COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

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This session will discuss compliance with the Americans with Disabilities Act. Amendments to the ADA have expanded the law's coverage and employers' responsibilities under the ADA. This session will help ensure that you understand your responsibilities under the ADA. During the session, we will focus on case studies and real world scenarios to help prepare you for ADA compliance.

- Amendments to the Americans with Disabilities Act
  - The ADAAA emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA.
  - Likely to result in more ADA cases going to trial (or at least surviving summary judgment).
  - Applies to all private, state and local government employers with 15 or more employees.
COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• Congressional findings and purposes
  • Reinstate broad protection under ADA
  • Reject Supreme Court cases narrowing the protection of the ADA
  • Determination of disability should not require extensive analysis

• Rules of construction now apply
  • "Disability" interpreted in favor of broad coverage
  • Episodic impairments are protected under ADAAA
  • Mitigating measures are not considered
  • ADAAA makes it easier for individuals with disabilities to obtain protection under the Act.

COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• Defining Disability
  • Disability is a physical or mental impairment that substantially limits one or more major life activities
  • Three-prong approach:
    • Actual disability
    • Record of disability
    • Regarded as having a disability
  • Conditions that will consistently meet the definition of disability
  • "Substantially limits" aspect of defining "disability"
  • Mitigating measures may no longer be considered in determining whether an individual is disabled
  • Expanded definition of major life activities
  • "Regarded as" disabled
  • Associational claims

COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• New regulations
  • "The focus of an ADA case should be on whether discrimination occurred, not on whether an individual meets the definition of 'disability.'" 29 CFR § 1630.1(c)(4).
  • An impairment is a disability if it "substantially limits" an individual's ability to perform a major life activity as compared to most people in the general population.
  • The regulations provide nine rules of construction to apply in determining whether an impairment is substantially limiting.
  • Mitigating measures are not considered in determining whether an impairment substantially limits a major life activity.
COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• Reasonable Accommodations
  1. Modifications or adjustments to job application process
  2. Modifications or adjustments to work environment
  3. Enable all employees to enjoy equal benefits and protections
• Examples of reasonable accommodations
  1. Make facilities accessible
  2. Job restructuring
  3. Part-time or modified work schedules
  4. Reassignment
  5. Modify equipment, examinations, training materials, etc.
• Initiate interactive process

COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• Undue hardship
  – Nature and cost of accommodation
  – Financial resources of facility and employer
  – Impact of the accommodation on the facility, other employees
• There is no need to accommodate if it would create a direct threat.
• Case law

COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

• Impact of the ADAAA
  • Courts are construing the definition of “disability” very broadly.
  • Employers must be ready to implement an interactive process with disabled employee to determine whether a reasonable accommodation is required.
COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT – PRACTICAL TIPS

• Consider whether individual is disabled
• If disabled
  – Engage in interactive process
  – Talk, listen, research
  – Seek advice and input
  – Document
  – Rely on essential functions in job description
  – Develop potential reasonable accommodation
  – Is there any reasonable accommodation that would allow the employee to perform the essential functions of the job?

Thank you
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COMPLYING WITH THE AMERICANS WITH DISABILITIES ACT

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I. AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT

A. Introduction to the ADAAA

1. On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA" or the "Act").

2. It became effective on January 1, 2009.

3. The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA – that is, these changes make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

4. The amendments are likely to result in more ADA cases going to trial (or at least surviving summary judgment).

5. As with the ADA, the ADAAA applies to all private, state and local government employers with 15 or more employees.

B. Congressional Findings and Purposes

1. Congress expressed certain conclusions and “findings” when enacting the ADAAA, which give further explanation for the changes made in the ADAAA. Such findings include the following:
a. While Congress’ expectation was that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, such expectation has not been fulfilled, thereby necessitating, in part, the ADAAA;

b. The decisions of numerous Supreme Court cases\(^1\) have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;\(^2\) and

c. As a result of these Supreme Court cases, lower courts have “incorrectly found” in individual cases that people with a range of substantially limiting impairments are not people with disabilities.

