

# The ADA Amendments Act

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## Timeline

- **July 26, 1990:** president George H.W. Bush signs the ADA
- **July 26, 1991:** EEOC issues regulations implementing Title I.
- **June 22, 1999:** Supreme Court issues Sutton trilogy
- **January 8, 2002:** Supreme Court decides Toyota Motor Mfg., Ky. V. Williams,

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## Timeline (cont.)

- **July 26, 2007:** On anniversary of ADA's enactment, legislation to amend the ADA is introduced in the House (H.R. 3195) and Senate (S. 1881)
- **June 25, 2008:** By a vote of **402-17**, House passes the ADA Amendments Act, a revised version of the bill introduced on July 26, 2007
- **July 31, 2008:** Senators Harkin and Hatch Introduce S. 3406, the ADA Amendments Act of 2008
- **September 25, 2008:** President George W. Bush signs the ADA Amendments Act of 2008
- **January 1, 2009:** ADA Amendments Act becomes effective.

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## Compromise Bill

- ADA Amendments Act was negotiated between employer and disability groups
- Employer groups included U.S. Chamber of Commerce, Society for Human Resource Management, and National Association of Manufacturers
- Disability groups included Epilepsy Foundation, American Diabetes Association, American Association of People with Disabilities and National Disability Rights Network

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## Findings

- When it passed the ADA, Congress intended it to be construed broadly
- The ADA's definition of "disability" was based on Section 504 of the Rehabilitation Act of 1973, as construed broadly in Sch. Board of Nassau County v. Arline
- The Supreme Court's decisions in the Sutton trilogy and in Toyota Motor Mfg., Ky v. Williams construed the term 'disability' too narrowly
- The EEOC's current regulation defining "substantially limits" as "significantly restricted" is inconsistent with Congressional intent by expressing too high a standard (Senate bill)

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## Purposes

- To **restore** the ADA's broad protections as intended by Congress;
- To reject the Supreme Court's view in the Sutton trilogy that "disability" should be determined by reference to the ameliorative effects of mitigating measures
- To reject the Supreme Court's holding in Toyota that the ADA requires a "demanding standard" for establishing coverage and requires that an impairment "severely restrict" major life activities
- To express Congress's expectation that EEOC will revise its regulation defining "substantially limits" as "significantly restricted" (Senate bill)

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## Definition of “Disability”

- A physical or mental impairment that substantially limits a major life activity;
- A record of such an impairment;
- Being regarded as having such an impairment (as described in paragraph (3))

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## Definition of “Disability” (cont.)

- Definition of “disability” construed broadly
- Mitigating measures (other than ordinary corrective lenses) will not be considered
- Impairment can be disability even if **episodic** or **in remission**

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## Mitigating Measures

Mitigating measures include:

- (1) medication, medical supplies and equipment, low vision and hearing devices, prosthetics, mobility devices, etc.
- (2) Use of assistive technology
- (3) Reasonable accommodations
- (4) Learned behavioral or adaptive neurological modifications

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## Ordinary Eyeglasses or Contact Lenses

- Distinguished from “low vision devices,” defined as “devices that magnify, enhance, or otherwise augment a visual image”
- Definition: “lenses that are intended to fully correct visual acuity or eliminate refractive error”

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## 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.

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## Major Life Activities

- The term “major life activities” also includes the operation of a major bodily function, including but 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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## “Regarded As” Disabled

- Broader definition of “regarded as” disabled that would cover anyone subjected to an action “prohibited by this Act” because of a real or perceived physical or mental impairment
- “Regarded as” would, however, exclude impairments that are transitory (less than six months) and minor
- Individuals “regarded as” disabled not entitled to reasonable accommodation

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## Other Provisions

- Qualification standard based on uncorrected vision must be job-related and consistent with business necessity
- Term “qualified individual” replaces “qualified individual with a disability”
- In general prohibition of discrimination, the phrase “**discriminate on the basis of a disability**” replaces “discriminate against a qualified individual with a disability because of the disability of such individual”
- Federal agencies, including EEOC, given authority to issue regulations interpreting the term “disability”

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## Retroactivity

- Courts to have considered the issue have said the ADAAA is not retroactive.
- Accommodation decisions made before January 1, 2009, if challenged, would likely be evaluated under standards in effect before that date.
- Evaluate accommodation requests made before January 1, 2009 but that are still pending on that date under new standards.
- Evaluate accommodation requests renewed after January 1, 2009 under new standards.