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## The ADA Amendments Act of 2008

On January 1, 2009, the Americans with Disabilities Act (ADA) Amendments Act of 2008 went into effect, making some major changes to the way the definition of disability has been interpreted in the past. The changes apply to both the ADA and the Rehabilitation Act. Many agree that these changes were needed because the courts had interpreted the definition of disability so narrowly that hardly anyone could meet it – but the challenge now is understanding what the changes are and who is going to be covered as of January 1<sup>st</sup>. We do not yet have any regulations nor do we have any court interpretation; all we currently have are the words of the Amendments Act and its legislative history.

According to Congress, the ADA Amendments Act was passed “to carry out the ADA’s objectives of providing ‘a clear and comprehensive national mandate for the elimination of discrimination’ and ‘clear, consistent, enforceable standards addressing discrimination’ by reinstating a broad scope of protection to be available under the ADA.” In other words, the purpose of the original ADA was to eliminate discrimination. However, if hardly anyone was covered, then very few were actually being protected from discrimination. So, in the Amendments Act, Congress fixed the definition of disability to cover more people and, as a result, prevent more discrimination. That means that once the Act goes into effect, the question of who has a disability will no longer be the main focus. Instead, the focus will be on whether discrimination occurred.

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;
- A record of such an impairment; or
- Being regarded as having such an impairment.

The Amendments Act did not change the actual definition of disability; the definition is exactly the same as it was. What did change is the meaning of some of the words used in the definition and the way those words are to be applied to individuals.

In the Amendments Act, Congress expressly gave the EEOC the authority to revise its regulations regarding the definition of substantially limits to make them consistent with the Act’s purpose. In the past, the regulations had defined substantially limits as “significantly restricted,” but Congress said that is too high a standard and the EEOC is working on revisions.

These revisions are not available yet. However, we do have additional information in that “mitigating measures” will not be considered.

Mitigating measures are:

## *The Focus*

- Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- Use of assistive technology;
- Reasonable accommodations or auxiliary aids or services; or
- Learned behavioral or adaptive neurological modifications

### Except

- The ameliorative effects of the mitigation measures of ordinary eyeglasses or contact lenses shall be considered in determining whether impairment substantially limits a major life activity.

When determining whether a person is substantially limited in a major life activity, we ignore the beneficial effects of mitigation measures except ordinary eyeglasses or contact lens. In the past, the U.S. Supreme Court held the opposite, that you do not ignore mitigation measures. This holding resulted in a lot of people not being covered by the ADA. The Amendments Act overruled the Supreme Court's holding regarding the use of mitigating measures.

Additionally, there was some debate over what activities were considered "major life activities" for ADA purposes, but one of the most confusing issues was whether someone with a medical condition that only affected internal functions would be covered. Congress has cleared up the confusion by specifically stating in the Amendments Act that bodily functions are indeed major life activities.

In the past, a person whose condition was in remission or whose limitations came and went might not have been covered by the ADA, depending on how long that person's limitations were in an active state. Congress addressed this in the Amendments Act by stating that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."

The Amendments Act makes "regarded as" coverage under the ADA very broad. To be covered, an individual only has to establish that an employer discriminated against him/her because of a medical condition, whether he/she actually has one or the employer just thought he did. He/she does not have to meet the substantially-limited-in-a-major-life-activity standard. One exception under "regarded as" is that impairments that are transitory (lasting or expected to last 6 months or less) and minor are not covered. Arguably, impairments that are transitory or minor, but not both, will be covered.

Even though the EEOC regulations are not available yet, there are some practical things that employers can do to get ready for the Amendments Act:

- Review job descriptions, qualification standards and accommodation procedures
- Focus on performance and conduct
- Train frontline supervisors and managers
- Document actions and decisions

For additional information, go to [www.eeoc.gov](http://www.eeoc.gov) or [www.jan.wvu.edu](http://www.jan.wvu.edu)