

Welcome to the 2008-2009 Legal Issues Webinar Series



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Court Interpretations of Major Life Activities Under the ADA: What Will Change After the ADA Amendments Act?

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Webinar Outline

- I. Major Life Activities Under the Americans with Disabilities Act
- II. Major Life Activities After the Passage of the ADA Amendments Act
- III. Analysis of Specific Major Life Activities
- IV. Does the ADA Amendments Act Apply Retroactively?

Major Life Activities and the text of the ADA

- Definition of actual disability under the ADA:
 - Physical or mental impairment that substantially limits one or more **major life activities**
- Major life activities not defined in the text of the ADA
- No examples of major life activities in the text of the ADA

Major Life Activities and the EEOC's Regulations

- **EEOC Definition of Major Life Activities:** basic activities that the average person can perform with little or no difficulty
- **EEOC Examples of Major Life Activities:** caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working
- **Illustrative, Not Exhaustive:** EEOC regulations make clear not an exclusive list of major life activities

Additional Major Life Activities Identified by EEOC

- **Appendix:** In the Appendix to its regulations, EEOC also identified **sitting, standing, lifting** and **reaching** as major life activities
- **Compliance Manual:** In its Compliance Manual, EEOC identified **thinking, concentrating** and **interacting with others** as other major life activities
- **Enforcement Guidance:** EEOC identified **sleeping** as a major life activity when it issues its Guidance on Psychiatric Disabilities and the ADA



Deference to EEOC?

- Anticipated courts would defer to EEOC's interpretations/guidance on definition of disability
- Supreme Court refused to defer to EEOC regulations (*Sutton v. United Air Lines*)
- Supreme Court finds Congress did not give any agency authority to interpret definition of disability
- After *Sutton*, courts generally took narrow view of what is an ADA disability, and confusion arose with inconsistent rulings across the country

Purpose of the ADA Amendments Act (ADAAA)

ADAAA was passed to:

- Invalidate Supreme Court decisions that incorrectly narrowed definition of disability
- Restore ADA protection for individuals Congress intended to protect
- Make clear that focus should be on whether covered entities met ADA obligations, instead of extensive analysis on definition of disability

ADA Amendments Act: Definition of Disability

- **Definition of disability remains the same:** Initial versions of ADAAA modified definition of disability, but in the end, ADAAA did not change the ADA's original definition of disability
- **Rules of Construction:** However, to make clear interpretation should be different, ADAAA explicitly states that the definition of disability "shall be construed in favor of broad coverage" ... "to the maximum extent permitted by the terms of this Act."

ADA Amendments Act: Major Life Activities in text

- Congress added examples of major life Activities to the text of ADA
- **Goal:** Congress trying to avoid previous problems of courts ignoring regulations of federal agencies and inconsistent rulings
- Generally, Congress listed major life activities previously identified by EEOC and added a few more

ADA Amendments Act: Major Life Activities

A non-exhaustive list of major life activities:

caring for oneself	walking & standing
performing manual tasks	reading
seeing	lifting
hearing	bending
eating	speaking
sleeping	breathing
learning	communicating
concentrating & thinking	working

**Activities not previously recognized by EEOC include:
reading, bending, and communicating**

ADA Amendments Act: Major Life Activities – cont'd

Major life activities also include the operation of “major bodily functions”

immune system

normal cell growth

digestive

bowel

bladder

reproductive functions

neurological

brain

respiratory

circulatory

endocrine

Possible Application of Major Bodily Functions

- **immune system:** HIV/AIDS, auto-immune disorders, lupus
- **normal cell growth:** cancer
- **digestive:** Crohn's disease, celiac disease
- **bowel:** ulcerative colitis
- **bladder:** kidney disease
- **reproductive functions:** infertility

Possible Application of Major Bodily Functions (cont'd)

- **neurological:** multiple sclerosis, epilepsy
- **brain:** schizophrenia, developmental disabilities
- **respiratory:** asthma
- **circulatory:** heart disease, high blood pressure
- **endocrine:** diabetes

Upcoming EEOC regulations
will likely provide more clarity

Major Life Activities: One is Sufficient

Only **one** major life activity need be impacted.

The Act clarifies that individuals are not excluded from coverage because of an ability to do many things, as long as they are substantially limited in one major life activity.

