

SUMMARY OF KEY PROVISIONS: EEOC'S NOTICE OF PROPOSED RULEMAKING (NPRM) TO IMPLEMENT THE ADA AMENDMENTS ACT OF 2008 (ADAAA)

The NPRM was published in the *Federal Register* on September 23, 2009 for a 60-day notice and comment period. To view the NPRM, see <http://edocket.access.gpo.gov/2009/E9-22840.htm>, and for more information, go to http://www.eeoc.gov/ada/amendments_notice.html.

Basic Definition of “Disability”

- The basic three-part ADA definition is retained: 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. However, the meaning of these terms has changed.

Rules Used to Determine Whether Someone Has a “Disability”

- An impairment need not prevent, or significantly or severely restrict, performance of a major life activity to be “substantially limiting.”
- Disability “shall be construed in favor of broad coverage” and “should not require extensive analysis.”
- An individual’s ability to perform a major life activity is compared to “most people in the general population,” often using a common-sense analysis without scientific or medical evidence.
- An impairment need not substantially limit more than one major life activity.

Major Life Activities (MLAs)

- MLAs include “major bodily functions,” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular systems, and reproductive functions.
- MLAs also include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Mitigating Measures

- Positive effects of mitigating measures (except for ordinary eyeglasses and contact lenses) are ignored in determining whether an impairment is substantially limiting.
- Examples of mitigating measures include medication, medical equipment and devices, prosthetics, hearing aids, cochlear implants and other implantable hearing devices, low vision devices, mobility devices, oxygen therapy, use of assistive technology, reasonable accommodations and auxiliary aids or services, behavioral or neurological modifications, and surgical interventions that do not permanently eliminate an impairment.
- Ordinary eyeglasses and contact lenses are lenses “intended to fully correct visual acuity or eliminate refractive error.”

Impairments that Are Episodic or in Remission

- An impairment that is “episodic” or “in remission” is a disability if it would substantially limit a major life activity when active. Examples of impairments that are episodic or in remission include epilepsy, hypertension, multiple sclerosis, asthma, diabetes, major depression, bipolar disorder, schizophrenia, and cancer.

Examples Illustrating Definition of Disability

- *Impairments for which an individualized assessment “can be conducted quickly and easily, and that will consistently result in a determination that the person is substantially limited in a major life activity”*: deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.
- *Impairments that may be substantially limiting for some individuals but not for others, and therefore may require somewhat more, though still not extensive, analysis*: asthma, high blood pressure, back and leg impairments, learning disabilities, panic or anxiety disorders, some forms of depression, carpal tunnel syndrome, and hyperthyroidism.
- *Temporary, non-chronic impairments of short duration with little or no residual effects that usually will not substantially limit a major life activity*: common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, a broken bone expected to heal completely, appendicitis, and seasonal allergies.
- However, an impairment may still be substantially limiting even if it lasts or is expected to last fewer than 6 months, such as a 20-pound lifting restriction lasting several months.

Substantially Limited in Working

- An individual with a disability will usually be substantially limited in another major life activity, therefore generally making it unnecessary to consider whether the individual is substantially limited in working.
- Replaces “class” or “broad range” of jobs with the concept of a “type of work.”
 - A type of work may be identified by the nature of the work (e.g., commercial truck driving, assembly line jobs, food service jobs, clerical jobs, or law enforcement jobs).
 - A type of work may also be defined by reference to job-related requirements (e.g., jobs requiring repetitive bending, reaching or manual tasks; jobs requiring frequent or heavy lifting; and jobs requiring prolonged sitting or standing).

“Regarded As”

- Employer regards an individual as having a disability if it takes a prohibited action based on an actual or perceived impairment that is not transitory (lasting or expected to last for six months or less) and minor. For example, taking an adverse employment action based on a sprained wrist and broken leg expected to heal normally does not amount to regarding an individual as having a disability, because these impairments are transitory and minor. Taking an adverse action based on carpal tunnel syndrome or Hepatitis C, or on a 2-day virus that an employer perceived to be heart disease, would amount to regarding an individual as having a disability.
- Actions taken on the basis of an impairment’s symptoms (e.g., a facial tic related to Tourette’s Syndrome) or an individual’s use of mitigating measures (anti-seizure medication for epilepsy) are actions taken on the basis of an impairment.
- Reasonable accommodation is not available to someone only covered under the “regarded as” prong of the definition of “disability.”

Uncorrected Vision Standards

- Employer must show challenged uncorrected vision qualification standards are job-related and consistent with business necessity, regardless of whether the person challenging the standard has a disability.