

# Understanding the ADAAA and How It Changed Federal Disability Laws

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Federal laws providing protections for employees or citizens with disabilities include the Americans with Disabilities Act, Sections 102 and 104; (42 U.S.C §§ 12112-12114); Section 501 of the Vocational Rehabilitation Act (34 C.F.R. Part 104) and the most recent addition, the Americans with Disabilities Act as Amended or ADAAA, adopted in 2009. The Equal Opportunity Commission published its final regulations to implement the amendment. Those regulations are found at 29 CFR Part 1630.

The ADA did not include definitions for some important phrases used in the initial legislation. As a result, the ADA court decisions frequently focused on whether certain medical conditions were covered under the ADA. Some courts interpreted the scope of the ADA protections narrowly. The ADAAA was intended to shift the focus from whether an individual has a qualifying disability to a clearer focus on whether an employer has engaged in unlawful discrimination based on an individual's disability.

## *ADA Terminology*

The ADA protects “**qualified individuals with a disability**” from discrimination in the job market or workplace. A qualified individual with a disability is an individual who can perform the **essential functions** of the position, with or without a **reasonable accommodation**. This means the individual must have the requisite skills, experience and training to meet the requirements of the position.

1. The ADA defines a **disability** as a physical or mental impairment, a record of physical or mental impairment or being regarded as having a physical or mental impairment, which **substantially limits** one or more of the **major life activities** of the individual. The terms disability and physical or mental impairment include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory and speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and learning disabilities.
2. **Major life activities** are defined as the normal activities of living which a non-disabled person can do with little or no difficulty, such as caring for oneself, performing manual tasks, walking, sleeping, seeing, hearing, speaking, breathing, learning, engaging in sexual relations, reproducing, interacting with others and working.
3. A **limitation is substantial** under the ADA if the disabled person is unable to perform the activity or is significantly restricted in doing so. The factors to consider in deciding whether a major life activity is substantially impaired include: (1) the nature and severity of the impairment and (2) the permanent or long-term impact of the impairment. In *Toyota Motor Manufacturing, Ky. Inc. v. Williams*, 534 U.S. 184 (2002) the court interpreted the term “substantially” as “substantially limits” a major life activity, which are “of central importance to daily life”. *Id.* at 197.
4. The court also concluded impairments that interfere only in a minor way with the performance of (i.e.) manual tasks, or impairments that were not permanent or long term, were excluded. Courts took into

account the ease of correcting the impairment, such as impaired vision, and concluded certain correctable vision impairments are not “substantially limiting” disabilities. See, *Albertson’s Inc. v. Kirkingburg*, 157 U.S. 555 (1999) and *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999).

5. To establish the employee was **substantially limited** in the **major life activity of “working”**, the plaintiff must show he or she is precluded from performing a broad range of jobs, rather than merely a single job. This included a showing of the job restrictions by the geographic area in which the plaintiff has reasonable access to and the number or types of jobs using similar training, job skills or knowledge, the plaintiff would be disqualified from performing.
6. An **essential job function** is one that is fundamental to the position the plaintiff holds or desires. It does not include marginal functions that are non-essential to the job functions the employee has or will be asked to perform. See, 42 U.S.C § 12111 (8) for a list of factors in assessing whether a job function is essential or marginal to the position. See also, *Dark v. Curry County*, 451 F. 3d 1078, 1084-85 (9<sup>th</sup> Cir. 2006), *cert. denied*, 127 S. Ct. 1252 (2007) (discussing essential and marginal functions).
7. An employer must **accommodate** the disabled employee to address any changes in job duties needed to allow the disabled employee to perform essential job functions, if such an accommodation does not produce an **undue burden or hardship** on the employer. See, 42 U.S.C § 12111 (10) and 29 C.F.R § 1630.2(p) for the list of factors relevant in determining whether an employer would experience an undue hardship in providing the employee with an accommodation. Basically, eliminating essential job functions; a change which is unduly costly considering the size and financial resources of the operation; changes which impact a large number of employees; or changes which are disruptive to or change the nature of the business operations, may be unduly burdensome.

