



A Summary of the ADA Amendment Act and the Impact

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The ADA Amendment Act went into effect 1/1/2009. The following is a summary of the key changes and the impact of the Act for employers.

Key changes:

- The new act rejects the strict interpretation of the definition of a disability and makes clear that the ADA is intended to **provide broad coverage** to protect anyone who faces discrimination on the basis of disability.
- The focus shifts, under the new Act, from whether or not someone has a covered disability to whether employers have **complied with their obligations to reasonably accommodate** employees and applicants.
- The Act fundamentally maintains the original definition of disability, but takes steps to ensure a **broader interpretation of the terms**. According to the Act, "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 as impairment".
- EEOC has been charged with issuing new regulations **re-defining "substantially limits"**, which is to be consistent with the Act's broader view of coverage provided.
- Under the Act, the determination of whether or not an individual is substantially limited in a major life activity is made **without regard for mitigating measures** (except ordinary eyeglasses and contact lenses). For example, if a diabetic uses insulin, they may still be deemed disabled under the Act even if the insulin controls their symptoms. Mitigating measures include (but are not limited to) medications, medical supplies, equipment, and other auxiliary aides.
- The Act now includes a non-exclusive **list of major life activities** in an effort to eliminate any confusion about what conditions may fall under the ADA. According to the Act, major life activities include a "General" category covering (but not limited to) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working as well as a "Major bodily functions" category covering (but not limited to) functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, grain, respiratory, circulatory, endocrine, and reproductive functions.
- The Act generally expands the **"regarded as" protections**. A person will be regarded as having a disability if an employer discriminates against him/her because of an actual or perceived impairment, whether or not the impairment substantially limits or is perceived to substantially limit a major life activity. "Regarded as" protections do not apply to impairments that are transitory and minor, with an actual or expected duration of 6 months or less. Employers are not required to provide reasonable accommodations to individuals that have been "regarded as" having a disability.

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A Summary of the ADA Amendment Act and the implications (continued)

- Under the Act, impairments that are **episodic or in remission** can still be considered a disability if they would substantially limit a major life activity when active.

Impact of the Act on employers:

- The Act's stated intent to provide broader coverage will result in an **increased number of individuals protected** by Federal Law.
- The Act removes the focus from the disability inquiry (whether or not an individual meets the definition of having a disability) and **places the focus on the individualized "interactive process"** to provide reasonable accommodations.
- Employers must be prepared to engage **employees and applicants in a reasonable accommodation dialog** and, as appropriate, provide qualified individuals with accommodations to perform their essential functions of the job.
- There will be a heightened emphasis on what the **essential functions of the job** are, and employers should be prepared by having job descriptions that include both essential functions, as well as the physical, environmental and mental job factors.
- Employers should keep **records** of all reasonable accommodation dialogs, processes and outcomes.

Attachments:

- Disability Management Employer Coalition (DMEC), Legislative Update; "The ADAAA has been signed – what's an employer to do?"
- The ADA Amendment Act, full text of the Act
- Society for Human Resource Management, Workplace Law Library; "Out with the Old ADA, in with the New"

[The ADAAA has been signed—what’s an employer to do?](#)

Disability Management Employer Coalition, Legislative Updates

Now that the President has signed the Americans with Disabilities Act Amendments Act (ADAAA), what should employers do? The ADAAA is effective January 1, 2009, so employers have just three months to be ready to comply. This means employers need to train managers and supervisors about what has changed. It is probably also a good time to provide a general refresher on ADA itself.

The definition of employer has not changed, so if you were covered by the ADA before, you still are and if you were not, you’re still not. If you have 15 or more employees, you must comply with the ADA and ADAAA.

One of the main things to know about the ADAAA is that it broadens the definition of disability. Many more people will be considered disabled now than in the past. One of the stated purposes of the legislation is to overturn recent court cases that have narrowed the definition of who is considered disabled for purposes of ADA protections.

The ADAAA defines a disability as:

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

The rule about being regarded as having an impairment does not apply to impairments that are transitory and minor. Transitory means an impairment with an actual or expected duration of six months or less.

