



New ADA Amendment Benefits People with Disabilities and Businesses

The Americans with Disabilities Act (ADA), signed by President George H.W. Bush on July 26, 1990, was originally intended to be a civil rights law guaranteeing people with disabilities access to government services and facilities, public gathering places, telecommunication, and employment. It was the most comprehensive law on disability rights ever passed.¹ It created physical guidelines for new building construction, set standards for hiring practices, and mandated that people with disabilities be included with their nondisabled peers wherever possible.

As with all laws, once it was passed by Congress and signed by the President, the court system was left to iron out the ADA's implementation and establish its Constitutional validity. In the 18 years since its inception, court rulings have largely chipped away at the potency of the ADA, creating a need for the Americans with Disabilities Amendment Act (ADAA). This brief will outline the original ADA, discuss some of the important court decisions interpreting it, and then discuss the anticipated impact of the ADAA on both individuals and businesses.

Background and Purpose

The ADA requires the accessibility of government and private locations where the public can gather. This requirement includes ramps and accessible restrooms, but it also includes walking paths wide enough for a wheelchair to use, doors that are not heavy, and clear pathways for use by someone with a visual impairment, among other physical accessibility guidelines.

The ADA is divided into four titles, each addressing a particular subject. The major topics covered by the separate Titles are: employment, government property and services, public gathering places, and communication. In response to these new mandates, businesses and government agencies were required to undergo many physical improvements, such as installing ramps and curb cuts and providing accessible restroom facilities. They also needed to make several upgrades to their programs, such as reworking hiring processes, adopting more accessible program guidelines, and providing accessible visual materials in order to comply with the law.

Some businesses had to bear considerable cost to make the necessary accommodations; however, the average cost to a business was still less than \$1000.^{2,3} This figure only covers accommodations that agencies willingly implemented without the threat of legal action, but the overall cost to employers is still considered minimal. Many adaptations cost nothing, such as pro-

viding written information and offering flexible scheduling, more frequent breaks, and job carving.^{4,5}

In order for an individual to qualify for ADA coverage, the individual's condition must meet the ADA definition of "disability." In the original version of the ADA, disability was defined as an impairment that affected a major life function. The law protected people who had a disability, had a record of a disability, or were regarded as having a disability [42 USC 126 § 12102 (2) (A-C)]. The law did not explicitly define a "major life function," however, it covered activities like walking, talking, seeing, hearing, standing, and sitting. The "record of such an impairment" clause was significant for individuals who had a history of disabilities with unfavorable public opinion, like mental illness. This piece of the legislation protected individuals from discrimination based on past conditions that have since been treated.

The original wording of the ADA also protected people without disabilities. The statute safeguarded people without disabilities from unfair treatment due to a perceived but nonexistent condition.

The original wording of the ADA left many loopholes regarding who was covered and not covered under the law. The Americans with Disabilities Amendment Act attempts to streamline this issue.

Legislative Challenges

Multiple court decisions over the past several years have weakened the original intent of the ADA. Two cases in particular, *Toyota Motor Manufacturer of Kentucky Inc. v. Williams* [534 U.S. 184 (2002)], and *Sutton v. United Airlines* [527 U.S. 471 (1999)], interpreted the ADA definition of disability in a particularly narrow manner, prompting the legislature to take action to restore the original intent of the ADA.

The Supreme Court found in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, [534 U.S. 184 (2002)], that the definition of disability under the ADA "needs to be interpreted strictly to create a demanding standard for qualifying as disabled."⁵ The "substantially limits" requirement of the original statute was intended to provide the same type of protection as that given under the Rehabilitation Act of 1973, a fairly broad interpretation; however, the interpretation in *Toyota* and subsequent cases was much narrower than that supplied under the 1973 Act. Although the phrase "substantially limits one or more major life activities" remains in the definition of "disability" in the ADAA (42 U.S.C. 12102), the ADAA requires the interpretation to follow a broad standard outlined in the Act.

Job carving is breaking up the required tasks for a job and assigning some of those to someone else. For example, an administrative assistant with quadriplegia might have a colleague handle the copying duties of her position.