2. Congress also expressed certain purposes behind the ADAAA, including the following:

a. Reinstate a broad scope of protection to be available under the ADA;

b. Reject the aforementioned Supreme Court cases that incorrectly narrowed the protection of the ADA;

c. Convey to the public that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations; and

d. Convey to the public that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.


\(^2\) In particular, Congress found that “the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term ‘substantially limits’ to require a greater degree of limitation than was intended by Congress.” Further, Congress found “that the current Equal Employment Opportunity Commission ADA regulations defining the term ‘substantially limits’ as ‘significantly restricted’ are inconsistent with congressional intent, by expressing too high a standard.”
C. The following rules of construction now apply:

1. The term “disability” should be interpreted in favor of broad coverage of individuals.

2. An impairment that substantially limits one major life activity need not limit other major life activities to constitute a legally protectable disability.

3. Individuals who suffer from episodic impairments, even if in remission, including cancer, are protected under the ADA as long as the impairment would substantially limit a major life activity when the impairment is active.

4. Mitigating measures, other than ordinary eye glasses and contact lenses, shall not be considered in assessing whether an individual has a disability.


II. SIGNIFICANT CHANGES TO THE ADA

A. Defining “disability”

Disability is a physical or mental impairment that substantially limits one or more major life activity.

The ADAAA and the final regulations define disability using a three-pronged approach:

1. A physical or mental impairment that substantially limits one or more major life activities; or

2. A record of a physical or mental impairment that substantially limits a major life activity; or

3. When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor (“regarded as”).

B. Conditions that will consistently meet the definition of disability include:

1. Autism
2. Cancer
3. Cerebral Palsy
4. Diabetes
5. Epilepsy
6. HIV/AIDS
7. Multiple sclerosis and muscular dystrophy
8. Major depression, bipolar disorder, posttraumatic stress disorder, obsessive compulsive disorder, and schizophrenia
9. Deafness, blindness, mental retardation, missing limbs, and mobility impairment requiring wheel chair use

C. The list of impairments that “may be” disabling include:

1. Asthma
2. High blood pressure
3. Learning disability
4. Back or leg impairments
5. Psychiatric impairments such as panic disorder, anxiety disorder, or forms of depression other than major depression
6. Carpal tunnel syndrome
7. Hypothyroidism

D. The “substantially limits” aspect of defining “disability”.

The Act retains the requirement that an impairment “substantially limit” a “major” life activity to establish a disability, but the Act makes it easier to meet that standard.

1. Under the old rule (including the Toyota Motors case) the terms “substantially” and “major” were interpreted strictly to create a demanding standard for qualifying as disabled. To be substantially limited in performing a major life activity, the old rule provided a person must have an impairment that “prevents or severely restricts the individual from doing activities that are of central importance to most peoples’ daily lives.”


The Act rejects the interpretation of “substantially limits” as “prevents or severely restricts” because Congress found that this created too demanding of a standard for qualifying as disabled. The Act provides that an impairment that substantially limits one major life activity need not limit other major life activities in order to
be considered a disability. The determination of “substantially limits” should not demand extensive analysis.

E. Mitigating measures may no longer be considered in determining whether an individual is disabled.

1. Under the old rule, if a person took measures to correct or mitigate a physical or mental impairment, both the positive and negative effects of those measures could be taken into account when determining whether he or she is substantially limited in a major life activity. A disability existed only when the impairment actually substantially limited the major life activity, not merely when it could, would, or might if mitigating measures were not taken.

2. Under the new rule, an employer is prohibited from taking into account any mitigating measures in determining whether an individual has a disability, with the exception of ordinary eye glasses and contact lenses. An individual must be evaluated without regard to hearing aids, medications, prosthetic devices, and other measures used to manage the individual’s condition, thereby expanding the number of people covered under the ADA. In other words, a hearing impaired person who can wholly compensate for the hearing loss with hearing aids and therefore under the old rule might not be covered under the ADA, will now have ADA protection.

