

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED (2008): ADA AMENDMENTS ACT CHANGES TO THE PUBLIC LAW

The Americans with Disabilities Act was passed in 1990. After a series of Supreme Court cases narrowed the definition of “disability” in contravention to congressional intent, Congress passed the ADA Amendments Act (ADAAA). The ADAAA was signed into law on September 25, 2008.

This document tracks the line by line changes made by ADAAA to the public law. Changes are reflected in the following ways:

- Deleted language is in brackets and italics (for example: [*deleted text*])
- New language is in bold (for example: **new language**)

AMERICANS WITH DISABILITIES ACT OF 1990

An Act to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

<< 42 USCA <section> 12101 NOTE >>

(a) SHORT TITLE.--This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.--The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definition[s] **of disability**.

Sec. 4. Additional definitions.

TITLE I--EMPLOYMENT

Sec. 101. Definitions.

Sec. 102. Discrimination.

Sec. 103. Defenses.

Sec. 104. Illegal use of drugs and alcohol.

Sec. 105. Posting notices.

Sec. 106. Regulations.

Sec. 107. Enforcement.

Sec. 108. Effective date.

TITLE II--PUBLIC SERVICES

Subtitle A--Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 201. Definition.

Sec. 202. Discrimination.

Sec. 203. Enforcement.

Sec. 204. Regulations.

Sec. 205. Effective date.

Subtitle B--Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I--PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

Sec. 221. Definitions.

Sec. 222. Public entities operating fixed route systems.

Sec. 223. Paratransit as a complement to fixed route service.

Sec. 224. Public entity operating a demand responsive system.

Sec. 225. Temporary relief where lifts are unavailable.

Sec. 226. New facilities.

Sec. 227. Alterations of existing facilities.

Sec. 228. Public transportation programs and activities in existing facilities and one car per train rule.

Sec. 229. Regulations.

Sec. 230. Interim accessibility requirements.

Sec. 231. Effective date.

PART II--PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

Sec. 241. Definitions.

Sec. 242. Intercity and commuter rail actions considered discriminatory.

Sec. 243. Conformance of accessibility standards.

Sec. 244. Regulations.

Sec. 245. Interim accessibility requirements.

Sec. 246. Effective date.

TITLE III--PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.

Sec. 302. Prohibition of discrimination by public accommodations.

Sec. 303. New construction and alterations in public accommodations and commercial facilities.

Sec. 304. Prohibition of discrimination in specified public transportation services provided by private entities.

Sec. 305. Study.

Sec. 306. Regulations.

Sec. 307. Exemptions for private clubs and religious organizations.

Sec. 308. Enforcement.

Sec. 309. Examinations and courses.

Sec. 310. Effective date.

TITLE IV--TELECOMMUNICATIONS

Sec. 401. Telecommunications relay services for hearing-impaired and speech-impaired individuals.

Sec. 402. Closed-captioning of public service announcements.

TITLE V--MISCELLANEOUS PROVISIONS

Sec. 501. Construction.

Sec. 502. State immunity.

Sec. 503. Prohibition against retaliation and coercion.

Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.

Sec. 505. Attorney's fees.

Sec. 506. Rule of construction regarding regulatory authority.

Sec. [506] **507.** Technical assistance.

Sec. [507] **508.** Federal wilderness areas.

Sec. [508] **509.** Transvestites.

Sec. [509] **510.** Coverage of Congress and the agencies of the legislative branch.

Sec. [510] **511.** Illegal use of drugs.

Sec. [511] **512.** Definitions.

Sec. [512] **513.** Amendments to the Rehabilitation Act.

Sec. [513] **514.** Alternative means of dispute resolution.

Sec. [514] **515.** Severability.

<< 42 USCA <section> 12101 >>

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.--The Congress finds that--

(1)[some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older]

physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, *329 failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

[(7)individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society]

[[8]7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

[[9]8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue

those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.--It is the purpose of this Act--

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

<< 42 USCA <section> 12102 >>

SEC. 3. DEFINITION[S] OF DISABILITY.

