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# **OVERVIEW OF THE ADA AMENDMENTS ACT OF 2008**

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# INTRODUCTION

The ADA is a civil rights law.

# INTRODUCTION

The ADA was supposed to focus primarily on whether a covered entity engaged in discrimination on the basis of disability; not require an extensive analysis regarding the nature of the individual's disability.

# INTRODUCTION

**Examples of individuals intended to be protected under the ADA:**

- An individual denied employment on the basis of mental retardation.
- A woman denied re-employment after her breast cancer was in remission.
- An individual refused an accommodation (short breaks) on the basis of the fact that he had diabetes and needed to take insulin during the work day.

# INTRODUCTION

## Series of court decisions

- Restricted the broad scope of coverage under the ADA;
- Interpreted the ADA strictly to create a demanding standard to qualify as disabled;
- Diminished the civil rights protections of the ADA; and
- Created a perverse Catch-22.

# INTRODUCTION

**A broad-based coalition of  
stakeholders and policymakers  
agreed to work together to  
restore protections under the  
ADA.**

# PURPOSES OF THE ADAAA

The ADA Amendments Act of 2008 (ADAAA)  
restores the original intent of the ADA by:

- Reinstating the broad scope of protection;
- Moving the focus from the threshold issue of disability to the primary issue of discrimination; and
- Reaffirming that although the definition of disability is intended to be broad, only those individuals who are qualified and can prove discrimination are entitled to relief.

# PURPOSES OF THE ADAAA

The ADA accomplishes this intent by:

- Retaining the existing definition of the term “disability” but clarifying the key words and phrases;
- Changing the structure of the law to focus on discrimination;
- Including construction clauses to explain intent;
- Authorizing federal agencies to regulate the definition of “disability”; and
- Including conforming amendments regarding Title V of the Rehabilitation Act.

# DEFINITION OF DISABILITY

The ADAAA retains without amendment the existing definition of the term “disability” **but** clarifies the key words and phrases in the definition.

# DEFINITION OF DISABILITY

The term “disability” means, with respect to an individual—

- A physical or mental impairment that substantially limits one or more major life activities of such individual (PRONG 1);
- A record of such an impairment (PRONG 2); or
- Being regarded as having such an impairment (PRONG 3).

# **DEFINITION OF DISABILITY**

## **PRONG 1 (Impairment)**

### **Key Components:**

- Physical or mental impairment**
- Substantially limits**
- Major life activities**

# DEFINITION OF DISABILITY

**Physical or mental impairment**

- Currently, no definition of the phrase “physical or mental impairment” in the statute.
- ADAAA does not add definition of the phrase to the statute.
- Legislative history explains that definition included in current regulations is appropriate.  
[28 CFR 36.104; 29 CFR 1630.2(h)(10-(2); 34 CFR 104.3(j)(2)(i)]

# **DEFINITION OF DISABILITY**

## **Substantially Limits**

### **ADAAA:**

- Rejects standards adopted by courts and EEOC (“prevent or severely restrict”) as “too demanding.”
- Directs courts and agencies to construe term “broadly” and “without regard to the ameliorative effects of mitigating measures.”
- Directs the courts and EEOC to view impairments that are “episodic” or “in remission” in their “active” state.

# **DEFINITION OF DISABILITY**

## **Major Life Activities**

- **Includes illustrative list of major life activities.**
- **Specifies that major life activities includes major bodily functions.**
- **Clarifies that individual may be limited in only one major life activity.**

# **DEFINITION OF DISABILITY**

## **PRONG 2 (Record or History of Impairment)**

- No change to current law or regulatory interpretation.**

# **DEFINITION OF DISABILITY**

## **PRONG 3 (Regarded as having an impairment)**

- Individuals not subject to functional test.**
- Individual must prove adverse action taken because of an actual or perceived impairment.**
- Does not include transitory and minor impairments.**
- Covered entities not required to make reasonable accommodations or modifications.**

# **ADAAA CHANGES THE STRUCTURE OF THE ADA**

**Focus is on merits of the case i.e., whether a covered entity engaged in discrimination on the basis of disability rather than threshold question of whether the individual was disabled.**

# CONSTRUCTION CLAUSES

- Workers compensation and other disability benefit programs not affected.
- Fundamental alteration defense not affected.
- Reverse discrimination claims not authorized.

# **REGULATORY AUTHORITY**

**ADAAA clarifies that the EEOC,  
DOJ, and DOT are authorized to  
issue regulations implementing  
the definition of disability**

# **CONFORMING AMENDMENTS**

**ADAAA specifies that the meaning given the term “disability” under the ADA shall be used for purposes of defining the term “disability” under Title V of the Rehabilitation Act of 1973, as amended.**