F. Expanded definition of major life activities

1. Under the prior rule, “major life activities” were those of central importance to daily life. There was no list of expressly defined “major life activities”. The terms “substantially” and “major” were interpreted strictly to create a demanding standard for qualifying as disabled.

2. The new rule provides for the first time a list of activities that are always recognized as meeting the definition of “major life activities”. The list includes, but is not limited to:

   a. Caring for oneself
   b. Performing manual tasks
   c. Seeing, hearing, eating
   d. Sleeping
   e. Walking, standing
   f. Lifting
g. Speaking
h. Breathing
i. Learning, reading, concentrating, thinking, communicating
j. Working

3. The Act also expands the definition of major life activities to include the performance of any major bodily function such as:
   a. Normal cell growth and functions of the immune system
   b. Digestive, Bowel, Bladder
   c. Neurological, Brain
   d. Respiratory
   e. Circulatory
   f. Endocrine
   g. Reproductive functions

4. By including “lifting” among the list of major life activities, Congress has rejected over 1,000 cases decided in the last 10 years that held that a permanent lifting restriction, without more, does not meet the definition of a “major life activity” that needs to be accommodated.

G. “Regarded as” Disabled

1. An individual is “regarded as” having a disability if the employee establishes that he or she has been discriminated against 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. 42 USC § 12102(3)(a).

2. To prevail on a “regarded as” claim, the employee only has to show an actual or perceived impairment and that he or she was discriminated against – the employee no longer has to prove the employer regarded him or her as being disabled and unable to perform an entire class of jobs.

3. “Regarded as” claims cannot be based on transitory impairments, that is, those of six months or less. 42 CFR § 1630.2(1)(3).

4. A person who is only “regarded as” being disabled does not need to be offered a reasonable accommodation. 42 CFR § 1630.9(e).

5. Whether an individual’s impairment “substantially limits” a major life activity is not relevant to coverage under the “regarded as” prong of the definition of disability.
6. Regarded as examples:
   a. Employee believed to have cancer.
      Pre-ADAAA: Employee is required to demonstrate that the employer believed that the condition significantly limited a major life activity. If employer believed cancer was in remission, employee may not have claim.
      Post-ADAAA: Cancer is an impairment. No need to analyze whether it significantly limits a major life activity.
   b. Employer refuses to hire employee because of skin graft scars.
      Pre-ADAAA: Employee was required to prove that the employer believed the scars were due to a condition that significantly limited a major life activity.
      Post-ADAAA: Scars are evidence of impairment. No need to analyze whether it significantly limits a major life activity.

7. Case law. In McNally v. Aztar Indiana Gaming Co., LLC, 3:12-CV-00063-TWP, 2014 WL 300433 (S.D. Ind. Jan. 28, 2014) the employee, McNally, alleged violation of the ADAAA claiming he was terminated because his employer regarded him as having a disability related to depression. McNally was terminated, in part, due to attendance issues and unexplained absences. At his termination meeting, McNally’s supervisor recommended that McNally seek professional counseling to deal with his personal issues. Prior to his termination, McNally did tell his supervisor that he had a lot going on in his personal life, but did not express to anyone that he was suffering from depression.

The Court concluded that McNally’s ADAAA claim failed because he did not present sufficient evidence that his employer regarded him as disabled. The Court noted that the employer had no knowledge that McNally had seen a counselor prior to his termination. Further, while there was evidence that an HR manager knew about problems in McNally’s personal life, there was no evidence that anyone at the employer regarded him as disabled.

H. Associational claims
1. A person who is neither impaired nor disabled may be covered by the ADA against an adverse action based on the actual or perceived impairment or disability of a spouse, parent, or child. 42 USC § 12112(a)-(b).

III. CURRENT REGULATIONS

A. The new regulations provide that “the focus of an ADA case should be on whether discrimination occurred, not on whether an individual meets the definition of ‘disability’.” 29 CFR § 1630.1(c)(4).

B. Substantially limits

1. Under the old rules, a limitation had to “significantly” or “severely” restrict a major life activity to qualify as a disability.

