

## AMERICANS WITH DISABILITIES ACT (ADA)

On January 1, 2009, the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 went into effect, making some major changes to the way the definition of disability and eligible individuals has been interpreted in the past. As a result of how the courts had interpreted the definition of disability so narrowly, it made it difficult for most individuals to be covered under the original Americans with Disabilities Act (ADA) of 1990.

### Overall Purpose

According to Congress, the ADAAA was passed "to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' by reinstating a broad scope of protection to be available under the ADA." However, if hardly anyone was covered, then hardly anyone was actually being protected from discrimination. So, in the ADAAA, Congress fixed the definition of disability to cover more people and as a result, prevent more discrimination. That means that once the Act went into effect, the question of who has a disability is no longer the main focus; instead, the focus is on whether discrimination occurred.

### Changes in the New Law

#### 1. *Definition*

The basic three-part definition will remain the same. Disability: (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such impairment; or (C) being regarded as having such an impairment. The ADA Amendments Act did not change the actual definition of disability - the definition is exactly the same as it was. What did change is the meaning of some of the words used in the definition and the way those words are to be applied to individuals.

#### 2. *Substantially Limits*

New regulations that were signed July 23, 2010 and went into effect March 15, 2011 changed the standard of the term "substantially limits". In the Amendments Act, Congress expressly gave the Equal Employment Opportunity Commission (EEOC) the authority to revise its regulations regarding the definition of substantially limits to make them consistent with the Act's purpose. In the past, the EEOC regulations had defined substantially limits as "significantly restricted," but Congress told the EEOC, that is too high of a standard - go back and make it an easier standard to meet.

#### 3. *Mitigating Measures*

Another change is that when determining whether a person is substantially limited in a major life activity, it is assumed that the beneficial effects of mitigating measures, such as the use of assistive technology, except ordinary eyeglasses or contact lens will be ignored. In the past, the U.S. Supreme Court held the opposite, that it did not ignore mitigating measures. This holding resulted in a lot of people not being covered by the ADA - people with conditions such as epilepsy, diabetes, and mental illness, who controlled their symptoms through measures like medication, good diet, and regular sleep. Prior to the Supreme Court ruling, few people questioned whether individuals with these types of conditions had disabilities, but after the ruling it was clear that many of them did not, at least not under the ADA definition. The ADAAA rejected the Supreme Court's holding regarding the use of mitigating measures.

#### 4. *Major Life Activities*

Major life activities expanded to include bodily functions. Major life activities include, but are 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. Now it will also include, the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. For example, a person with insulin-dependent diabetes will most likely be covered under the first part of the new definition of disability because it will consider what his limitations would be without his insulin and because endocrine system function is definitely considered a major life activity as of January 1, 2009.

#### 5. *Limitations that are Episodic or in Remission*

Conditions that are episodic or in remission will now be considered limitations as if they are active. In the past, a person whose condition was in remission or whose limitations came and went might not have been covered by the ADA, depending on how long that person's limitations were in an active state. This meant that a person with, for example, mental illness, might not be entitled to accommodations in the workplace when his condition was active because he did not meet the ADA's definition of disability. Congress addressed this in the Amendments Act by

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stating that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."

### 6. *Regarded As*

An individual will meet the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. In addition the "regarded as" definition does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less. The ADA makes regarded as coverage under the ADA very broad. To be covered, an individual only has to establish that an employer discriminated against him because of a medical condition, whether he actually has one or the employer just thought he did. He does not have to meet the substantially-limited-in-a-major-life-activity standard. One exception, under regarded as is, that impairments that are transitory (lasting or expected to last 6 months or less) and minor are not covered. Arguably, impairments that are transitory or minor, but not both, will be covered. Congress broadened coverage under the regarded as part of the definition to help address the prejudice, antiquated attitudes, and the failure to remove societal and institutional barriers that still exist.

### Reasonable Accommodation

The ADA did not change the definition of reasonable accommodation. However, the Act does clarify that only individuals who meet the first (actual disability) and second (record of a disability) parts of the definition are entitled to accommodations; individuals who only meet the third part (regarded as) are not entitled to accommodations. Even though the definition did not change, it is clear that with a broader definition of disability, more focus will be placed on providing reasonable accommodations. One thing to keep in mind regarding a request for reasonable accommodation is that the accommodation does not have to be tied to the substantially limited major life activity that established that the employee has a disability. For example, a person with cancer may establish that she has a disability because she is substantially limited in normal cell growth, which is listed as a major life activity under the "bodily functions" category in the

ADAAA. However, the accommodation request is related to fatigue and nausea resulting from medical treatment. Once the employee establishes that they have a disability, then the employer must consider providing accommodations for any limitations as a result of the impairment, not just the limitation that established the disability.

