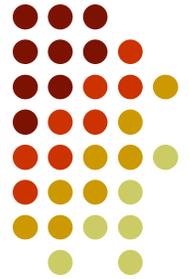


ADA Amendments Act of 2008



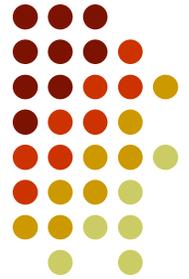
C. Jason Willcox

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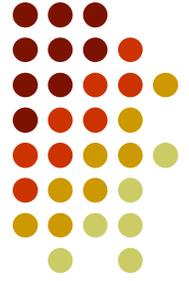


The Americans with Disabilities Act (ADA) of 1990



- Congress determined that a large number of Americans suffered from discrimination because of their physical and mental disabilities.
- These individuals had no real legal recourse to address the discrimination.
- Congress drafted ADA to address the problem.
- President George Herbert Walker Bush signed the ADA into law.

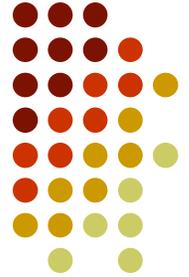
Purposes of the ADA



- To establish a clear and comprehensive prohibition of discrimination on the basis of disability.
- To ensure that the federal government plays a central enforcement role.

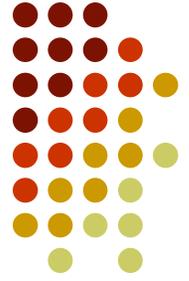


3 Major Sub-Chapters



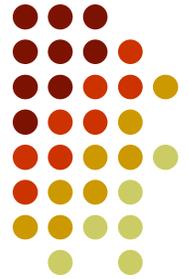
- Title I: Prohibits discrimination in employment;
- Title II: Provides equal access in public services and transportation; and,
- Title III: Provides equal access in places of public accommodations.

Basic Provisions of Title I of the ADA



- Designed to prohibit discrimination against “qualified individuals with disabilities”
 - The general purpose of the Americans with Disabilities Act (“ADA”) is to eradicate discrimination against persons with disabilities and to ensure equal treatment. 29 C.F.R. § 1630.1(a) (1999)
- Created the potential for “reasonable accommodations”
- Provided regulations regarding pre and post-employment medical inquiries
- Provided regulations regarding the confidentiality of medical information

Prohibited Acts under the ADA



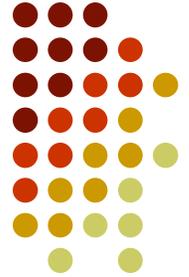
- No covered employer shall discriminate against a qualified individual with a disability because of the disability in regard to:
 - terms, conditions, or privileges of employment.

To Assert a Viable ADA Claim, Plaintiff Must Show:



- The Plaintiff's employer is a *covered entity*;
- The Plaintiff is a *qualified individual*; and
- The Plaintiff suffered an adverse employment action because of disability.

Covered Entity:



- An entity with 15 or more employees for each of the 20 or more calendar weeks in the current or in a preceding year.

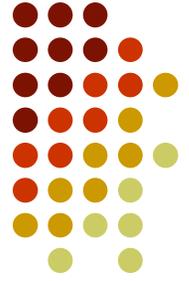


Qualified Individual:



- An individual with a disability who, with or without reasonable accommodation, can perform the essential job functions of the employment position that said individual holds or desires.

Disability:



- The definition of *disability* is the subject of the recent ADA amendments, which we will discuss in a moment.
- The ADA Amendments Act makes significant changes to the definition of the term “disability” by rejecting several US Supreme Court decisions and portions of the EEOC’s ADA regulations

ADA Amendments Act of 2008



- The ADA Amendments Act of 2008 (“ADAAA”) was signed into law on September 25, 2008.
- The ADAAA - effective January 1, 2009
- Note: Titles II and III regarding accessible design have been temporarily withdrawn until the Obama Administration can review the new rules.

The Purpose of the ADAAA



- When Congress first enacted the ADA, it intended *disability* to be interpreted broadly.
- Over time, court decisions began to narrow the scope of the term *disability*, with the result that the standard for coverage was too difficult to meet.
- As a result, ADA protection was eliminated from many people that Congress had originally intended to protect.