As used in this Act:

[(1) *AUXILIARY AIDS AND SERVICES.--The term "auxiliary aids and services" includes--*

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.]

[(2)1] **DISABILITY.**—The term "disability" means, with respect to an individual—

[(i) **A**] a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

[(ii) **B**] a record of such an impairment; or

[(iii) **C**] being regarded as having such an impairment **(as described in paragraph (3)).**

(2) MAJOR LIFE ACTIVITIES.—

(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

(A) 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.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term “low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.

SEC. 4. ADDITIONAL DEFINITIONS.

As used in this Act:

(1) AUXILARY AIDS AND SERVICES.—The term “auxiliary aids and services” includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

([3]2) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of

the Northern Mariana Islands.

TITLE I--EMPLOYMENT

<< 42 USCA <section> 12111 >>

SEC. 101. DEFINITIONS.

As used in this title:

* * *

(8) QUALIFIED INDIVIDUAL [*WITH A DISABILITY*].--The term "qualified individual [*with a disability*]" means an individual [*with a disability*] who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) REASONABLE ACCOMMODATION.--The term "reasonable accommodation" may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) UNDUE HARDSHIP.--

(A) IN GENERAL.--The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) FACTORS TO BE CONSIDERED.--In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

<< 42 USCA <section> 12112 >>

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.--No covered entity shall discriminate against a qualified individual [*with a disability because of the disability of such individual*] **on the basis of disability** in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.--As used in subsection (a), the term "[*discriminate*] **discriminate against an individual on the basis of disability**" includes--

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration--

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental

limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

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<< 42 USCA <section> 12113 >>

SEC. 103. DEFENSES.

(a) IN GENERAL.--It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) QUALIFICATION STANDARDS.--The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

([c]d) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

([d]e) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall--

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list

of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services.

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<< 42 USCA <section> 12114 >>

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) Qualified individual with a disability

For purposes of this subchapter, *[the term “] a qualified individual with a disability[”]* shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

TITLE V--MISCELLANEOUS PROVISIONS

<< 42 USCA <section> 12201 >>

SEC. 501. CONSTRUCTION.

(a) IN GENERAL.--Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) RELATIONSHIP TO OTHER LAWS.--Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

* * *

(e) BENEFITS UNDER STATE WORKER’S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker’s compensation laws or under State and Federal disability benefit programs.

(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the

nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability.

(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.

* * *

SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.—The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.

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SEC. [506] **507. TECHNICAL ASSISTANCE.**

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SEC. [507]**508. FEDERAL WILDERNESS AREAS.**

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SEC [508] **509. TRANSVESTITES.**

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SEC. [509] **510. INSTRUMENTALITIES OF CONGRESS.**

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SEC. [510] **511. ILLEGAL USE OF DRUGS.**

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(c) HEALTH AND OTHER SERVICES.—Notwithstanding subsection (a) of this section and section [511(b)(3)] **512(b)(3)** of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

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SEC. [511] **512**. DEFINITIONS.

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SEC. [513] **514**. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

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SEC. [514] **515**. SEVERABILITY.

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Rehabilitation Act of 1973
“Red-Line” Version with ADA Amendments Act Changes
Deleted language in brackets and italics; new language in bold

* * *

Sec. 7. For the purposes of this Act:

* * *

(9) Disability

The term "disability" means--

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII, [*a physical or mental impairment that substantially limits one or more major life activities*] **the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).**

* * *

(20) Individual with a disability

(A) In general

Except as otherwise provided in subparagraph (B), the term "individual with a disability" means any individual who--

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, or VI.

(B) Certain programs; limitations on major life activities

Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII of this Act, [*any person who--*

(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) has a record of such an impairment; or

(iii) is regarded as having such an impairment.] any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).