Another thing to keep in mind is the flexibility built into the reasonable accommodation obligation under the ADA. For example:

- a. employers can choose among effective accommodation options and do not always have to provide the requested accommodation,
- b. employers do not have to provide accommodations that pose an undue hardship,
- c. employers do not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job,
- d. employers do not have to make an accommodation for an individual who is not otherwise qualified for a position, and
- e. employers do not have to remove essential functions, create new jobs, or lower production standards as an accommodation.

### Employers and ADA

An individual's employer is a potential source of funding for assistive technology. Under ADA, the employer has a legal mandate to provide a "reasonable accommodation" to employees and prospective employees with disabilities, if the accommodations will enable the individual to perform the essential functions of the position. A reasonable accommodation may include "acquisition or modifications of equipment or devices" as long as the accommodation does not impose "an undue hardship" on the company, determined by comparing "the nature and cost of the accommodation(s) in relation to the size, resources, nature and structure of the employer's operation." If the facility or company is part of a larger organization, the resources of the larger organization are taken into account when determining "undue hardship." An employer is not responsible for an accommodation unless the individual makes known his or her disability and need for an accommodation.



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### *Eligibility*

All persons who fall under the definition of disabilities are covered by ADA. Title I of the Act forbids discrimination in employment on the basis of an individual disability. If a person with a disability is qualified for a job, he or she is entitled to a "reasonable accommodation." State and local governments are covered under Title II of ADA and must provide "reasonable accommodation" for employees and perspective employees under this Title of the Act. Not all employers are covered by Title I. Employers of fewer than 15 people are exempt from Title I as well as all religious organizations.

### **Education and the ADA**

Title II of the Act prohibits all public entities, even those completely independent from federal funding, from discriminating against people with disabilities. Title II provides protection to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of Title V of the Rehabilitation Act, which includes Section 504. The more specific requirements imposed on a school district under Section 504 are applicable under Title II when necessary to ensure that Title II is interpreted in a way that is consistent with the intent of the ADA. The obligations of a school district, specifically described under Section 504, to provide a Free Appropriate Public Education (FAPE) to school-age individuals with disabilities, regardless of the nature or severity of their disabilities, are incorporated in the general provisions of Title II.

Provision of FAPE requires a school district to provide regular or special education and related aids or services that are: (1) designed to meet the individual needs of persons with disabilities as adequately as the needs of non-disabled persons are met; and (2) able to satisfy requirements regarding educational setting, evaluation and placement, and due process safeguards. Examples of related aids and services that may be provided to individuals with disabilities in either regular or special education programs include: interpreters for students with hearing impairments; readers for students with visual impairments; equipment and equipment modifications to accommodate the needs of students with mobility impairments, manual impairments, hearing impairments, or visual impairments; speech therapy; psychological services; physical and occupational therapy; school health services; or school social work services.

Schools may not deny children the opportunity to take home assistive devices if those devices are needed to enable those children to have an equal opportunity to participate in school.

A school district must provide an appropriate public education to a person with a disability without cost to the person or to his or her parents or guardians, except for those fees that are also imposed on non-disabled persons or their parents or guardians.

In general, Title II does not require school districts to provide personal devices such as wheelchairs, prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature, including assistance in eating, toileting, or dressing. This provision serves as a limitation on the school district's obligation to comply with other Title II requirements, including the duty to provide auxiliary aids and services to facilitate communication, and the duty to modify policies, practices, and procedures to ensure accessibility. This provision does not affect the obligation of a school district to provide a personal device or service in the form of special education or a related aid or service if that device or service is necessary to provide FAPE to the individual student.

### *Eligibility*

The ADA requires that all state and local government services be accessible to people with disabilities as defined in Section 504 of the Rehabilitation Act. Title II of the ADA provides comprehensive civil rights protection for "qualified individuals with disabilities."

ADA and Section 504 protection for children with disabilities is much broader than that of the Individuals with Disabilities Education Act (IDEA). Children with disabilities or temporary disabilities who do not meet the criteria for Special Education Services under IDEA may be able to receive AT regardless of whether it is needed to allow the child to benefit from special education.

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### POST-SECONDARY EDUCATION AND THE ADA

Colleges, universities and vocational schools that receive federal funds must make their programs accessible to students with disabilities. This will include the great majority of schools, including most private ones. Previously, this was required by Section 504 of the Rehabilitation Act, but it was reinforced by the passage of the Americans with Disabilities Act (ADA).