Until the ADAAA, “major life activities” were not defined. The ADAAA defines major life activities by providing something akin to a laundry list. Specifically, the new law says 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, concentrating, thinking, communicating and working. The law goes on to say that a major life activity also includes the 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.

The new law includes rules of construction that specifically state:

- The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.

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DMEC article, continued

The rule gives the following examples of mitigating measures: 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. Mitigating measures also include use of assistive technology, reasonable accommodations or auxiliary aids or services or learned behavioral or adaptive neurological modification.

The ADAAA does include a provision that makes it clear that if someone is protected under the Act only because they are regarded as having a disability, no accommodations need to be made for that person.

This new law means that if someone has epilepsy or diabetes that is under control with medication, they can still be considered disabled for purposes of the ADA's protections. The same is true of someone with multiple sclerosis that is in remission.

It is time for employers to start training their supervisors and managers about these new rules. The ADA requires an interactive process and the people who need to implement that process need to understand just who is covered by it. It is also a good idea to get input from an attorney with expertise in the area of employment law.

Out with the Old ADA, in with the New

By Allen Smith

Society for Human Resource Management, Workplace Law Library

Many millions more Americans not previously covered by the ADA will be covered by the law as of Jan. 1, 2009, because of the ADA Amendments Act (ADAAA), Camille Olson, an attorney with Seyfarth Shaw in Chicago, told *SHRM Online*. Olson said that employers should provide just as much managerial training about the amended law now as they did after the ADA was first enacted.

“Employers that never got the ADA and don’t get it right now are in for a rude awakening,” Francis Alvarez, an attorney with Jackson Lewis in White Plains, N.Y., added in a Sept. 26 interview. He said that employers that didn’t understand the ADA have been “coddled and protected” by a series of U.S. Supreme Court decisions that “insulated them from challenge.”

Now that the insulation of such decisions as *Sutton v. United Air Lines* (527 U.S. 471 (1999)) and *Toyota Motor Manufacturing, Kentucky v. Williams* (153 U.S. 184 (2002)) has been stripped away, he said, employers will have to defend themselves vigorously from ADA claims by showing they had processes to make individual assessments of employees’ qualifications with or without accommodations. “Employers will be put to the test to evaluate employees one by one,” he said. “I don’t think they’re ready.”

Expanded Definition of Disability

The ADAAA didn’t change the definition of “reasonable accommodation,” but employers will have many more occasions to go through the interactive process of identifying a reasonable accommodation because of the law’s expansion of the term “disability,” according to Olson.

The ADAAA expands the definition of “disability” in several ways, including by:

- Rejecting *Sutton*. As a result, employers no longer may take into account mitigating measures such as hearing aids or insulin when determining whether someone has a disability. However, eyeglasses and contact lenses still may be taken into account.
- Rejecting *Toyota Motor Manufacturing*’s interpretation of “substantially” and “major life activity” in the definition of disability, which is a physical or mental impairment that substantially limits a major life activity, a record of disability or being regarded as having a disability. The Supreme Court had said that to be substantially limited in performing a major life activity under the ADA “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” The ADAAA directs the EEOC to revise its regulatory definition of “substantially limits,” finding that its definition of the term as “significantly restricted” is inconsistent with congressional intent.

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- Adding a definition of “major life activities” to the ADA, including a lengthy illustrative list of major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function, such as functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- Removing the “substantially limits” requirement from the “regarded as” prong of ADA disability. Now someone with an impairment can be regarded as having a disability, even without the perception that the impairment limits a major life activity, provided that the impairment is not an impairment with an actual *or expected* duration of six months or less.
- Providing that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The ADAAA also amended the ADA to clarify that employers do not have to reasonably accommodate someone who is only regarded as having a disability. It didn’t make sense for some courts to interpret the ADA as requiring an accommodation for an impairment that was only regarded as being a disability rather than an actual disability, Myra Creighton, an attorney with Fisher & Phillips in Atlanta, noted in a Sept. 26 interview.