In Sutton, the Court ruled that “mitigating factors” should be considered when making a decision about disability eligibility under the ADA. In the Sutton case, the mitigating factor was glasses or contacts; however, later decisions broadened mitigating factors to include prostheses, medication, and other life-changing devices. If use of such devices allowed the person to participate in major life activities, the Sutton line of cases would hold that the person was not a person with a disability. Additionally, the body’s own compensation mechanisms would be considered mitigating factors, for example, cancer that is in remission.⁵ The Sutton interpretation of the statute created a very narrow definition of disability that precluded many who might once have been considered disabled under a broad definition. The ADAA explicitly rejects the Sutton “mitigating factors” analysis.

The Americans with Disabilities Amendment Act was signed by President George W. Bush on September 25, 2008, and went into effect on January 1, 2009. The bill was sponsored by Senator Tom Harkin (D-IA) and cosponsored by Senators Edward Kennedy (D-MA), Arlen Specter (R-PA), and Ted Stevens (R-AK). The amendment was crafted to restore the ADA to the original intent that subsequent court rulings eroded. The bill addressed these issues by reworking the ADA’s definition of disability to clarify who is and who is not covered by the law.

Clarifications and Improvements

The Americans with Disabilities Amendment Act (ADAA) streamlined the definition of disability to more clearly define people who should be covered, as originally intended by the ADA. To that end, the ADAA kept the general definition of disability the same as the previous version of the ADA, covering an impairment that significantly limits a major life function. However, the interpretation of this clause has been clarified. The refined interpretation now includes two nonexhaustive lists of conditions covered by the ADA.^{6,7} The first list includes bodily functions that, if impaired, are covered by the ADA.

This list includes:

- Functions of the immune system
- Normal cell growth
- Digestive functions
- Bowel functions
- Bladder functions
- Neurological functions
- Brain functions
- Respiratory functions
- Circulatory functions
- Endocrine functions
- Reproductive functions

The second list of covered condition includes the types of activities that nondisabled people can perform. Individuals who cannot perform these functions are considered to have a disability.

This activity list includes:

- Caring for oneself
- Performing manual tasks
- Learning
- Reading
- Concentrating
- Thinking
- Bending
- Communicating

While these lists are not exhaustive, they are intended to provide more guidance to businesses and the courts as to which individuals are protected under the Act. In addition to clarifying the disabilities covered by the ADA, the Amendment Act also specifically excludes individuals with minor “everyday” disabilities commonly corrected through equipment such as eyeglasses and contact lenses. The ADAA also specifically eliminates protection of individuals whose conditions are short-term, defined as six months or less.

The ADA Amendment Act’s broader disability definition is likely to increase the number of individuals entitled to accommodations. This additional protection could have both positive and negative repercussions on society. On one hand, more individuals will be able to seek accommodations than before, allowing more Americans to maintain employment and contribute to society. On the other hand, in many cases these accommodations will not be free; they could be quite costly in some instances. Both consequences must be considered in order to gauge the effectiveness of the new legislation.

Under the provisions of the original ADA, the EEOC maintained statistics on the number and outcome of legal cases filed. According to the EEOC, between FY 1997 and FY 2007, 267,477 ADA-related cases were resolved. Not all of these cases resulted in a settlement; however, settlements totaled \$677,229,538.⁷

The new legislation makes it easier for individuals with mental illness and other “hidden” disabilities to qualify. Theoretically, the more explicit definition of disability should reduce the number of legal cases brought forth to establish qualifications. However, in practice, more individuals should receive protection under the ADA with the new amendment, which could result in more people pursuing lawsuits to gain their accommodation.

Although it is not always the case, accommodations for people with disabilities more broadly covered under the amendment tend not to be very costly. Such accommodations are typically flexible scheduling, working from home, and other intangible adjustments, rather than expensive equipment.⁸

Thoughts for Policymakers

Table I: Outcomes of ADA Legislation, By Year^{7,9}

Fiscal Year	Case Resolutions	Monetary Benefits
1997	24,200	\$41,300,648
1998	23,324	\$53,725,580
1999	22,152	\$55,835,598
2000	20,475	\$54,437,850
2001	19,084	\$47,869,555
2002	18,804	\$49,971,957
2003	16,915	\$45,238,577
2004	16,949	\$47,697,860
2005	15,357	\$44,843,117
2006	15,045	\$48,784,081
2007	15,708	\$54,540,645

