



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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ADA Amendments Act of 2008 (ADAAA)

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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ADA Amendments Act of 2008 (ADAAA)

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On Sept. 25, 2008, President George W. Bush signed the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) with an effective date of January 1, 2009 (S. 3406). The ADAAA ensures protections for people with disabilities whose conditions have been denied as ADA eligible through years of Supreme Court ADA interpretation. The ADAAA greatly expands the number of persons eligible under the ADA of 1990.

On March 25, 2011, the final regulations implementing the ADAAA were made available on the Federal Register's website www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as [1].

These changes to ADA are significant and impacted many cases that were previously thought to be settled. Two notable cases that were reversed by *U.S. Pub.L. 110-325*, (2009) are *Toyota Motor Manufacturing Kentucky, Inc. v. Williams* 534 U.S. 184 122 S. Ct. 681 (2002) and *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139 (1999). The ADAAA changed the Supreme Court's interpretation of who is considered to be eligible under the new ADA, in effect, leading to a much larger segment of the American population that have conditions that now qualify as disabled under ADA.

More importantly for employers, the new laws brought central focus to employer compliance. "Did the employer reasonably accommodate the disabled employee?" rather than "Is the condition really considered a disability?"

The amendments restore benefits by making changes to the definition of the term disability that more closely mirrors the intentions of the original act as passed in 1990. Perhaps just as significantly, the ADAAA overturns more than a decade of court cases involving those with conditions such as epilepsy, mental health disorders, diabetes, autism, attention deficit disorder, developmental delays, intellectual disabilities, muscular dystrophy, and cancer. Additionally, other illnesses that affect major life activities such as working, communicating, concentrating, thinking, reading, and other activities of central importance now fall under the protections of ADA and are considered a protected disability.

As stated in the new legislation, the purpose of this act is:

(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.

In Section 3, DEFINITION OF DISABILITY under the regarded section, coverage is now expanded to persons who are not truly disabled, but who may be regarded as disabled, regardless of whether the impairment or perceived impairment limits major life activity. 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. The new 2008 ADA amendments ensure that those with serious conditions or conditions that substantially limit major life activities are now covered by ADA regardless of mitigating measures.

The ADAAA legislation: prohibits consideration of mitigating measures other than "ordinary contact lenses or eyeglasses" when determining whether someone has a disability. The Supreme Court previously allowed medications or assistive devices people used to control their disability into account when determining if that person qualified as having a disability. The ADAAA no longer allows such factors to be taken into consideration when determining whether someone is disabled under the ADA. Previously, a diabetic on medication to regulate his/her condition might have been deemed "not to have a covered disability." Now, items such as medication, cochlear implants, oxygen therapy, hearing aids, prosthetics, etc., cannot be taken into consideration when determining the definition of disability. Additionally, because the definition of disability has been expanded, that person would likely qualify as having a disability under ADA. This change to the law overturns the intent of the Supreme Court ruling in *Sutton v. United Airlines*, which determined that people with disabilities were not covered by the ADA if their condition could be mitigated by medication, assistive technology and equipment, or learned behavioral adaptations. 527 U.S. 471 (1999).

The ADAAA says that the condition or impairment is a disability if it “materially restricts” a major life activity, more specifically, if it is a physical or mental impairment that substantially limits one or more major life activities. Previously, the courts held that a person had to be significantly restricted” in order to qualify under ADA.

Congress deemed this standard too restrictive and attempted to correct more than a decade of unfavorable interpretation by passing the ADAAA, which includes “bodily functions” as part of major life activities. ADAAA provided that major bodily functions covered under the ADA include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This drastically expanded the list of conditions that fall under the protections of ADA. In the past, some serious conditions were not considered disabilities under ADA because they did not substantially affect a major life activity. Now, the ADAAA provides that major bodily functions are major life activities.

Links:

[1] <http://www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as>

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