The Purpose of the ADAA



- Thus, in the ADAAA, Congress redefined *disability* and reiterated the intent for a broad scope of protection.
- The focus should be on whether the covered entity has met the requirements of the ADA.
- Whether an individual qualifies as having a disability should be a simple analysis.

What is a Disability?



- Under the original ADA, a person has a disability when the person:
 - Has an impairment that substantially limits a major life activity;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.
- Under the ADAAA, this basic framework has not changed. Interpretation of the parts of the framework has changed.

Change: Major Life Activity



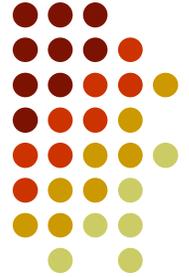
- Neither the ADA nor the ADAAA define *major life activity*.
- In the ADAAA, Congress provided a substantial list of major life activities.
- These include both activities and bodily functions.
- The ADAAA list is non-exhaustive.

Major Life Activities: Activities



- Major life activities include seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, performing manual tasks, and caring for oneself.

Major Life Activities: Bodily Functions



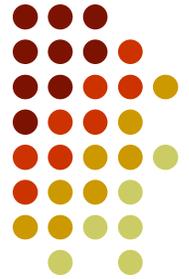
- *Major life activity* also includes major bodily functions.
- Major bodily functions include normal cell growth and functions of the immune system, as well as digestive, bowel, bladder, brain, neurological, respiratory, circulatory, endocrine, and reproductive functions.

Major Life Activities: Impairment of one is a disability



- The ADAAA now specifically provides that a person has a disability even when only *one* of the many major life activities is affected by the impairment.
- Thus, it is very important to keep the broad scope of *major life activity* in mind.

Impaired: Mitigating Measures



- Under the ADA, many cases said that impairment was determined by looking at whether the person’s activities are impaired even *after* use of “mitigating measures” (e.g. hearing aids, prosthetic limbs, etc.).

Impaired: Mitigating Measures



- The ADAAA provides that impairment must be determined without including mitigating measures.
- Thus, look to whether the person would be impaired if hearing aids, prosthetic limbs, medications, oxygen supplies, etc. were not used.
 - **exception: glasses or contact lenses

Impairment: Episodic or in Remission



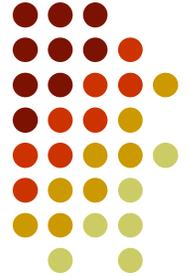
- At a given time, a person's life activities may be unaffected, as the impairment is either episodic (e.g. epilepsy) or in remission (e.g. cancer).
- Under the ADAAA, the impairment is a disability if it would limit a major life activity if the impairment were active.
- Thus, disability is determined by looking to the active periods of the impairment.

What did NOT change?



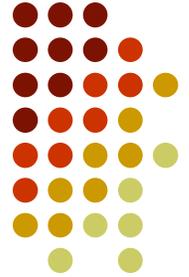
- Employee continues to be required to perform the essential functions of the job, with or without a reasonable accommodation
- Reasonable Accommodations:
 - Employee is responsible for informing Employer of disability if the disability is not obvious
 - Employer has obligation to accommodate for as long as the employee is employed and can be accommodated in some way
 - Employer may request documentation of condition

What did NOT change?



- Reasonable Accommodations Cont'd:
 - Employer need not consider any accommodation that is not “reasonable” or which cause an “undue hardship”
 - Employer need not accommodate a disability that is a “direct threat” to the Employee’s or co-employees’ health or safety
 - Employer does not need to create a job, displace a co-employee, or promote a disabled employee to satisfy the reasonable accommodation
 - Employer does not need to waive production requirements that are required for all other employees in that same position

EEOC



- Employer must engage in an interactive process to determine if a reasonable accommodation is appropriate and available
 - Accommodate Employee in his/her own position
 - Reassign Employee to a different position that is similar to regular position in terms/conditions of employment (pay, duties and STATUS)
 - Move Employee to different position (including part time position with part-time pay and reduced benefits)
 - Place Employee on medical leave
 - Termination of Employee