



## U.S. Department of Labor Employment Standards Administration

### Office of Federal Contract Compliance Programs (OFCCP)

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Ensures employers comply with nondiscrimination and affirmative action laws & regulations when doing business with the federal government.

#### The ADA Amendments Act of 2008: Frequently Asked Questions

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#### What is the purpose of the new ADA Amendments Act of 2008 (ADAAA)?

The ADAAA, Pub. L. 110-325, is intended to overturn a series of Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that an impairment is a "disability." The ADAAA makes significant changes to the ADA's definition of "disability" that broadens the scope of coverage under **both** the ADA and Section 503 of the Rehabilitation Act.

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#### When does the ADAAA become effective?

The ADAAA becomes effective on January 1, 2009.

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#### Is the ADAAA retroactive?

We do not believe so. This would mean that the ADAAA standards are applicable only to employment actions and employer activities that take place on or after January 1, 2009. Pre-ADAAA standards would continue to apply to employment actions or employer activities that occurred **before** the statute's effective date. We expect that EEOC will address this matter in its forthcoming regulations to implement the ADAAA.

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## Will OFCCP regulations be changed to conform to the new ADAAA standards?

Yes. Conforming amendments will be made to OFCCP's Section 503 regulations at 41 CFR 60-741 after the EEOC issues final ADAAA regulations. However, the new ADAAA standards apply to employment actions that take place on or after January 1, 2009, even though the regulations have not yet been changed.

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## What are the major changes made by the ADAAA?

The ADAAA retains the basic definition of "disability" as 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. However, the ADAAA:

- . broadens the definition of 'disability' by modifying key terms of that definition by:
  - . expanding the definition of 'major life activities';
  - . redefining who is 'regarded as' having a disability;
  - . modifying the regulatory definition of 'substantially limits';
  - . specifying that "disability" includes any impairment that is episodic or in remission if it would substantially limit a major life activity when active; and
  - . prohibiting consideration of the ameliorative effects of "mitigating measures" when assessing whether an impairment substantially limits a person's major life activities, with one exception.

The ADAAA also:

- . adds a new provision restricting employers' use of qualification standards, tests, or other selection criteria that are based on uncorrected vision standards;
- . clarifies that an individual who satisfy only the "regarded as" prong of the definition of disability is not entitled to 'reasonable accommodation'; and
- . modifies the language of the ADA's "General Rule" that prohibited 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."

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## What is the expanded definition of 'major life activities' under the ADAAA?

Under the ADAAA, 'major life activities' is expanded to include "major bodily functions." The statute contains a non-exhaustive list of "major life activities" that adds additional activities to those currently listed in the ADA and Section 503 regulations, and a non-exhaustive list of "major bodily functions." Specifically, the ADAAA provides that:

- . **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.
- . **Major Bodily Functions** include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

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## How does the ADAAA define 'regarded as' having a disability?

The ADAAA redefines and dramatically expands the scope of coverage under the "regarded as" prong of the definition of "disability." To satisfy the "regarded as" standard an individual need only show that he or she has been subjected to an action prohibited under the statute (e.g., termination; failure to hire) because of an actual or perceived impairment. It is no longer necessary that the impairment be perceived by the employer to limit or "substantially limit" a major life activity. However, to satisfy the "regarded as" standard, an impairment must not be one that is "transitory and minor." The ADAAA defines a "transitory" impairment as an impairment with an "actual or expected duration of 6 months or less."

Meeting the "regarded as" standard does not mean that a person has been the victim of unlawful discrimination. It means only that a person is an individual with a disability entitled to the protections of the ADA or Rehabilitation Act. Whether unlawful discrimination occurred is a separate determination.

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### **Are employers required to accommodate an individual who meets only the 'regarded as' prong of the definition of 'disability'?**

No. Under the ADAAA, an employer need not provide a reasonable accommodation to an individual who meets only the 'regarded as' prong of the definition of 'disability.'

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### **How does the ADAAA modify the regulatory definition of 'substantially limits'?**

The ADAAA specifically rejects the Supreme Court's stringent interpretation of "substantially limits," and directs the EEOC to revise its current regulatory definition of "substantially limits" to be consistent with the ADAAA. The ADAAA does not provide a definition of "substantially limits" or specific instructions as to how the regulatory definition is to be revised.

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### **What are 'mitigating measures'?**

As used in the ADAAA, 'mitigating measures' are things that lessen or ameliorate the effects of an impairment, including, but not limited to:

- . medication, medical supplies, equipment, or appliances, low-vision devices (not including 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;
- . use of assistive technology;
- . reasonable accommodations or auxiliary aids or services; or
- . learned behavioral or adaptive neurological modifications.

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### **May the ameliorative effects of mitigating measures be taken into account when determining whether an impairment is substantially limiting?**

No. With one exception, the ADAAA specifically prohibits consideration of the ameliorative effects of mitigating measures when assessing whether an impairment substantially limits a major life activity. This means, for example, that the ameliorative effects of the insulin a person uses must NOT be considered when determining whether that person's diabetes is a disability.

The one exception to this rule is the use of "ordinary eyeglasses or contact lenses." The ADAAA expressly requires consideration of the ameliorative effects of "ordinary eyeglasses or contact lenses" when assessing whether impairment substantially limits a major life activity. This means that when determining whether a person is substantially limited in the major life activity of seeing, the person's vision should be assessed in its corrected state when using such eyeglasses or contact lenses.

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### **Are employers still allowed to use qualification standards, tests, or selection criteria based on uncorrected vision?**

The ADAAA severely restricts employers' ability to use qualification standards, employment tests, or other selection criteria that are based on a person's uncorrected vision. Employers are only allowed to use such

qualification standards, tests or selection criteria IF the employer can demonstrate that the requirement is job-related to the position in question AND consistent with business necessity.

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