2. The new definition provides that 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.” Section 1630.1(c)(4).

3. An employee is substantially limited in working if the impairment substantially limits an individual’s ability to perform or to meet the qualifications for the type of work at issue. Section 1630.2(j)(7).

The “type of work at issue” includes the job the individual has been doing or the job for which the individual has applied as well as similar jobs.

4. Temporary, transitive problems are not included as substantial limitations. See Section 1630.2(j)(8). Thus, colds, the flu, and broken limbs do not qualify.

C. The Regulations provide nine rules of construction to apply in determining whether an impairment is substantially limiting:

1. The term “substantially limits” shall be construed broadly in favor of expansive coverage;

2. 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. An impairment need not prevent,
or significantly or severely restrict the individual from performing a major life activity in order to be considered substantially limiting;

3. The primary focus should be whether covered entities have complied with their obligations and whether discrimination has occurred;

4. Whether an impairment substantially limits a major life activity requires an individualized assessment;

5. 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 analysis;

6. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigation measures;

7. An impairment that is episodic or in remission (i.e. epilepsy, cancer) is a disability if it would substantially limit a major life activity when active;

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

9. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.

29 C.F.R. § 1630.2(j)(1).

D. Mitigating measures

1. The regulations now provide that the ameliorative effects of mitigating measures are not considered in determining whether an impairment substantially limits a major life activity.

   a. The new regulations change the prior standard that considered the effects of mitigating measures in determining that an individual was not disabled.
2. The regulations list mitigating measures that include medication, medical supplies, equipment or appliances, prosthetics including limbs and devises, hearing aids, mobility devices, or oxygen therapy equipment.

3. Vision is treated separately under the new rules.
   a. Mitigating measures do not include “ordinary” contacts or glasses.
   b. Employers generally cannot use tests based upon uncorrected vision. The legislative history states that “if an applicant or employee is faced with a qualification standard that requires uncorrected vision, an employer will be required to demonstrate that the qualification standard is job-related and consistent with business necessity.”

4. Mitigating Measures - Example:
   a. Employee with diabetes operates heavy machinery, but controls her diabetes with insulin injections. Whether the employee is “disabled” is determined without regard to insulin injections. The employee’s use or nonuse of insulin injections to control her diabetes may be considered in determining whether she satisfies the position’s essential qualifications and whether she poses a threat to herself and others.

IV. REASONABLE ACCOMMODATION

A. The Regulations define reasonable accommodation as:

1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position.

2. Modifications or adjustments to the work environment that enable an individual with a disability to perform the essential functions of that position; or

3. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment that
are enjoyed by other similarly situated employees without disabilities.

29 C.F.R. 1630.2(o)

B. The Regulations provide the following examples of reasonable accommodations:

1. Making existing facilities readily accessible and usable by individuals with disabilities;
2. Job restructuring;
3. Part-time or modified work schedules;
4. Reassignment to a vacant position;
5. Acquisition or modifications of equipment or devices;
6. Appropriate modifications to examinations, training materials or policies;
7. Provision of qualified readers or interpreters.

29 C.F.R. § 1630.2(o)(2)

C. Interactive Process. To determine an appropriate reasonable accommodation it may be necessary for an employer to initiate an informal, interactive process with the employee in need of accommodation. The Regulations state that this interactive process should identify the employee’s limitations and potential accommodations that could overcome these limitations.

D. Undue hardship. An employer is required to provide a reasonable accommodation absent a showing of undue hardship. In determining whether an accommodation imposes an undue hardship, the following factors should be considered:

1. The nature and cost of the needed accommodation.
2. The overall financial resources of the facility involved in the reasonable accommodation.
3. The overall financial resources of the employer.

4. The type of operation of the employer.

5. The impact of the accommodation on the facility, including the impact on other employees to perform their duties.

29 C.F.R. § 1630.2(p)

E. There is no need to accommodate if it would create a direct threat.

1. Direct threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

2. The determination that an individual poses a “direct threat” must be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job.

3. The assessment must be based on a reasonable medical certainty that relies on the most current medical knowledge and/or on the best available objective evidence.