But the definition of disability has been “vastly expanded” by the ADAAA, Victoria Zellers, an attorney with Cozen O’Connor in Philadelphia, told *SHRM Online*. Before the law, employers had to look on a case-by-case basis to determine whether many diseases were covered, she said. “Cancer sometimes was and sometimes wasn’t,” she noted, saying the same was also true, for example, with epilepsy and diabetes. “Now with bodily functions being a major life activity, those diseases most likely are covered under the ADA, unless they are extremely mild,” she said.

The ADAAA borrowed from New Jersey and New York state law prohibitions on disability discrimination by incorporating “major bodily function” into the ADA’s definition of major life activity, Frederic Leffler, a Proskauer Rose attorney in New York, remarked during a Sept. 16 webcast. Leffler noted that the state laws provide more expansive definitions of disability than the ADAAA, as do other states, such as California, where impairments need only limit rather than substantially limit major life activities to be covered.

But in states that do not have more expansive definitions of disability than the ADA, as amended by the ADAAA, Zellers expects that more plaintiffs will get past summary judgment motions because of the changes to the federal law. ADA plaintiffs can be sympathetic for juries, which may put employers at risk for more ADA damages awards and increase the pressure to settle earlier and for more.

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Steps To Take

HR professionals should take a number of steps to prepare for the ADAAA, experts say. These steps include:

- Providing ADA training to supervisors and managers. Training should remind managers of their duty to accommodate not only employees with disabilities but also applicants with disabilities. Olson suggests sending a brief memo to every manager to alert them that the ADA has been amended to provide a much broader definition of who is covered and that it is incumbent on managers to alert HR to reasonable-accommodation requests. She recommended that HR attend managers' meetings before the end of 2008, taking a few minutes to explain the new law and ensuring that managers know who to go to if there are issues.
- Reviewing the interactive accommodation process. The informal discussion with employees about accommodations shouldn't be stilted and should, according to Alvarez, reflect an employer's understanding of its need to be flexible, within reason and without sacrificing consistency. But the process shouldn't be ad hoc either. It should be well documented and overseen by HR.
- Reevaluating policies to make sure that they comply, especially in the application and interactive processes.
- Making sure that job descriptions accurately describe what employers believe are the essential functions of the position.
- Developing internal protocols on how to approach situations. Internal protocols can, according to Alvarez, help ensure consistent treatment and avoid other EEO claims of disparate treatment.
- Developing tools, forms, letters and processes to handle accommodation requests. "If employers wait until there is a reasonable accommodation request" to identify tools, forms and processes, they will find themselves "very off balance and reactive," he cautioned.

New Mindset

As a result of the ADAAA, "HR should stop being lawyers and diagnosticians," according to Lawrence Lorber, a Proskauer Rose attorney in Washington, D.C. Lorber said employers should focus instead on the essential functions of the job and job restrictions to identify a reasonable accommodation.

Much about the ADA has not changed. The ADA still prohibits medical inquiries and examinations, except in limited circumstances such as if an employee requests a reasonable accommodation and the employee's disability isn't obvious. The confidentiality of medical information that employers retain has to be maintained in files that are separate from personnel files. Employers still are required to provide only *reasonable* accommodations to individuals who, with or without accommodations, are *qualified* to perform the essential functions of their positions. And the ADAAA does not change the fact that employers do not have to provide accommodations that will result in an undue hardship.

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But there will be much greater uncertainty about who is covered now that Supreme Court decisions that provided more clarity about the definition of “disability” have been rejected, according to Alvarez.

“The ADA was intentionally vague and intended to force employers to avoid preconceived judgments about what people with disabilities can and cannot do, so they have to figure it out on a case-by-case basis,” he remarked. The interactive process for identifying an accommodation can be slow and deliberative and “rarely has a clear answer,” which he said can make employers uncomfortable.

The ADAAA will require employers to change their mindset, he remarked, to “accept, embrace and master uncertainty when dealing with employees who have disabilities.” Employers that embrace this uncertainty instead of fighting it will, he predicted, be in a “better position in the market to compete and find the right talent.”

