

AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT BECOMES LAW

Seeking to reverse the Supreme Court's trend of excluding disabled people from the protections of the Americans with Disabilities Act, the ADA Amendments Act of 2008 (ADAAA) becomes effective on January 1, 2009. The stated goal of the ADAAA is to restore a broad scope of protection for individuals with disabilities from discrimination and to align the construction of the ADA with Title VII of the Civil Rights Act. The ADAAA seeks to change the focus from whether an individual has a qualifying disability to the discrimination claim. The ADAAA restates the prohibition against discrimination as: no covered entity shall discriminate against a qualified individual on the basis of disability.

To accomplish its goals, the ADAAA makes significant changes to two of the three definitions of disability under the ADA. The ADAAA states that the term "substantially limits" in the first prong of the definition of disability should not be unduly used as a tool for excluding individuals from the ADA's protections, rather it should be interpreted in favor of broad coverage of individuals under the Act. The ADAAA further clarifies that an impairment need only limit one major life activity and not other major life activities in order to be considered a disability. Determinations of whether an impairment substantially limits a major life activity are to be made without regard to the ameliorative effects of mitigating measures (except ordinary eyeglasses or contact lenses). This provision protects individuals who would have been considered disabled, but through some ameliorative measures (medicine) and/or the individual's adaptation to the impairment had overcome his/her disability, but under Court rulings found themselves outside of the ADA's intended protection.

The new law also provides examples of what might constitute a major life activity such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also includes major bodily functions such as: functioning of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Neither list is meant to be exhaustive or conclusive.

Episodic impairments or those impairments in remission are to be considered disabilities if they would substantially limit a major life activity when active, e.g. epilepsy.

The “regarded as” prong in the third definition of disability was revised by stating: a person meets the requirement of “regarded as” having an impairment if the individual establishes he/she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment whether or not the actual or perceived impairment limits a major life activity. Under current law, a plaintiff would have to prove that the actual or perceived impairment actually did impair a major life activity. This changes the focus to the defendant’s motivation for the adverse action under a Title VII analysis. Transitory impairments lasting six months or less are now excluded from coverage.

The ADA changes may have little practical impact in New York because the New York Executive Law has been interpreted more broadly than the ADA and lacks the requirement that a disability restrict the performance of a major life activity.