“Regarded As” Prong and Major Life Activities

- The ADAAA broadens coverage under the ADA’s “regarded as” prong of the definition of disability
- Clarifies that “regarded as” applies “whether or not the impairment limits or is perceived to limit a **major life activity.**”
- Exception – provision does not apply to impairments that are “transitory and minor.”
 - ❖ Defined as “an actual or expected duration of six months or less.

Regulatory Authority

- ADAAA grants EEOC, DOJ and DOT authority to issue regulations interpreting the definition of disability under the ADA
- Repudiates Supreme Court's ruling in *Sutton* allowing courts to ignore federal regulations interpreting definition of disability
- EEOC directed to issue new regulations including redefining "substantial limitation"

Specific Major Life Activities: Overview

- Most litigation on definition of disability focused on whether the person is substantially limited
- However, before that analysis occurs, the court must determine whether the activity asserted is a “major life activity”
- Considerable litigation on the issue of what constitutes a major life activity
- ADAAA will potentially change legal analysis on particular major life activities

Specific Major Life Activities: Bending

- Bending not listed in EEOC's regulations
- Courts questioned whether bending is a major life activity. *Parkinson v. Anne Arundel Medical Center, Inc.*, 214 F. Supp. 2d 511 (D. Md. 2002)
- Bending one of the major life activities listed in the ADAAA
- Therefore, no more speculation whether bending is a major life activity under the ADA and cases will turn on whether there is a substantial limitation

Specific Major Life Activities: Reading

- Reading not listed in EEOC's regulations
- Nevertheless, most courts agreed that reading is a major life activity under the ADA See *Head v. Glacier Northwest, Inc.*, 413 F.3d 1053 (9th Cir. 2005);
- ADAAA lists reading as major life activity
- **Tip:** The addition of reading may benefit people with learning disabilities

Specific Major Life Activities: Communicating

- EEOC regulations identified “speaking” as a major life activity, but not “communicating”
- Cases where plaintiff not limited in speaking, but was limited in communicating. See *Sevigny v. Maine Education Association*, 1999 WL 1995208 (D. Me. June 14, 1999)
- Communicating on list of major life activities in ADAAA
- Now easier for plaintiffs with communication issues, as opposed to speaking issues, to be covered under ADA

Specific Major Life Activities: Concentrating

- Before ADAAA, courts split whether concentrating was major life activity under ADA.
- ADAAA lists concentrating as major life activity
- Eliminates situation of different courts treating people with similar limitations differently.
- **Tip:** People with intellectual and learning disabilities and mental illness may be able to use this major life activity or the bodily function of brain activity.

Specific Major Life Activities: Lifting

- Before ADAAA, courts split whether lifting is major life activity.
- In ADAAA, lifting listed as a major life activity
- This will allow for more consistent interpretations
- Cases will likely now turn on whether the impairment *substantially limits* the major life activity of lifting.

Specific Major Life Activities: Sleeping

- Sleeping not listed in EEOC regs, but identified in EEOC Guidance on Psychiatric Disabilities
- Most courts found sleeping is a major life activity
- Sleeping listed in ADAAA as a major life activity
- Cases will turn on whether substantially limited in sleeping - previously courts took narrow view
- Should be easier to prove under ADAAA's rules of construction

Specific Major Life Activities: Eating

- EEOC identified eating as a major life activity
- Many courts also recognized eating as a major life activity, usually in diabetes cases. In ADA, eating is on list of major life activities
- Cases will be decided on whether person is *substantially limited* in major life activity of eating.
- **Tip:** For people with diabetes, substantial limitation in endocrine system may be easier than proving substantial limitation in eating.

Specific Major Life Activities: Reproduction

- Reproduction not identified by EEOC as a major life activity
- Nevertheless, Supreme Court recognized reproduction is a major life activity. *Bragdon v. Abbott*, 524 U.S. 624 (1998)
- Reproduction not listed as a major life activity in ADAAA, but immune system and reproductive function listed as major bodily functions in ADAAA

Specific Major Life Activities: Sexual Relations

- After *Bragdon*, some courts have recognized sexual relations as a major life activity, while others haven't.
- Sexual relations not identified by EEOC as a major life activity, nor listed in ADAAA – altho identified as a major life activity in House report
- Open question whether reproductive functions in ADAAA will be extended to sexual relations

