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OVERVIEW OF THE ADA AMENDMENTS ACT OF 2008

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INTRODUCTION

The ADA is a civil rights law.

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The ADA was supposed to focus primarily on whether a covered entity engaged in discrimination on the basis of disability; not require an extensive analysis regarding the nature of the individual's disability.

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Examples of individuals intended to be protected under the ADA:

- An individual denied employment on the basis of mental retardation.
- A woman denied re-employment after her breast cancer was in remission.
- An individual refused an accommodation (short breaks) on the basis of the fact that he had diabetes and needed to take insulin during the work day.

INTRODUCTION

Series of court decisions

- Restricted the broad scope of coverage under the ADA;
- Interpreted the ADA strictly to create a demanding standard to qualify as disabled;
- Diminished the civil rights protections of the ADA; and
- Created a perverse Catch-22.

INTRODUCTION

A broad-based coalition of stakeholders and policymakers agreed to work together to restore protections under the ADA.

PURPOSES OF THE ADA AAA

The ADA Amendments Act of 2008 (ADAAA)
restores the original intent of the ADA by:

- Reinstating the broad scope of protection;
- Moving the focus from the threshold issue of disability to the primary issue of discrimination; and
- Reaffirming that although the definition of disability is intended to be broad, only those individuals who are qualified and can prove discrimination are entitled to relief.

PURPOSES OF THE ADA

The ADA accomplishes this intent by:

- Retaining the existing definition of the term “disability” but clarifying the key words and phrases;
- Changing the structure of the law to focus on discrimination;
- Including construction clauses to explain intent;
- Authorizing federal agencies to regulate the definition of “disability”; and
- Including conforming amendments regarding Title V of the Rehabilitation Act.

DEFINITION OF DISABILITY

The ADAAA retains without amendment the existing definition of the term “disability” but clarifies the key words and phrases in the definition.

DEFINITION OF DISABILITY

The term “disability” means, with respect to an individual—

- A physical or mental impairment that substantially limits one or more major life activities of such individual (PRONG 1);
- A record of such an impairment (PRONG 2);
or
- Being regarded as having such an impairment (PRONG 3).

DEFINITION OF DISABILITY

PRONG 1 (Impairment)

Key Components:

- Physical or mental impairment
- Substantially limits
- Major life activities

DEFINITION OF DISABILITY

Physical or mental impairment

- Currently, no definition of the phrase “physical or mental impairment” in the statute.
- ADAAA does not add definition of the phrase to the statute.
- Legislative history explains that definition included in current regulations is appropriate. [28 CFR 36.104; 29 CFR 1630.2(h)(10-(2)); 34 CFR 104.3(j)(2)(i)]

DEFINITION OF DISABILITY

Substantially Limits

ADAAA:

- Rejects standards adopted by courts and EEOC (“prevent or severely restrict”) as “too demanding.”
- Directs courts and agencies to construe term “broadly” and “without regard to the ameliorative effects of mitigating measures.”
- Directs the courts and EEOC to view impairments that are “episodic” or “in remission” in their “active” state.

DEFINITION OF DISABILITY

Major Life Activities

- **Includes illustrative list of major life activities.**
- **Specifies that major life activities includes major bodily functions.**
- **Clarifies that individual may be limited in only one major life activity.**

DEFINITION OF DISABILITY

PRONG 2 (Record or History of Impairment)

- No change to current law or regulatory interpretation.

DEFINITION OF DISABILITY

PRONG 3 (Regarded as having an impairment)

- Individuals not subject to functional test.
- Individual must prove adverse action taken because of an actual or perceived impairment.
- Does not include transitory and minor impairments.
- Covered entities not required to make reasonable accommodations or modifications.

ADAAA CHANGES THE STRUCTURE OF THE ADA

Focus is on merits of the case i.e.,
whether a covered entity engaged
in discrimination on the basis of
disability rather than threshold
question of whether the individual
was disabled.

CONSTRUCTION CLAUSES

- **Workers compensation and other disability benefit programs not affected.**
- **Fundamental alternation defense not affected.**
- **Reverse discrimination claims not authorized.**

REGULATORY AUTHORITY

ADAAA clarifies that the EEOC, DOJ, and DOT are authorized to issue regulations implementing the definition of disability

CONFORMING AMENDMENTS

ADAAA specifies that the meaning given the term “disability” under the ADA shall be used for purposes of defining the term “disability” under Title V of the Rehabilitation Act of 1973, as amended.