4. The factors to be considered include:
   a. Duration of the risk;
   b. The nature and severity of the potential harm;
   c. The likelihood that the potential harm will occur; and
   d. The imminence of the potential harm.

F. Reassignment as a reasonable accommodation

1. The prospect of reassignment does not arise unless “accommodation within the individual’s current position would pose an undue hardship.” 29 CFR § 1630.2(o).

2. Reassignment is often referred to as an accommodation of last resort.

3. An employer is not required to create a new position as an accommodation or to “bump” another person in order to reassign a disabled person to that position, nor is an employer required to
promote a disabled employee or to provide the accommodation requested or preferred by the employee.

4. The employee must be otherwise “qualified” for the reassigned position.

5. The ADA does not require an employer to reassign a qualified disabled employee to a vacant position when such a reassignment would violate a legitimate non-discriminatory policy of the employer to hire the most qualified candidate for the position.

G. Reasonable Accommodation Case Law:

In Minnihan v. Mediacom Commc'ns Corp., 4:12-CV-00248-JEG, 2013 WL 6680982 (S.D. Iowa Dec. 19, 2013) the Court held that an employer could not provide reasonable accommodations to an employee who suffered from seizures and was unable to drive. The employee worked as a technical operations supervisor (“TOS”) and was required to drive during his shift to respond to cable outages. The employee requested that Mediacom hire an additional person to cover the employee’s territory, so the employee could continue in his position and not have to drive. The employer refused to create a new TOS position that would allow the employee to keep his job without having to drive, but did offer the employee an office job that would not require any driving. The court held that while driving was not a part of the employee’s job description, it was an essential function of the job. Because driving was an essential function of the TOS position and the employee could not perform the essential functions of the job, the court held that the only reasonable accommodation was to reassign the individual to a new position. Thus, the employer acted properly in offering the employee a new position.

In Horn v. Knight Facilities Management-GM, Inc., 2014 WL 715711 (6th Cir. Feb 25, 2014) the Sixth Circuit affirmed that the employer could not reasonably accommodate a janitor whose doctor ordered “no exposure to cleaning solutions.” The employee argued that the company should have either eliminated restrooms from her cleaning route or provided her with a respirator. The court disagreed and held that the employee’s proposed accommodations were not objectively reasonable because they failed to comply with the physician-mandated restriction of “no exposure to cleaning solutions.” The court found that eliminating bathrooms was not a reasonable accommodation because she still would have been exposed to cleaning chemicals. Further, the court found that there was no evidence that working with a respirator would have complied with the employee’s...
restrictions. The court’s holding reaffirms that when an employer
legitimately cannot make an accommodation and the employee cannot
perform the essential functions of the job, the employee is not “qualified”
under the ADA.

In Vanhorn v. Hana Grp., Inc., CIV. 12-00215 JMS, 2013 WL 5719478 (D.
Haw. Oct. 18, 2013), a former security guard at Pearl Harbor with shoulder
and back injuries argued that her employer failed to provide reasonable
accommodations when the employer refused to allow her to sit while she
was stationed at security posts. The court first found that under the
ADAAA, the employee was disabled because her injuries substantially
limited her ability to stand, a major life activity under the ADAAA. Next, the
Court found that because there were guards who sat during much of their
shift, the employee established that an accommodation (i.e. allowing her
to move to a guard post that permitted sitting) was reasonable and
available.

In Lu v. Longs Drug Stores, CIV. 11-00563 DKW, 2013 WL 5607166 (D.
Haw. Oct. 11, 2013), the Court granted summary judgment to an employer
after finding that a transfer to a new location to avoid a supervisor is not a
reasonable accommodation under the ADAAA. The employee alleged
psychological problems that were the result of workplace harassment by
her direct supervisor. The employee’s doctor provided a note to her
employer recommending that the employee transfer to a different store.
The court concluded that a transfer to avoid a supervisor is not a
reasonable accommodation under the ADAAA.

