

# The ADA Amendments Act of 2008 (ADAAA): EEOC's Final Regulations

Federally Employed Women's  
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# ADA Amendments Act of 2008

- Statute went into effect on January 1, 2009
- Statute not retroactive
- All provisions of the Amendments Act apply to the Rehabilitation Act

# EEOC Regulations

## [29 C.F.R. part 1630]

- Published in the Federal Register on March 25, 2011
- Effective Date: May 24, 2011
- Regulations closely track the statute
- Published along with revisions to interpretive guidance issued with the original regulations (also known as the appendix)
- EEOC revised only those portions of the regulations and appendix affected by ADAAA

# Why Did Congress Amend the ADA?

- Congress intended the ADA definition of disability to be construed broadly but courts were finding too many people outside the ADA's protections
- Congress wanted to make it much easier for persons with a wide range of impairments to establish disability without much analysis

# Definition of “Disability”

## [§ 1630.2(g)]

- Same basic three-part definition:
  - A physical or mental impairment that substantially limits a major life activity;
  - A record of such an impairment;
  - Being regarded as having a disability
- However, Congress changed the meanings of key terms used in these definitions

# How the Statute and Regulations Change Definition of “Disability”

- Provides illustrative list of major life activities that includes “major bodily functions”
- Specifically rejects high standards used by EEOC and Supreme Court to define “substantially limits”
- Positive effects of mitigating measures (other than ordinary eyeglasses or contact lenses) cannot be considered in determining “substantial limitation”

# How the Statute/Regulations Change Definition of "Disability" (cont.)

- Impairment can be substantially limiting even if **episodic** or **in remission**
- "Regarded as" definition rewritten and expanded
- **Remember: Goal of all of these changes is to broaden definition and make it much easier/quicker to find disability without a demanding analysis**

# Impairment [§ 1630.2(h)]

- Statute made no changes to definition of a “physical or mental impairment”
- EEOC regulations make a small change to definition in original ADA regulations by adding the immune and circulatory systems as examples of “body systems” that may be affected by an impairment

# Major Life Activities [§ 1630.2(i)]

- Statute and EEOC regulations provide two non-exhaustive lists of major life activities
- First list of major life activities should look familiar because most of these activities are ones previously recognized by EEOC and most courts
  - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working

# Major Life Activities Include Major Bodily Functions

- New category of major life activities
- Will make it easier for individuals with many different types of impairments to establish disability
  - Examples include functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, reproductive
  - Also includes operations of an individual organ within a body system, such as the operation of kidney, liver, or pancreas

# Major Life Activities (cont.)

- Individual can show substantial limitation (or record of) in just one major life activity from either category
- Regulations say that in determining other examples of major life activities, “the term ‘major’ shall not be interpreted strictly to create a demanding standard for disability.”
- Whether something is a major life activity is not determined by reference to whether it is of “central importance to daily life.”

# Substantially Limits: Rules of Construction [§ 1630.2(j)(1)]

1. Substantial limitation shall be construed broadly in favor of expansive coverage.
2. Impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. Nonetheless, not every impairment will be a disability.
3. Extensive analysis not required: Primary focus should be on a person's qualifications for a job, need for reasonable accommodation, or whether discrimination occurred.

# Substantially Limits: Rules of Construction (cont.)

4. Individualized assessment still required.
5. Comparison of ability to perform major life activity as compared to most people usually will not require scientific, medical or statistical evidence, though presentation of such evidence is not prohibited.
6. Ameliorative effects of mitigating measures (other than ordinary eyeglasses or contact lenses) shall not be considered.

# Substantially Limits: Rules of Construction (cont.)

7. Impairments that are episodic or in remission can be prong one disabilities if substantially limiting when active
8. Individual need only be substantially limited in one major life activity (either list) to have a prong one disability
9. No minimum duration requirement: impairment lasting fewer than six months may be substantially limiting

# Mitigating Measures

## [definition at § 1630.2(j)(5)]

- Mitigating measures eliminate or reduce the symptoms or impact of an impairment
- If an individual uses a mitigating measure to eliminate, control, or lessen the impact/symptoms of an impairment, disability is determined based on extent of limitations prior to using the mitigating measure, or on assessing what would happen if the person stopped using the mitigating measure

# Mitigating Measures (cont.)

- medication, medical supplies, equipment, or appliances, low-vision devices, prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies
- use of assistive technology
- reasonable accommodations
- learned behavioral or adaptive neurological modifications (e.g., monocular vision, learning disabilities)
- psychotherapy, behavioral therapy, physical therapy

