text of the ADAAA itself as one of its driving influences for passing the ADAAA.

US Airways, Inc. v. Barnett

Decided by the US Supreme Court in 2002, this case [82][83] held that even requests for accommodation that might seem reasonable on their face, e.g., a transfer to a different position, can be rendered unreasonable because it would require a violation of the company's seniority system. While the court held that, in general, a violation of a seniority system

renders an otherwise reasonable accommodation unreasonable, a plaintiff can present evidence that, despite the seniority system, the accommodation is reasonable in the specific case at hand, e.g., the plaintiff could offer evidence that the seniority system is so often disregarded that another exception wouldn't make a difference.

Importantly, the court held that the defendant need not provide proof that this particular application of the seniority system should prevail, and that, once the defendant showed that the accommodation violated the seniority

system, it fell to Barnett to show it was nevertheless reasonable.

In this case, Barnett was a US Airways employee who injured his back, rendering him physically unable to perform his cargo-handling job. Invoking seniority, he transferred to a less-demanding mailroom job, but this position later became open to seniority-based bidding and was bid on by more senior employees. Barnett requested the accommodation of being allowed to stay on in the less-demanding mailroom job. US Airways denied his request, and he lost his job.

The Supreme Court decision invalidated both the approach of the district court, which found that the mere presence and importance of the seniority system was enough to warrant a summary judgment in favor of US Airways, as well as the circuit court's approach that interpreted 'reasonable accommodation' as 'effective accommodation.'

Access Now v. Southwest Airlines

Access Now v. Southwest Airlines was a case where the District Court decided that the website of Southwest Airlines was not in violation of the Americans with

Disabilities Act, because the ADA is concerned with things with a physical existence and thus cannot be applied to cyberspace. Judge Patricia A. Seitz found that the "virtual ticket counter" of the website was a virtual construct, and hence not a "public place of accommodation." As such, "To expand the ADA to cover 'virtual' spaces would be to create new rights without well-defined standards."[84]

Ouellette v. Viacom International Inc.

Ouellette v. Viacom International Inc. followed in Access Now's footsteps by holding that a mere online presence does

not subject a website to the ADA guidelines. Thus Myspace and YouTube were not liable for a dyslexic man's inability to navigate the site regardless of how impressive the "online theater" is.

Authors Guild v. HathiTrust

Authors Guild v. HathiTrust was a case in which the District Court decided that the HathiTrust digital library was a transformative, fair use of copyrighted works, making a large number of written text available to those with print disability.

Zamora-Quezada v. HealthTexas

Medical Group

Zamora-Quezada v. HealthTexas Medical Group[85] (begun in 1998) was the first time this act was used against HMOs when a novel lawsuit[86] was filed by Texas attorney Robert Provan against five HMOs for their practice of revoking the contracts of doctors treating disabled patients.

Campbell v. General Dynamics Government Systems Corp.

Campbell v. General Dynamics Government Systems Corp. (2005)[87] concerned the enforceability of a mandatory arbitration

agreement, contained in a dispute resolution policy linked to an e-mailed company-wide announcement, insofar as it applies to employment discrimination claims brought under the Americans with Disabilities Act.

Tennessee v. Lane

Tennessee v. Lane,[88] 541 U.S. 509 (2004), was a case in the Supreme Court of the United States involving Congress's enforcement powers under section 5 of the Fourteenth Amendment. George Lane was unable to walk after a 1997 car accident in which he was accused of

driving on the wrong side of the road. A woman was killed in the crash, and Lane faced misdemeanor charges of reckless driving. The suit was brought about because he was denied access to appear in criminal court because the courthouse had no elevator, even though the court was willing to carry him up the stairs and then willing to move the hearing to the first floor. He refused, citing he wanted to be treated as any other citizen, and was subsequently charged with failure to appear, after appearing at a previous hearing where he dragged himself up the stairs.[89] The court ruled that Congress did have enough evidence that the

disabled were being denied those fundamental rights that are protected by the Due Process clause of the Fourteenth Amendment and had the enforcement powers under section 5 of the Fourteenth Amendment. It further ruled that "reasonable accommodations" mandated by the ADA were not unduly burdensome and disproportionate to the harm.[90]

See also

- ADA Compliance Kit
- ADA Signs
- American Disability rights movement

- Convention on the Rights of Persons with Disabilities
- Developmental disability
- Disability in the United States
- Individual rights advocate
- Interactive accommodation process
- Job Accommodation Network
- List of anti-discrimination acts
    - Disability discrimination act
    - Title VII of the Civil Rights Act of 1964
- List of disability rights activists
- Registered Accessibility Specialist
- Stigma management

- Timeline of disability rights in the United States
- United States Access Board
- Wheelchair ramp

There are a number of open questions regarding the ADA, with scholars and courts alike trying to solve them. For example, one scholar has argued that the "deliberate indifference model" should apply to ADA Title II damages actions.[91] Indeed, there are some very powerful provisions of the ADA (especially Title II) that appear to go unnoticed or under used.[92]

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- Department of Labor ADA page
- Equal Employment Opportunity Commission ADA page

- Navigable text of the Americans with Disabilities Act of 1990 – 42 U.S. Code Chapter 126
- Family Network on Disabilities FNDUSA.ORG —Florida Parent Training and Information Center funded by DOED Offices of Special Education Programs (OSEP)

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