

# ADA Amendments Act of 2008



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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