### *The ADAAA and EEOC Regulations*

The ADAAA did not have regulations to help support its application when it was first adopted in 2009. The EEOC adopted regulations found in 29 C.F.R Part 1630 which recently went into effect. The reason for the amendment is best described in a statement by Rep. Steny H. Hoyer, one of the original sponsors of the ADA, who stated: “we could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, mental illnesses and other disabilities would have their ADA claims denied because they were considered too functional to meet the definition of disability.” 2008 House Judiciary Report at 10. The bill was assigned to the Committee on Education and Labor, which commented; “too often cases have turned solely on the question of whether the plaintiff is an individual with a disability; too rarely have courts considered the merits of the discrimination claim, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied inappropriately, or qualification standards were unlawfully discriminatory. H.R. Report, 110-730, at 7-8 (June 23, 2008).

The ADAAA includes a rule that requires the term “disability” to be construed broadly to achieve its remedial purpose. An individual with a disability need only show he or she has a physical or mental impairment which limits one or more major life activities. The second prong of the test under the ADA, i.e. a showing the employee is a “qualified individual”, is only necessary if the employee or applicant was seeking an accommodation he or she did not receive. If the employee or applicant (referred to as “plaintiff”) brings a claim of discrimination based on impairment, but is not seeking an accommodation, the plaintiff must show the third prong of the test under the ADA, which is that the plaintiff was discharged, not hired, or adversely affected due to his or her disability. This is the prong which addresses the severity of the impairment. 29 C.F.R. § 1630.2 (g)(3).

The ADAAA also provides a definition of major life activities, but adds the list is not exclusive. It also defines “major bodily functions”. Again the list is extensive but is not considered exhaustive. Also the amendment defines

how certain conditions impact major bodily functions, such as cancer affects normal cell growth, diabetes affects the operation of the pancreas and endocrine system etc.

Finally, the ADAAA states the primary focus of the analysis is not on whether the individual has a disability, but whether discrimination due to a disability or perceived disability occurred. The ADAAA states the determination of whether an individual has a disability should not “require extensive analysis” and the term “substantially limits” should be construed broadly in favor of expansive coverage. Appendix to Part 1650, Introduction, subsection (4). This language was included in the amendment to reverse the U.S. Supreme Court’s ruling in *Toyota*, cited above, which stated these terms should be interpreted strictly or narrowly, to limit the scope of the ADA.

By limiting the proof required for disability discrimination claims, this change in the application of the rules broadens who will be protected under the ADA. Most notably, the protections will impact discrimination and hostile work environment claims.<sup>1</sup> In a claim for failure to accommodate, the plaintiff must have an impairment that supports the request for an accommodation. In a discrimination claims, the plaintiff must show the employer’s decision was based in part on the belief that the plaintiff had a qualifying disability. It is not necessary that the plaintiff actually be disabled, if the perception of a disability negatively impacted the plaintiff’s employment opportunity.

## *Conclusion*

Disability discrimination liability has always been a challenging issue for employees and employers because the laws attempted to balance the employee’s interests with the employer’s needs. That is a difficult balance to achieve. That balance has now shifted in favor of broader ADA coverage, but many of the same concepts used under the ADA are still applicable to certain situations. The new EEOC regulations attempt to direct employers through the ADAAA by defining when the different ADA terminology or tests apply.

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<sup>1</sup> A hostile work environment claim is one type of prohibited discrimination. A plaintiff can show he or she was targeted in the workplace due to an actual or perceived impairment that adversely impacted the employee’s working conditions. Discrimination claims may focus on one employer decision such as failure to hire or promote. Hostile work environment claims focus on numerous actions, often by co-workers, which collectively have an adverse impact on employment.