# “Ordinary Eyeglasses or Contact Lenses”

[definition at § 1630.2(j)(6)]

- “Shall” take these into account in determining “disability”
- Definition: “lenses that are intended to fully correct visual acuity or to eliminate refractive error”
- **Distinguished from “low vision devices” defined as “devices that magnify, enhance, or otherwise augment a visual image”**

# Impairments That Are Episodic or In Remission

- Will be prong one disabilities if substantially limit a major life activity when active
- Episodic: impairments that may not affect a person 24/7 but that periodically flare up: epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, schizophrenia
- Cancer is an example of impairment that may be in remission

# Types of Impairments That Will Virtually Always Be Found To Be Substantially Limiting

[§ 1630.2(j)(3)(ii)]

- Regulations emphasize that individualized assessment still required
- But, for certain impairments, this individualized assessment will virtually always result in a finding of substantial limitation due to the inherent nature of these conditions and the extensive changes Congress made to the definition of disability

# Types of Impairments That Should Easily Be Found To Be Substantially Limiting [§ 1630.2(j)(3)(iii)]

- Deafness, blindness, mobility impairments requiring use of a wheelchair, intellectual disability (mental retardation), partially or completely missing limbs
- Autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy
- Mental impairments such as major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, schizophrenia

# Condition, Manner, or Duration [§ 1630.2(j)(4)]

- Regulations retain these factors as concepts to consider, if relevant, in determining if a substantial limitation exists
- May consider difficulty, effort, or length of time required to perform major life activity; pain; amount of time major life activity may be performed; the way an impairment affects the operation of a major bodily function

# “Record of” a Disability

## [§ 1630.2(k)]

- 2<sup>nd</sup> definition of disability
- All of the changes reviewed for 1<sup>st</sup> definition (e.g., disregarding ameliorative effects of mitigating measures) would apply to a “record of” situation
- Probably much less likely to need this definition for coverage given expansion of 1<sup>st</sup> and 3<sup>rd</sup> definitions of disability
- Individuals with “record of” disability may be entitled to reasonable accommodation

# “Regarded As” Having a Disability [§ 1630.2(A)]

- This definition of disability is new
- Covers anyone subjected to an action “prohibited by this Act” because of an actual or perceived physical or mental impairment
- For example, applies to actions such as hiring, demotion, promotion, termination, discipline, annual evaluation, compensation decisions, placement on involuntary leave, refusal to allow to return to work

# “Regarded as” (cont.)

- “Regarded as” coverage no longer requires a showing that an employer believed the impairment substantially limited a major life activity
- Only two elements:
  - Employer took employment action
  - Because of an individual’s actual or perceived impairment

# “Regarded as” (cont.)

- Employer can defeat “regarded as” coverage by showing that the impairment at issue is both transitory and minor
- Transitory: Lasting 6 months or less
- Whether impairment is transitory and minor determined objectively

# “Regarded as” (cont.)

- Regarding person as having a disability does not mean employer violated the ADA
- Employer may defend its employment action; if action taken for lawful reasons, then no discrimination
- Individuals covered only under “regarded as” definition not entitled to reasonable accommodation

# Other ADAAA Changes

- Employers using uncorrected vision standards as a qualification standard for certain jobs must show that they are job-related and consistent with business necessity [§ 1630.10(b)]
- In the general prohibition of discrimination, the phrase “**discriminate on the basis of a disability**” replaces “discriminate against a qualified individual with a disability because of the disability of such individual”

# Other Changes (cont.)

- Individuals cannot file an ADA claim stating that they were denied something because they lacked a disability

[§ 1630.4(b)]

- E.g., non-disabled person cannot claim an ADA violation because he was denied a reasonable accommodation or not hired

# Implications

- First two prongs of the definition of “disability” will primarily be relevant where someone needs reasonable accommodation or claims an accommodation was unlawfully denied
- “Regarded as” prong will probably be most likely basis for coverage in non-accommodation cases

# Implications (cont.)

- Where accommodation is requested, focus should be on need for accommodation rather than coverage
- Where accommodation is requested, employers may still ask for documentation to substantiate existence of non-obvious disability, but it will be different from, and likely less extensive than, documentation pre-ADAAA

# Implications (cont.)

- Employers more likely to have to defend qualification standards that exclude individuals from jobs based on impairments, because individuals affected by such standards generally will meet the “regarded as” definition of disability (i.e., unlikely that the impairments will be both transitory and minor)

# More Information

- [www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm) (Q&A on the ADAAA regulations)
- [www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm) (Fact Sheet on the ADAAA regulations)