



(ADAAA)

The Americans With Disabilities Act Amendments Act of 2008

The Americans with Disabilities Act of 1990 (ADA) has been unchanged since it was signed into law until recently. As of January 1, 2009 this law has been amended to broaden the original definition of the term “disability.” A series of Supreme Court decisions such as *Toyota v. Williams* interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that impairment is a disability by stating that a person must be severely restricted in his or her ability to perform life activities.

ADAAA Details

- Changes apply to business with 15 or more employees, currently or preceding calendar year.
- ADAAA only applies to employment actions and employer activities which took place on or after January 1, 2009. The statute has no retroactive clause.
- The ADAAA retains the basic definition of “disability is an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.”
— Department of Labor

The ADAAA also:

- Restricts qualification standards, tests, or other selection criteria that are based on uncorrected vision standards.
- Clarifies that individuals “regarded as” disabled by the employer are not entitled to reasonable accommodation.
- Modifies the language of the ADA’s “General Rule,” which prohibits discrimination against “a qualified individual with a disability because of the disability of such individual” to say that discrimination is prohibited against “a qualified individual on the basis of disability.”
— Department of Labor



“[The term disability] includes any impairment that is episodic or in remission if it would substantially limit a major life activity when active.”

— Department of Labor

What Does the ADAAA change?

- It broadens the government’s definition of a disability by expanding the definition of major life activities.
- The ADAAA redefines the term “regarded as” disabled to mean the applicant or employee has been subjected to an action prohibited by the ADA.
- Includes an expansion of “major life activities” – physically, mentally, and emotionally.
- Specifies that the term disability “includes any impairment that is episodic or in remission if it would substantially limit a major life activity when active.”
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What You Should Know About the ADAAA?

- It's the employee's responsibility to let the employer know that a performance problem is disability-related and to request an accommodation.
- The ADA still requires that a company spend money for accommodations unless it imposes an "undue hardship," which is rarely applicable as a defense.
- The ADA does not require a business to hire unqualified employees with a disability or retain an employee who can no longer perform an essential job function due to a disability.
- The ADA prohibits employers from using unnecessary qualification standards to weed out employees with disabilities.

Actions to Ensure Compliance:

- Make sure that you have a formal ADA policy in your employee handbook and written procedure for handling accommodation requests.
- Check to see if job descriptions accurately reflect the position.
- Document and record job decisions that relate to the disabled employee based on job performance. Do not imply that performance issues were due to the employee's disability.

Under the ADAAA the employee must still be able to perform the duties of a job. If the employee cannot safely do so, then the employee is not protected by the ADAAA.



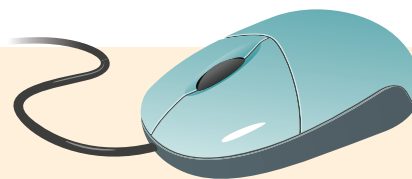
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— Department of Labor

One of the best ways to handle ADA situations is experience in dealing with the regulations, changes and case laws. Some employers may be uncomfortable and unsure of how they need to handle a disability claim. Odyssey OneSource can be your support system that can guide you through and help make the correct decisions within the boundaries of the law.

Contact Us Today

Complying with new ADAAA regulations can be a daunting task for employers. If you want to rid yourself of this and other compliance tasks, consider Odyssey OneSource. We offer the most comprehensive HR outsourcing solution available.



To learn more, call (866) 508-7361 or visit www.OdysseyOneSource.com/ContactUs/