In LaPier v. Prince George’s County, Case No. 8:10-cv-02851 (S.D. Md.
2013), a federal court in Maryland dismissed a disability discrimination
case filed by a trainee police officer who could not meet the police
department’s fitness tests. The trainee officer needed more than 17
minutes to run a mile and a half; department rules required officers to run
a mile and a half in less than 15 minutes. The officer requested permanent
light duty assignment or modification of the department’s fitness
standards. The Court held that while the trainee officer’s blood disorder
was a covered disability under the ADAAA, the officer could not perform
the essential functions of his job without reasonable accommodation.
Notably, the Court held that employers do not have an obligation to create
permanent light duty positions as a reasonable accommodation. Further,
the Court deferred to the employer’s assessment of what are the essential
functions of the position.

In Miller v. Illinois Dept. of Transp., 643 F.3d 190, 192 (7th Cir. 2011), the
Seventh Circuit concluded that a bridge worker’s acrophobia (fear of
heights) was a disability. Thus, the Court concluded that a reasonable jury could find that the employee’s request that other employees substitute for him when the task required working above 25 feet in an exposed condition was a reasonable accommodation.

V. REASONABLE ACCOMMODATION V. PROHIBITED ACTIONS CLAIMS

A. Reasonable Accommodations Claims

1. Includes failure to engage in interactive process claims and failure to provide reasonable accommodations claims.

   a. Plaintiff must show she has (or has a record of) physical/mental impairment that substantially limits a major life activity and employer failed to provide reasonable accommodation.

   b. Employer has no duty to provide “reasonable accommodations” to individuals under the “regarded as” prong. Reasonable accommodations claims cannot be brought under the “regarded as” prong.

B. Prohibited Actions Claims

1. Includes disability-based harassment, failure to train/hire/promote claims, wrongful termination or demotion based on disability.

   a. The regulations note that the “regarded as” prong is the preferred route for pursuing ADA claims that do not involve reasonable accommodations because it is an easier showing for the plaintiff.

   b. Plaintiff need only show that the employer took a prohibited action based on actual or perceived physical/mental impairment

   c. Plaintiffs may bring prohibited actions claims under actual disability or record disability prongs, but Congress expected these prongs to be used primarily by people affirmatively seeking reasonable accommodations.

VI. IMPACT OF ADAAA
A. Disability is now construed very broadly. Incorrectly deciding whether someone is disabled can have severe implications for potential claims of disability discrimination and/or failure to accommodate.

B. Under broader definition of disability, employers should be ready to implement an interactive process to determine whether a reasonable accommodation is required and document the employee’s circumstances with the job requirements.

VII. ADAAA CASE LAW

A. Courts have construed the definition of “disability” very broadly. The focus now is on whether the employer is required to make reasonable accommodations for disabled employees so they can perform the essential functions of the job.

B. Recent cases that have examined the substance of the ADAAA demonstrate that courts are construing the definition of “disability” very broadly.

In *Ekstrand v. Sch. Dist. of Somerset*, 683 F.3d 826, 828-29 (7th Cir. 2012), the Court upheld a jury verdict for nearly $2 million based on a finding that a teacher with seasonal affective disorder was a qualified individual with a disability. The Court found that the jury reasonably determined that the school district failed to accommodate the teacher when it failed to move her to a classroom with windows.

In *Kinney v. Century Services Corp. II*, 2011 WL 3476569 (S.D. Ind. 2011) the employee suffered isolated bouts of depression, which could be debilitating, but did not impact her work performance when inactive. The District Court denied the employer’s motion for summary judgment and held that although intermittent depressive episodes were clearly not a disability prior to the ADA amendments, the employee raised a genuine issue of material fact as to whether she was a qualified individual under the ADAAA.

In *Gibbs v. ADS Alliance Data Systems, Inc.*, 2011 WL 3205779 (D. Kan. 2011) the Court held that carpal tunnel syndrome that is debilitating in one hand may constitute a disability under the ADAAA. The Court stated that in passing the ADAAA “Congress intended to convey ‘that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis’ and that the ‘primary object of attention in cases brought under the ADA should be whether entities covered under
the ADA have complied with their obligations.” Id., citing Norton v.

