

The ADA Amendments Act: Effective January 1, 2009


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The ADA Amendments Act

- New Law Effective January 1, 2009
- Reason for New Law
 - In enacting ADA in 1990, Congress intended broad coverage.
 - U.S. Supreme Court's decisions in *Sutton v. United Air Lines* (1999) and *Toyota Motor v. Williams* (2002) narrowed broad coverage and eliminated protection for many persons Congress had intended to protect.
 - Current EEOC regulations are also too restrictive on the coverage of the ADA.
- Result of New Law
 - Broad scope of protection available under ADA
 - "Disability" to be construed broadly


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The ADA Amendments Act

- Conveys Congressional intent that standard imposed by U.S. Supreme Court created inappropriate high level of limitation necessary to obtain coverage under ADA.
- Rejects U.S. Supreme Court decisions in *Sutton* and *Toyota Motor*.
- Reinstates reasoning of U.S. Supreme Court decision in *Nassau County v. Arline* (1987).
- Expresses expectation that EEOC will revise regulations to provide for broader coverage.
- Conveys Congressional intent that **"primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis."**

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Sutton v. United Air Lines (1999)

- Severely myopic job applicant
- Challenged minimum vision requirement
- Held: corrective and mitigating measures should be considered in determining whether individual is disabled
- Applicants not disabled because vision corrected by eyeglasses or contact lenses
- Mitigating measures defense subsequently broadly applied, resulting in many individuals being deemed not disabled under ADA

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Toyota Motor Manufacturing v. Williams (2002)

- Former employee with carpal tunnel syndrome
- Held: ADA must be interpreted strictly to create a demanding standard for qualifying as disabled
- Held: impairment must be considerable to constitute a disability; major life activities are those that are of central importance to daily life
- Holding subsequently resulted in rejection of many impairments as constituting a disability under ADA

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Focus and Impact of New Law

What is a Disability?

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Under New Law – The Definition of Disability

Disability means:

- A physical or mental impairment that *substantially limits* one or more *major life activities*;
- A record of such impairment; or
- Being *regarded as* having such an impairment.

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Under New Law – 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, concentration, thinking, communicating, and working; and
- Also include 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.

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Under New Law – Regarded as Having Such an Impairment

- If Individual establishes that he or 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 impairment limits or is perceived to limit a major life activity**.
- Individual is not “regarded” as disabled if impairment is transitory and minor.
- Transitory impairment has an expected duration of 6 months or less.

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Rules of Construction

- Definition of disability construed in favor of broad coverage.
- Term "substantially limits" interpreted consistently with findings and purposes.
- Impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active.
- Determination made without regard to mitigating measures.
- But may consider mitigating effects of ordinary eyeglasses or contact lenses.

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School Board of Nassau County v. Arline (1987)

- School teacher fired for tuberculosis.
- Held: contagious disease such as TB is handicap under Rehabilitation Act.
- Case remanded for further proceedings on whether teacher qualified for job.
- Focus of proper analysis: is teacher qualified for job (not is she disabled).
- Court draws a road map on appropriate analysis and factors to consider once employee is determined to be disabled.

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The Arline "Road Map"

Question: Is the disabled employee otherwise qualified for the job?

To Answer: Conduct individualized inquiry of facts.

- Individualized inquiry achieves goal of protecting disabled individuals from deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as exposing others to significant health and safety risks.
- Example: Person who presents significant risk of communicating infectious disease to others in workplace will not be otherwise qualified for job if reasonable accommodations will not eliminate that risk.

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The Arline "Road Map"

- An otherwise qualified person is one who can perform the essential functions of the job, with or without reasonable accommodations.
- If disabled person is not able to perform essential functions of job, question is if a reasonable accommodation would enable disabled person to perform those functions.
- Accommodation is not reasonable if it imposes undue financial and administrative burdens on employer or requires a fundamental alteration in nature of job. Factors to consider:
 - Overall size of place of employment with respect to number of employees, number/type of facilities, and size of budget;
 - Nature of employer's operation, including composition and structure of employer's workforce;
 - Cost and nature of requested accommodation.
 - How fundamentals of job are impacted by accommodation

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Impact of New Law – Day to Day

- Employers' actions subject to more scrutiny in court system
- HR day to day decisions extend beyond inquiry of whether employee has disability
- Continue with ADA analysis
- Is employee qualified for job
- Focus on whether reasonable accommodations are necessary or required

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Interactive Process

- Emphasize interactive process
- Carefully identify and consider essential functions of job
- Consider job descriptions and annual reviews in identifying essential job functions
- Evaluate reasonableness of requested accommodations in context of essential functions
- Modify non-essential functions
- Evaluate undue hardship in context of business necessity
- Dot the "i's" and cross the "t's" when making reasonable accommodation decisions

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Impact on Litigation

- Limits, if not virtually eliminates, legal issue of whether plaintiff is disabled within meaning of law
- Much larger group of individuals protected by statute
- Legal defenses will be focused on whether requirements of ADA satisfied
- Predict more lawsuits

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Grant of Rule Making Authority

- Grant of authority to EEOC, Attorney General, and Secretary of Transportation to adopt implementing regulations for definitions of disability
- Expect significant new regulations that define disability more particularly
- Focus on performance and conduct standards adopted in 2008 – consistent with ADA Amendments Act
- EEOC guidance – focus on performance and conduct standards
- Other guidance by EEOC – *specific types of disabilities*

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Conclusion

- Amendments clarify, simplify, and broaden definition of disabled
- Group of protected individuals increased
- Will increase viability and number of lawsuits
- Key is interactive process and clear focus on essential functions
- Review Guidance by EEOC in evaluating specific types of disabilities

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