

Questions and Answers about the Department of Justice's Notice of Proposed Rulemaking to Implement the Americans with Disabilities Act Amendments Act of 2008

1) What is the ADA Amendments Act of 2008 and when did it take effect?

The ADA Amendments Act of 2008 was signed on September 25, 2008. The law was intended to clarify the scope of the definition of disability under the ADA and took effect on January 1, 2009.

2) What is the purpose of the ADAAA?

Congress passed the ADA Amendments Act (ADAAA) in response to several Supreme Court decisions that had narrowly interpreted the Americans with Disabilities Act's (ADA) definition of disability. This narrow interpretation resulted in the denial of the law's protection for many individuals with impairments such as cancer, diabetes, and epilepsy who had been the subject of adverse actions due to their disabilities. The law made a number of significant changes to the ADA definition of "disability" to ensure that it would be easier for individuals seeking the protection of the ADA to establish that they have a disability that falls within the meaning of the statute.

3) Why does the Department need to change its regulations?

The Attorney General is charged with publishing regulations interpreting the requirements of title II (state and local governments) and title III (public accommodations) of the ADA. The Department must also make sure that those regulations are revised to reflect and be consistent with any changes to the ADA made by Congress. Accordingly, this Notice of Proposed Rulemaking (NPRM) proposes to update the Department's title II and title III regulations to reflect the changes to the ADA. Although the ADAAA is already in effect and already applies to title II and title III entities, the Department's proposed regulatory changes will help ensure that covered entities, persons with disabilities, and others affected by the ADA will know how to interpret and apply the ADA.

4) Has the Department proposed changes to the basic, three-prong definition of disability in the regulations?

No. In keeping with the ADAAA, the Department is maintaining its regulatory language defining the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as

having a disability. However, the NPRM proposes additional regulatory provisions that explain how that definition should be interpreted and applied.

5) What are the changes that are incorporated into the revised regulations?

The proposed revisions to the Department's title II and title III regulations are based on the broad purposes and specific requirements of the ADAAA, as well as on language in the Act's legislative history.

Consistent with the ADAAA, the proposed changes in the regulations will ensure that:

The definition of disability will be interpreted broadly. The ADAAA makes it clear that the primary object of attention in ADA cases should be whether entities covered under the ADA have complied with their obligations.

The question of whether an individual's impairment is a disability under the ADA will not demand extensive analysis.

It will be easier for individuals to establish coverage under the "regarded as" prong of the definition of disability. As a result of court interpretations, it had become difficult for individuals to establish coverage under the "regarded as" prong. Under the ADAAA, the focus for establishing coverage is on how a person has been treated because of an actual or perceived physical or mental impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature or severity of the person's impairment.

Individuals covered under the "regarded as" prong are not entitled to reasonable accommodations.

The definition of "major life activities" will be expanded by providing a non-exhaustive list of major life activities that includes the operation of major bodily functions.

There will be specific rules of construction that should be applied when determining whether an impairment substantially limits an individual in a major life activity. These rules of construction include the following:

The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA;

An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population;

The primary issue in a case brought under the ADA should be whether the covered entity has complied with its obligations and whether discrimination has occurred, not the extent to which the individual's impairment substantially limits a major life activity;

In making the individualized assessment required by the ADA, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for substantially limits applied prior to the ADA Amendments Act;

The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence;

Except for ordinary eyeglasses and contact lenses, the ameliorative effects of mitigating measures such as medication or hearing aids, shall not be considered in assessing whether an individual has a disability that substantially limits a major life activity;

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and

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

6) If an individual can show that he or she falls within the revised definition of disability, does it automatically mean that he is a victim of unlawful discrimination?

No. As was the case before the passage of the ADA Amendments Act, the individual still has to show that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment.

7) How do the Department's proposed changes to implement the ADAAA in the title II and title III regulations relate to the EEOC's 2011 changes to implement the ADAAA in regulations implementing title I of the ADA?

The ADAAA's revised definition of disability applies to title I (employment), as well as to titles II and III of the ADA. The Equal Employment Opportunity Commission, which is responsible for developing regulations implementing title I of the ADA, published its revised title I regulation incorporating the ADAAA in March 2011. The Department has made every effort to ensure that its proposed revisions to the title II and title III regulations are consistent with, if not identical to, the corresponding provisions in the title I regulation. This will ensure that the definition of disability is interpreted consistently for all three titles of the ADA.

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