Source: (U.S. Equal Opportunity Employment Commission 2008)

Table 2: ADA and ADAA Comparison¹⁰

	Americans with Disabilities Act	Americans with Disabilities Amendment Act
Definition of Disability	Protects 3 groups of people: 1. Individuals with an impairment that affects a major life function 2. Individuals who are regarded as having an impairment 3. Individuals who have a record of such an impairment	Keeps the same criteria, but adds nonexhaustive lists of major life functions and bodily functions that should be considered when assessing whether someone is covered under the law.
Major Life Functions	ADA gave no examples of major life functions and instead let employers and courts decide whether or not an individual's impairment affected a major life function on a case-by-case basis.	Gave nonexhaustive lists of examples of both major life and bodily functions. Bodily functions: • Functions of the immune system • Normal cell growth • Digestive functions • Bowel functions • Bladder functions • Neurological functions • Brain functions • Respiratory functions • Circulatory functions • Endocrine functions • Reproductive functions Major Life Functions: • Caring for oneself • Performing manual tasks • Learning • Reading • Concentrating • Thinking • Communicating
People Regarded as having a Disability	Covers individuals who are discriminated against because people falsely assume that they have a disability. However, qualifying for coverage was a challenge as individuals had to prove that other employees would have discriminated against them as well.	Eases the requirements for being protected under this clause. The ADAA provides that an individual can establish coverage under the "regarded as" prong by showing that he or she was subjected to an action prohibited by the ADA based on an actual or perceived impairment, regardless of whether the impairment limits a major life activity.
Duration of Disability	Does not specify how long a disability must be expected to last in order for the individual to be covered. Even though the law does not specify duration, the courts have generally agreed that a disability needs to last a few months, at minimum, to be covered.	The ADAA specifically states that a disability must be expected to last at least 6 months in order to be covered.
Average Cost to Businesses	For most businesses the cost was less than \$1000. ²	Although the ADAA protects more individuals, the types of accommodations required are expected to be the same, resulting in a similar cost of less than \$1000 per business.
Chief Legal Concerns	Beginning in 1999 the courts narrowed the interpretation of the ADA definition of disability. This narrowing prompted the legislature to draft the ADAA.	Currently courts have not developed a body of cases that interpret the new amendments. Until the courts have given additional guidance, businesses and individuals looking to the ADAA will be left to do their best to interpret the new statute on their own.

Sources: Acemoglu & Angrist, 2008; Long, 2001.

The impact of the ADAA remains to be seen. There are, however, possible business and policy implications that can be predicted.

1. The ADA as originally written was not interpreted by courts in the manner originally intended by Congress. The ADAA was written to specifically spell out Congressional intent to cover a broader category of people. The ADAA will, therefore, likely require that more people are covered by the protection of the bill. Unfortunately, until there is a developed set of legal cases, the direction of judicial interpretation will not be known. This fact can create difficulty for businesses attempting to ensure compliance with the law.
2. This expansion could result in higher costs for businesses initially, but newly covered employees are likely to be more productive with the aid of their new accommodations. Policymakers should consider a study that examines the cost of compliance for employers compared with the economic benefits of increased employee production due to their accommodation.
3. While Congress has provided updated and specific information on the definition of a covered individual under the ADAA, the ADAA does not specifically address the issue of "reasonable accommodations" in a manner to give additional guidance to the court.⁵ Business leaders and courts continue to be left to deal with defining and implementing a standard that does not give clear guidance.
4. It will be useful for policymakers and businesspeople to follow the cases that begin to be seen under the ADAA. As courts are required to begin interpreting some of the new regulations, businesses will be better prepared to deal with the new rules. In addition, policymakers may also want to follow the trends to ensure that the courts are interpreting the ADAA in a way that is consistent with Congressional will and serves the interests of the invested parties.

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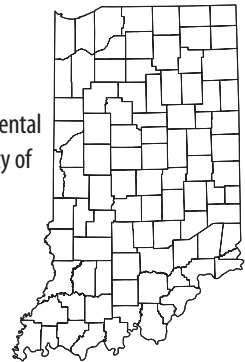
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