The purchase of assistive technology for an individual may be necessary to make a post-secondary education program accessible. Computers, for example, can enable students with visual impairments or physical disabilities to take notes and complete assignments for their classes. An individual who is hard of hearing may require an assistive listening device for classes. In many instances, the school may choose to combine resources with another entity, such as the Division of Rehabilitation Services, to obtain the assistive technology that a student needs. The school may insist that these or other agencies are responsible for providing the assistive technology.

#### *Eligibility*

Any individual with a disability who has been accepted into a post-secondary institution is potentially eligible to receive aid in obtaining assistive technology. It is the responsibility of the school to make the program accessible and to provide the student with what he or she needs in order to do so. A student with a disability who feels that he or she is in need of assistive technology in order to adequately participate in the educational process should talk with the particular school's admissions counselor or to a staff member at the Student Disability Services office.

### PIECES OF THE PUZZLE

- Computer-based assistive technology can be of great assistance to students with disabilities and can possibly be obtained through this source.
- The school may defer to another agency to pay for assistive technology, such as the Department of Rehabilitation Services, if the school feels that another agency has an obligation to provide the device. Post-secondary schools cannot supplant services that are the obligation of another entity.
- If the school does purchase assistive technology for a student's use, the school will maintain ownership.

### FOR ADA TECHNICAL ASSISTANCE CONTACT:

Southwest ADA Center  
2323 S. Shepherd, Ste 1000  
Houston, TX 77019  
(713) 520-0232 (V/TTY)  
(800) 949-4232 (ADA Hotline)  
FAX: (713) 520-5785  
<http://www.southwestada.org/>

The Southwest ADA Center's mission is to promote voluntary compliance with the Americans with Disabilities Act (ADA) by providing three core services: technical assistance, training, and materials dissemination.

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Dept. of Education Bldg.  
400 Maryland Ave, SW  
Washington, DC 20202-1100  
(800) 421-3481  
FAX: (202) 453-6012  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

The U.S. Department of Education's Office for Civil Rights (OCR) enforces Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. OCR has the responsibility for enforcing Title II with respect to all programs, services, and regulatory activities relating to the operation of public elementary and secondary education systems and public institutions of higher education, vocational education (other than schools of medicine, dentistry, nursing, and other health related schools) and public libraries. Section 504 regulation applies to preschool, elementary, secondary, postsecondary, vocational, and adult education programs and activities, as well as, other programs and activities that receive or benefit from federal financial assistance.

Online: Complainants may file a complaint with OCR using OCR's electronic complaint form at the following website: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

For those without current e-mail accounts, Internet access may be freely available from your local public library, and free e-mail accounts are available from several large providers.



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U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Civil Rights Division  
Disability Rights Section - NYA  
Washington, D.C. 20530  
(800) 514-0301 (V) OR (800) 514-0383 (TTY)  
<http://www.ada.gov/>

The Department of Justice ADA Technical Assistance Program provides free information and technical assistance directly to businesses, non-profit service providers, state and local governments, people with disabilities, and the general public. The Department's technical assistance services provide the most up-to-date information about the ADA and how to comply with its requirements. In addition to the major activities discussed below, we undertake broad and targeted outreach initiatives to increase awareness and understanding of the ADA to reach specific audiences at the local level, including hotels and motels, restaurants, small businesses, builders, mayors and town officials, law enforcement, people with disabilities, and others.

U.S. Equal Employment Opportunity Commission  
131 M St, NE  
Washington, DC 20507  
202-663-4900  
(800) 669-4000 OR (800) 669-6820 (TTY)  
(800) 669-3362 (to order publications)  
[www.eeoc.gov](http://www.eeoc.gov)

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title I provisions prohibiting discrimination in employment against qualified individuals with disabilities. The EEOC investigates complaints filed by job applicants or employees who believe they have been discriminated against in employment on the basis of disability. The EEOC also provides information, speakers, technical assistance, training, and referral to specialized resources to employers and people with disabilities. Publications available from the EEOC include the Title I regulation, "A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act," as well as, booklets and fact sheets that explain employer responsibilities and rights of individuals with disabilities.

To file a charge of employment discrimination at the EEOC regional office contact:

Oklahoma City Area Office  
215 Dean A McGee Ave. 5th Floor  
Oklahoma City, OK 73102  
(800) 669-4000 (V) or (800) 669-6820 (TTY)