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ADA Definitions

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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ADA Definitions	3
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ADA Definitions

Reference Number: CTAS-2013

Individual with a Disability

Under the ADA, an individual with a disability is a person who—

1. has a physical or mental impairment that substantially limits one or more major life activities,
2. has a record of such impairment, or
3. is regarded as having such an impairment.

42 U.S.C. § 12102(1).

Persons who are related or have a known association with a disabled person are also protected under Title I. The ADA prohibits discrimination based on an assumption that a relationship with a disabled person will affect job performance. 29 C.F.R. § 1630.8.

While this definition of disability remains the same under the Amendments Act, the Act provides clarification on what is considered a "major life activity" and what is meant by "regarded as having an impairment."

Major Life Activities

The original ADA did not offer guidance as to what constitutes a major life activity. The EEOC issued a list in their enforcement guidance that the following life activities should be considered major: walking, seeing, speaking, hearing, breathing, learning, performing manual tasks, caring for oneself, working, sitting, standing, lifting, reaching, thinking, concentrating, interacting with others, and sleeping.

The Amendments Act legislates the EEOC's list with some additions. The Act includes the following two non-exhaustive lists of major life activities:

In General--Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating, and working. 42 U.S.C. § 12102(2)(A).

Major Bodily Functions--Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. § 12102 (2)(B).

Even though the Amendments Act lists various major bodily functions as major life activities, there is still a determination of what constitutes "substantially limited".

Substantial Limitation

An individual is covered under the ADA if he or she has a physical or mental impairment that substantially limits one or more major life activity. "Substantially limits" is a measurement of the severity of the disability. The original ADA did not define substantial limitation and it was left up to the EEOC to define by regulation. In section 902.4(1) of the Definition of Disability, the EEOC defined substantial limitation as inability to perform a major life activity or significant restriction as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the average person.

While the Amendments do not define "substantially limits", they do state that the definition of disability should be interpreted broadly and that the question of whether an individual's impairment is a disability should not require extensive analysis. The Act rejects the Supreme Court ruling in *The Sutton Trilogy* that the terms "substantially" and "major" need to be interpreted strictly.

42 U.S.C. § 12102(4).

Episodic or Remission

There have been various rulings by the courts that impairments that are episodic or in remission may not always be disabilities. The new Rules of Construction Regarding the Definition of Disability state that the definition of disability shall be construed in accordance with the following:

- A. The definition of disability in the 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.

42 U.S.C. §12102(4)(D)

This means that under the Amendments Act, individuals that have an episodic disability, such as epilepsy, or individuals that are in remission can argue that they have an actual disability because when active the disability substantially limits a major life activity.

Mitigating Measures

When the EEOC first issued guidance documents for enforcing Title I of the ADA, they advised employers not to consider medical treatments or devices used to mitigate an impairment when determining if an impairment should be considered a disability under the ADA. The Supreme Court then ruled in *The Sutton Trilogy* that individuals should be evaluated in their mitigated state so the EEOC changed their enforcement guidelines. The Amendments Act overturns *The Sutton Trilogy* and includes the original EEOC regulations requiring employers not to consider mitigating measures when deciding whether or not an impairment should be considered a disability under the ADA.

The only exemption to the definition of mitigating measures is ordinary glasses and contact lenses. 42 U.S.C. § 12102(4)(E)(ii). They were exempted because of the number of people that would be protected and entitled to reasonable accommodation.

Aside from this exemption, under 42 U.S.C. § 12102(4)(i) when an employer is deciding if an employee is entitled to a workplace accommodation, they must make this decision without regard to the following mitigating measures:

- medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye glasses 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.

Regarded As

The third prong of the ADA's definition of disability states that an individual with a disability is a person who is "regarded as" having such an impairment. The original ADA did not explain what "regarded as" meant so there were conflicting opinions from the courts and the EEOC.

The Amendments Act provides that an individual is regarded as having a disability if that person has been subjected to discrimination based on an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. The "regarded as" provision does not apply to impairments that are transitory and minor. Transitory impairments are those with an actual or expected duration of six months or less. 42 U.S.C. § 12102(3).

Employers do not need to believe that a major life activity is substantially limited. Individuals are protected whether they have an actual or perceived impairment, even if the impairment would not limit a major life activity. However, the Act also states that only individuals with actual disabilities are entitled to workplace accommodations.

The Amendments Act clarifies that while an individual who is regarded as having a disability is protected from discrimination under the ADA, such a person is not entitled to reasonable accommodations unless the person actually has a disability.

Essential Functions

Employers must also determine the essential functions of a job. Essential functions are the basic job duties that an employee who holds the job must be able to perform. 29 C.F.R. § 1630.2(n)(1). A qualified individual with a disability is a person who satisfies the skill, experience, education, and other job-related requirements of the position and who, with or without a reasonable accommodation, can perform the essential functions of the position. When determining if a job duty is essential, consider—

- if the position exists to perform that function,

- the number of other employees that can perform the function, and
- the degree of skill required to perform the function.

29 C.F.R. § 1630.2(n)(2)

It is important to have job descriptions that detail the essential functions of every job. The EEOC will consider the job descriptions evidence of essential functions as well as—

- the employer's judgement as to which functions are essential,
- the work experience of past and present employees in the job,
- the time spent performing the job task,
- the consequences if an employee does not perform the task, and
- the collective bargaining agreement (if applicable).

29 C.F.R. § 1630.2(n)(3)

Additional definitions can be found on the following pages:

Reasonable Accommodation Definition

Medical Examinations Defined

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