

## ADA Amendments Act: What does it mean for employers?

The ADA Amendments Act of 2008  
Effective January 1, 2009



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## Refresher: What is the ADA??

- Americans with Disabilities Act Amendments Act (ADAAA)
- Signed into law on September 25, 2008
- Overall purpose -- "To restore the intent and protections of the Americans with Disabilities Act of 1990."

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## The ADAAA

- At the beginning of this new law, there is a list of findings, including:
  - Congress intended the ADA to provide a clear & comprehensive national mandate for the **ELIMINATION OF DISCRIMINATION** against individuals with disabilities and provide **BROAD COVERAGE**

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## And...

- “While Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled.”

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## And...

- The findings specifically state that the Supreme Court holdings in Sutton and Toyota eliminated protection for many individuals that Congress intended to protect.

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## New Rules

- The ADAAA sets up new rules of construction regarding the definition of disability.
  - The definition of disability is construed in favor of *broad coverage* to the maximum extent permitted.
  - The term *“substantially limits”* is to be interpreted consistently with the ADAAA.

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## More New Rules

- An impairment that substantially limits one major life activity ***need not limit other major life activities*** to be considered a disability.
- An impairment that is ***episodic or in remission*** is a disability if it would substantially limit a major life activity when active.

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## More New Rules

- ***Mitigating measures shall not*** be a factor when determining whether an impairment substantially limits a major life activity.
- The only mitigating measures that can be considered are ordinary eyeglasses or contact lens that fully correct visual acuity or eliminate refractive error.

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## Effective Date

- These new rules became effective on January 1, 2009.
- The EEOC is in the process of developing new regulations for the ADA Amendments Act.
  - Final Regulations anticipated by December 2009

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## Definition of Disability

- Look familiar?
  - (A) a physical or mental impairment that substantially limits one or more major life activities
  - (B) a record of such an impairment; or
  - (C) being regarded as having such an impairment
- So what changed?
  - How the WORDS are interpreted

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- “Significantly limits” no longer means “Significantly restricted”
  - Congress told the EEOC that “significantly restricted” is too high a standard and must be lowered so that it is easier to meet
  - Minutes of the December 11, 2008 EEOC meetings give us some “light” into the direction that they are going with the regulations

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## Draft Regulations

- An impairment is a disability if it “substantially limits” the **condition, manner or duration** under which an individual can perform a major life activity as compared to **most** people in the general population
  - Condition or manner is the extent to which:
    - an activity can be performed,
    - way it is performed,
    - the effort required to perform it or;
    - the effects on an individual when performing it
- An impairment need not prevent, or significantly restrict the individual from doing the activity.

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## So what does this mean in “real” terms?

- Examples:
  - Individual with a learning disability may be able to achieve a high level of academic success but may still be an individual with a disability because of the need to spend more time reading, writing or learning compared to most people
  - An individual with coronary artery disease may be able to walk but may experience shortness of breath or fatigue when walking distances that **most** people do not experience the same problems.
  - Someone with an amputated arm may be able to lift or perform manual tasks but doing so is much more cumbersome than for **most** people
  - An individual with diabetes may be able to perform manual tasks but may experience fatigue, weakness or other difficulty due to the impact of bodily functions such as the bodies ability to produce insulin compared to most other people.

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## Changes to the 3rd Prong

- An individual is REGARDED AS if they are
  - ... subjected to non-selection, demotion, termination, or denial of any other term, condition or privilege of employment because of an actual or perceived physical or mental impairment whether or not it actually limits the person
  - New term: Transitory condition
    - Conditions lasting 6 months or less, and is minor

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- Employer does not hire a temporary employee for a position scheduled to begin immediately because of a sprained wrist that would prevent the individual from typing for the next three weeks is not “regarding” the person as having a disability because the sprained wrist is transitory and minor
- Employer refuses to hire someone with Hepatitis C for a food service position is regarding the individual as disabled because Hepatitis C is not transitory and minor
- An employer fires someone who experiences an episode of lightheadedness at work due to the effects of a minor intestinal virus, believing the symptoms to be those of heart disease is discriminatory because heart disease is not transitory and minor

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## Is It A Radical New Law?

No, the ADAAA is not really a "new ADA."

The ADAAA is an attempt by Congress to go back to the way Congress intended the law to be when it passed the ADA in 1990.

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## Revisit the Basics

- Review job descriptions to identify "essential job functions"
- Review qualification standards to ensure that they are not discriminatory
  - Process vs Outcome
    - Ability to "move 50 lbs" versus "lift 50 lbs"
    - Ability to "comprehend written information" versus "read"
    - Ability to effectively communication versus ability to "speak"

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- Interactive Process
  - How do supervisors/managers respond to requests for reasonable accommodation?
  - Do you have a policy in place for requesting and responding to requests?
- Review Policy for Accommodations to ensure that requirements for documentation are clearly articulated to all parties involved
  - What is "acceptable documentation"?
  - How is documentation reviewed?

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- Review practices for determining whether or not an accommodation is “effective”
- Train supervisors/managers regarding the ADA and changes
- Be aware of state/local law and what may be more “stringent”
- Approach all requests for accommodation the same
  - Do not make a judgment about the “disability” before getting all of the information needed
    - What may not have been covered previously may now be a disability under the amended law

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- Do not focus on the disability.....
  - Emphasis should be placed on the ABILITIES of all potential applicants or current employees
    - ADA Amendment Act addresses “qualified individual” It takes the “disability” out of “qualified” to neutralize the terminology and focus on the applicants/employees qualifications

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**STAY TUNED AND INFORMED**

QUESTIONS?

Toll Free: 800-949-4232 (V/TTY)  
Email: [gldbtac@uic.edu](mailto:gldbtac@uic.edu)  
Website: [www.adagreatlakes.org](http://www.adagreatlakes.org)



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