

# The ADAAA in the Courts: Some Broad Observations

Commissioner Chai R. Feldblum  
U.S. Equal Employment Opportunity  
Commission  
8<sup>th</sup> Circuit Judicial Conference 2014

# ADAAA

- Purposes:
  - (1) Expand and simplify coverage – analysis should be quick and many people should be covered.
  - (2) Overturn restrictive Supreme Court cases – *Sutton* and *Toyota* rules no longer applicable.

# The Definition of Disability

- Disability means “with respect to an individual:
  - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
  - (B) a record of such an impairment; or
  - (C) being regarded as having such an impairment”

42 U.S.C. §12102(1).

# ADAAA – Specific Changes

- Retains the term “substantially limits” but findings and purposes note that it is not a high standard.
- Expands list of major life activities and notes that major life activities includes major bodily functions.
- Clarifies that conditions should be evaluated in their active state without reference to any mitigating measures (medication, learned habits, etc.).

# ADAAA – Specific Changes

- Adds a new definition for “regarded as.”
  - Persons claiming to have been regarded as a person with a disability need only show that they have a physical or mental impairment and were subjected to an act that would be prohibited by the ADA.
  - Limited exception – impairments that are both transitory AND minor are excluded.
  - Reasonable accommodation claims not permitted in “regarded as” claims.

# ADAAA in the Courts

- So far, the courts are applying the law largely as intended. Courts are citing and correctly applying the new EEOC standards.

# ADAAA in the Courts

- There have been a few hiccups though:
  - (1) some decisions still cite old case law and old standards.
  - (2) many decisions overlook major bodily functions.
  - (3) the new “regarded as” definition has caused confusion, especially the “transitory and minor” exception.

# ADAAA in the Courts

- In a number of cases, errors were the result of attorneys failing to plead new standards.
- EEOC is actively seeking to educate the public and attorneys about rights (see notice of rights on next slide).
- EEOC is also actively looking for amicus opportunities to correct any erroneous applications of the law.
- Judges may want to be especially alert when hearing ADA claims – consult EEOC regulations and guidance.

# ADAAA Notice of Rights Document – available at [www.eeoc.gov/laws/types/adaaa\\_notice\\_of\\_rights.cfm](http://www.eeoc.gov/laws/types/adaaa_notice_of_rights.cfm)

Laws, Regulations, Guidance & Notices
Overview
Laws
Regulations
Guidance
Memoranda of Understanding
Discrimination by Type
Prohibited Practices

Home > Laws, Regulations & Guidance > Types of Discrimination



## Notice of Rights Under the ADA Amendments Act of 2008 (ADAAA)

The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment, or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**"Actual" disability or a "record of" a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either "actual" or "record of" a disability):**

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **"major life activities" now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of "mitigating measures"** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **"episodic"** (e.g., epilepsy, depression, multiple sclerosis) or **"in remission"** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting** if it lasts or is expected to last **fewer than six months**.

**"Regarded as" coverage:**

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- "Regarded as" coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a "regarded as" claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the "regarded as" definition of "disability."

**Note: Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.** For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).