Specific Major Life Activities: Driving

- Most courts have rejected driving as an ADA major life activity, altho some recognize traveling
- Driving never identified as major life activity by EEOC, nor listed in ADAAA
- **Tip:** Addition of “major bodily functions” to ADAAA will allow coverage for people who previously relied on driving as proposed major life activity
- **Example:** People with epilepsy can allege substantial limitation in neurological major bodily function, instead of limitation in driving

Specific Major Life Activities: Eliminating Bodily Waste

- Difficult for plaintiffs with kidney disease to identify a major life activity in which they were substantially limited.
- However, some courts have identified “elimination of bodily waste” as a major life activity allowing people with kidney disease to be covered by the ADA.
- Congress codified these decisions in ADAAA by including bladder among the major bodily functions.

Specific Major Life Activities: Pumping and Circulating Blood

- Difficult for plaintiffs with heart disease to identify a major life activity in which they were substantially limited.
- However, some courts have identified “pumping and circulating blood” as a major life activity allowing people with heart disease to be covered by the ADA.
- Congress codified these decisions in ADAAA by including the circulatory system among the major bodily functions.

Specific Major Life Activities: Performing Manual Tasks

- EEOC and courts generally agreed performing manual tasks is major life activity
- However, Supreme Court required plaintiffs to show substantially limited in tasks of “central importance in most people’s lives.” *Toyota v. Williams*, 534 U.S. 184 (2002).
- In ADAAA, Congress repudiated analysis in *Toyota*. (Supreme Court “created an inappropriately high level of limitation necessary to obtain coverage under the ADA.”)
- **Post ADAAA:** courts will be applying a less strict analysis when plaintiffs allege substantial limitation in performing manual tasks.

Specific Major Life Activities: Interacting with Others

- EEOC identified interacting with others as a major life activity
- However, courts are split on whether interacting with others is a major life activity
- ADAAA does not list interacting with others – although identified in House Committee Report
- Likely to see continued litigation on this issue
- New EEOC regulations may provide some guidance

Specific Major Life Activities: Working

- EEOC and most courts agree working is major life activity
- EEOC Standard: “significantly restricted in class of jobs or a broad range of jobs”
- Difficult burden to meet – only use as last resort
- EEOC standard problematic to then show qualified under ADA
- ADAAA lists working as a major life activity
- Upcoming EEOC regulations may provide clarity on standard for working

The ADAAA Effective Date and Retroactivity

- The effective date of the law was 1/1/09
- General view is that statutes are **not** applied retroactively (*Landgraf v. USI Film Products*, 511 U.S. 244 (1994))
- However, arguable that the ADAAA should be applied retroactively since it has a “restorative purpose” that reflects Congress’ original intent that the Supreme Court did not follow. (*Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994))

The ADAAA Effective Date and Retroactivity (cont'd)

- **7th Circuit:** ADAAA does not apply retroactively (*King v. City of Madison*, 550 F.3d 598 (7th Cir. 2008))
- **6th Circuit:** ADAAA applies retroactively when plaintiff only seeking prospective injunctive relief (*Jenkins v. National Board of Medical Examiners*, 2009 WL 331638 (6th Cir. Feb. 11, 2009))
- **9th Circuit:** ADAAA provides guidance on Congress' original intent (*Rohr v. Salt River Project Agricultural Improvement and Power Dist.*, 2009 WL 349798 (9th Cir. Feb. 13, 2009))

Regulatory Authority

- EEOC, DOJ and Secretary of Transportation granted explicit authority to issue regulations interpreting the definition of disability under the ADA
- Repudiates Supreme Court's ruling in *Sutton* allowing courts to ignore federal regulations interpreting definition of disability
- EEOC indicated it will soon be issuing new regulations including redefining "substantial limitation"

Resources

- **DBTAC: Great Lakes ADA Center:** www.adagreatlakes.org
- **Equip For Equality:** www.equipforequality.org
- **Illinois ADA Project:** www.ADA-IL.org
- **Job Accommodation Network:** www.jan.wvu.edu
- **EEOC ADA regulations and guidance–** www.eeoc.gov
- **Text of ADA Amendments Act –** www.ada.gov/pubs/ada.htm
- **ADA Technical Assistance –** www.adatac.org

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QUESTIONS?

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June 30, 2009

Legal Update on Title III Caselaw

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