WL 891447 (E.D.N.C. 2011) an employee who suffered from episodic flare
ups of multiple sclerosis (MS) had a plausible claim of disability under the
ADAAA because when active, the MS substantially limited the employee's
normal neurological functions, which is a major life activity under the
amended Act.

2010) the Court held that obesity may qualify as a disability under the
ADAAA where the employee alleged she was disabled because of her
weight and her disability made her unable to park and walk from the
regular employee parking lot. The court found that because “walking” is
specifically listed as a major life activity under the ADAAA, the employee
had adequately stated a claim for the purposes of a motion to dismiss.

In Thomas v. Bala Nursing and Retirement Center, 2012 WL 2581057
(E.D. Pa. 2012) the Court held that a nurse with anemia could qualify as
disabled under the ADAAA.

Finally, in Horgan v. Simmons, 704 F.Supp.2d 814 (N.D.Ill.2010) the Court
determined that an employee with HIV positive status had a plausible
claim of disability under the ADAAA because the normal functioning of his
immune system, a major life activity under the amended Act, was
substantially limited.

C. Other Courts have found in the employer’s favor holding that the
employee is not “substantially limited.”

In McKenzie-Nevolas v. Deaconess Holdings LLC, CIV-12-570-D, 2014
WL 518086 (W.D. Okla. Feb. 7, 2014) the Court held that an employee
with a breast infection that lasted two to three weeks did not have a
disability under the ADAAA. The Court held that the employee’s
temporary infection was “limited to one part of her body” and “was not
chronic but temporary and of short duration.”

In Allen v. SouthCrest Hosp., 455 F. App’x 827, 831 (10th Cir. 2011) the
Court found that an employee with migraine headaches was not disabled
under the ADAAA. The Court did note that migraines could qualify as a
disability, but the employee’s migraines in this case did not substantially
limit any major life activities. While employers should be cautious and err
on the side of considering most impairments to be disabilities, the Court
did signify that employers may require employees to provide evidence they have a disability.

In Hill v. Southeastern Freight Lines, Inc., 2012 WL 2564903 (M.D.N.C. 2012) the plaintiff/employee suffered from glaucoma and alleged he could not accept a nighttime delivery driving position he was offered in lieu of termination because it was not medically advisable for him to drive at night. In granting the employer’s motion for summary judgment the court held that the driver could not show he was substantially limited in the major life activity of working because he could still perform many other driving positions.

In Ratcliff v. Mountain Brook Bd. of Educ., 2012 WL 1884989 (N.D. Ala. 2012) the Court granted summary judgment in favor of the employer after finding that the plaintiff’s high blood pressure did not substantially limit her from working where the only evidence offered was a three-hour hospital visit and occasional ill feelings.

In Mercer v. Arbor E&T, 2012 WL 1425133 (S.D. Tex. 2012) the plaintiff’s complaint alleged that she suffered from workplace stress and anxiety. Granting the employer’s motion to dismiss the complaint, the court held that there was insufficient evidence to allege the employee was disabled under any of the three prongs. The Court did suggest that the outcome might have been different if the employee alleged in her complaint that she had a severe anxiety disorder that manifested itself in panic attacks, memory loss and difficulty concentrating.

Finally, in Brtalik v. South Huntington Union Free School Dist., 2012 WL 748748 (E.D.N.Y. 2012) the Court held that the employee’s claim that colonoscopy/polypectomy that resulted in a two-week light duty medical restriction was not a substantially limiting impairment. The Court held that the employee’s attempt to “characterize a routine, diagnostic, out-patient procedure, or any related minor discomfort, as a disability within the meaning of the ADA is simply absurd.”

D. Employee must be able to perform essential functions of job. In Wulff v. Sentara Healthcare, Inc., 4th Cir. 2013, the court found that the plaintiff could not show that she could perform the essential functions of her job with or without reasonable accommodation. The plaintiff was an emergency department nurse who had numerous limitations on lifting, pushing and pulling, and stretching. The court agreed with the employer that the hospital could not accommodate her restrictions, so the nurse had no claim under the ADA.