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(ADA Amendment Act- full text)

One Hundred Tenth Congress of the United States of America *AT THE SECOND SESSION* Begun and held at the City of Washington on Thursday, the third day of January, two thousand and eight

An Act To restore the intent and protections of the Americans with Disabilities Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'ADA Amendments Act of 2008'.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings- Congress finds that--

- (1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage;
- (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;
- (3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;
- (4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;
- (5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;
- (6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;
- (7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term 'substantially limits' to require a greater degree of limitation than was intended by Congress; and
- (8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term 'substantially limits' as 'significantly restricted' are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes- The purposes of this Act are--

- (1) to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA;
- (2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;
- (3) to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;
- (4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms 'substantially' and 'major' in the definition of disability under the ADA 'need to be interpreted strictly to create a demanding standard for qualifying as disabled,' and that to be substantially limited in performing a major life activity under the ADA 'an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives';

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(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for 'substantially limits', and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the 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; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term 'substantially limits' as 'significantly restricted' to be consistent with this Act, including the amendments made by this Act.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended--

(1) by amending paragraph (1) to read as follows:

'(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;';

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) Definition of Disability- Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

'SEC. 3. DEFINITION OF DISABILITY.

'As used in this Act:

'(1) DISABILITY- The term '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 (as described in paragraph (3)).

'(2) MAJOR LIFE ACTIVITIES-

'(A) IN GENERAL- For purposes of paragraph (1), 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, concentrating, thinking, communicating, and working.

'(B) MAJOR BODILY FUNCTIONS- For purposes of paragraph (1), a major life activity also includes the 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.

'(3) REGARDED AS HAVING SUCH AN IMPAIRMENT- For purposes of paragraph (1)(C):

'(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this 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.

'(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

'(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY- The definition of 'disability' in paragraph (1) shall be construed in accordance with the following:

'(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

'(B) The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

'(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

'(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

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(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--

(I) 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;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph--

(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.'

(b) Conforming Amendment- The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

'SEC. 4. ADDITIONAL DEFINITIONS.

'As used in this Act:

(1) AUXILIARY AIDS AND SERVICES- The term 'auxiliary aids and services' includes--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) STATE- The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.'

(c) Amendment to the Table of Contents- The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

'Sec. 3. Definition of disability.

'Sec. 4. Additional definitions.'

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) On the Basis of Disability- Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended--

(1) in subsection (a), by striking 'with a disability because of the disability of such individual' and inserting 'on the basis of disability'; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking 'discriminate' and inserting 'discriminate against a qualified individual on the basis of disability'.

(b) Qualification Standards and Tests Related to Uncorrected Vision- Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

(c) Qualification Standards and Tests Related to Uncorrected Vision- Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.'

(c) Conforming Amendments-

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended--

(A) in the paragraph heading, by striking 'WITH A DISABILITY'; and

(B) by striking 'with a disability' after 'individual' both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking 'the term 'qualified individual with a disability' shall' and inserting 'a qualified individual with a disability shall'.

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended--

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(1) by adding at the end of section 501 the following:

'(e) Benefits Under State Worker's Compensation Laws- Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

'(f) Fundamental Alteration- Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

'(g) Claims of No Disability- Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

'(h) Reasonable Accommodations and Modifications- A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.:'

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

'SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

'The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.:' and

(3) in section 511 (as redesignated by paragraph (2)) ([42 U.S.C. 12211](#)), in subsection (c), by striking '511(b)(3)' and inserting '512(b)(3)'.

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item:

'Sec. 506. Rule of construction regarding regulatory authority.:'

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 ([29 U.S.C. 705](#)) is amended--

(1) in paragraph (9)(B), by striking 'a physical' and all that follows through 'major life activities', and inserting 'the meaning given it in section 3 of the Americans with Disabilities Act of 1990 ([42 U.S.C. 12102](#))'; and

(2) in paragraph (20)(B), by striking 'any person who' and all that follows through the period at the end, and inserting 'any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 ([42 U.S.C. 12102](#)).:'.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

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