



SUPPORT ADA RESTORATION

Keep the Promise to End Unfair Employment Discrimination

EVERY AMERICAN WANTS THE OPPORTUNITY TO WORK AND TO BE JUDGED BASED ON PERFORMANCE.

The Americans with Disabilities Act of 1990 (ADA) was passed with overwhelming bipartisan support and signed by President George H.W. Bush in order to give people with disabilities a chance to be judged fairly.ⁱ

Unfair discrimination harms all Americans. Just as other civil rights laws prohibit employers from basing decisions on characteristics like race or sex, Congress wanted the ADA to stop employers from making decisions based on disability.ⁱⁱ

People with disabilities *want* to work to their full ability and not have to turn to public assistance to live. The ADA is supposed to level the playing field so everyone who wants a job has an equal opportunity to work.

BUT THIS IS **NOT** HAPPENING FOR PEOPLE WITH DISABILITIES.

- The employment rate of people with disabilities has not improved.ⁱⁱⁱ
- Two-thirds of people with disabilities who do not have a job indicate they would work if they could find employment.^{iv}
- Courts decide against people who challenge disability discrimination 97% of the time, often before the person has even had a chance to show that the employer treated them unfairly.^v

STOP EMPLOYERS AND COURTS FROM TREATING PEOPLE WITH DISABILITIES UNFAIRLY.

The courts have created an **absurd Catch-22** by allowing employers to say a person is “too disabled” to do the job but not “disabled enough” to be protected by the law. This is wrong!

- People with conditions like epilepsy, diabetes, HIV, cancer, hearing loss, and mental illness who manage their disabilities with medication, prosthetics, hearing aids, etc. – or “mitigating measures” – are viewed as “too functional” to have a disability and are denied the ADA’s protection from employment discrimination.^{vi}
- People denied a job or fired because an employer mistakenly believes they cannot perform the job – or because the employer does not want “people like that” in the workplace – are also denied the ADA’s protection from employment discrimination.^{vii}

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Congress must correct the courts’ misuse of the definition of “disability,” and harmonize the ADA with other civil rights laws. Action is needed to ensure that the courts interpret the ADA fairly, and as Congress intended.

ⁱ See 42 U.S.C. § 12111 *et seq.* (Title I of the ADA, which prohibits disability-based discrimination in employment).

ⁱⁱ See, e.g., S. Rep. No. 116, 101st Cong., 2d Sess. at 24 (1989) (“A person who is excluded from any activity covered under this Act or is otherwise discriminated against because of a covered entity’s negative attitude towards disability is being treated as having a disability which affects a major life activity. . . . if an employer refuses to hire someone because of a fear of the ‘negative reactions’ of others to the individual, or because of the employer’s perception that the applicant had a disability which prevented that person from working, that person would be covered [as having been “regarded as” disabled]”); H. Rep. 485, 101st Cong., 2d Sess. at 29 (1990) (stating that the ADA protects individuals “whether or not a person has an impairment, if that person was treated as if he or she had an impairment that substantially limits a major life activity”).

ⁱⁱⁱ Despite many factors contributing to a positive outlook for employment of people with disabilities, including the passage of civil rights laws like the ADA, the employment rate of people with disabilities has not improved significantly, as EEOC Chair Naomi C. Earp pointed out in her testimony during the September 13, 2006 ADA Oversight Hearing held by the House Judiciary Committee, Subcommittee on the Constitution. See also Harris, L. & Associates (1998) *N.O.D./Harris Survey Program on Participation and Attitudes: Survey of Americans with Disabilities*. New York. See also L. Harris & Associates, *N.O.D./Harris Survey Program on Participation and Attitudes: Survey of Americans with Disabilities* (2004).

^{iv} *Career World*, Nov/Dec 2000.

^v See Amy L. Allbright, 2004 *Employment Decisions Under the ADA Title I – Survey Update*, 29 *Mental & Physical Disability L. Rep.* 513, 513 (July/August 2005) (stating that in 2004, “[o]f the 200 [employment discrimination] decisions that resolved the claim (and have not yet been changed on appeal), 97 percent resulted in employer wins and 3 percent in employee wins”).

^{vi} See *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999) (holding that “mitigating measures” – medication, prosthetics, hearing aids, other auxiliary devices, diet and exercise or any other treatment – must be considered in determining whether an individual has a disability and is protected by the ADA); see also *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555 (1999)). In reaching this conclusion, the Court disregarded explicit statements from Congress that it did not intend mitigating measures to be considered in determining whether a person has a disability: “whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids.” S. Rep. No. 116, 101st Cong., 2d Sess. at 22 (1989); see also, Chai R. Feldblum, *Definition of Disability Under Federal Anti-Discrimination Law: What Happened? Why? And What Can We Do About It?*, 21 *Berkeley J. Emp. & Lab. L.* 91, 106 (2000).

^{vii} *Sutton*, 527 U.S. at 492-93 (an employer’s refusal to hire an employee does not show that the employer regarded the applicant or employee as disabled). Again, the Court disregarded explicit statements by Congress that it intended to protect individuals who were denied opportunities based on the beliefs, prejudices, or fears of others. See n.1, *supra*.