

The ADA Amendments Act of 2008

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On September 25, 2008, the [ADA Amendment Act \(ADAAA\)](#) was signed into law and will become effective on January 1, 2009. The ADAAA was supported by more than 220 national organizations, including the U.S. Chamber of Commerce, the American Society of Employers, disability organizations, veterans' groups, church organizations, and the National Association of Manufacturers. The bill passed the House on a vote of 402 to 17, and unanimously passed the Senate.

To understand what the ADAAA means, though, it's important to understand why the ADA needed amending in the first place. When it was passed back in 1990, the ADA had a definition of disability that was based on the definition used in the Rehabilitation Act of 1973. An individual with a disability has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having such an impairment. So Congress used that definition, which was originally in the Rehab Act, because it had worked well.

The Supreme Court, in 1999, started to narrow the definition of disability in unexpected ways. In a case called [Sutton v. United Air Lines](#), the court said that, when you determine whether an individual has a disability under the ADA, you have to consider the effects of mitigating measures - like corrective lenses, medications, hearing aids, and prosthetic devices - when deciding an impairment is substantially limiting. The Court did one other thing in Sutton. It essentially overturned an old Rehab Act case, [School Bd. of Nassau County v. Arline](#). Arline had broadly viewed the part of the definition of disability that mentions having a "record of" an impairment. The Court in Sutton required a more restrictive view of that part of the definition, which practically eliminated it.

In 2002, in a case called [Toyota v. Williams](#), the Supreme Court focused on the word "substantially" from the definition of disability, and said that it means "considerably" or "to a large degree." The Court also narrowed the scope of "major life activity," stating that it must be something that was central importance to most people's daily lives.

Between Sutton and Toyota, and their progeny, the definition of disability was narrowed to such a degree that most cases became more about whether a person met the definition of disability, rather than focusing on access or accommodation.

The EEOC did its part, too. It had regulations that defined "substantially limits" as "significantly restricts," which was inconsistent with Congress' intent when it passed the ADA.

So THAT is why Congress decided that the ADA needed to be amended.

At the beginning of every new law Congress writes, it lists "findings," which are the reasons why the law is being written. In the ADAAA, there is a list of findings. They include:

- Congress intended the ADA to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and provide broad coverage; and

- While Congress expected 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, that expectation has not been fulfilled; and
- Specific statements that the Supreme Court holdings in Sutton and Toyota eliminated protection for many individuals that Congress intended to protect.

Then it lists the purposes of the ADAAA, which include:

- To reject the requirement, under Sutton, that mitigating measures be considered when determining whether a person meets the definition of disability; and
- To reject the Supreme Court's reasoning, under Sutton, with regard to the "record of" prong of the definition of disability, and reinstate the Arline standard; and
- To reject the Toyota standard that the terms "substantially" and "major" need to be interpreted strictly because that creates a demanding standard for qualifying as person with a disability; and
- To express Congress' expectation that the EEOC will revise its definition of "substantially limits."

The ADAAA has new rules for the definition of disability. They include:

- **The definition of disability is construed in favor of broad coverage to the maximum extent permitted; and**
- **The term "substantially limits" is to be interpreted consistently with the ADAAA; and**
- **An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability; and**
- **An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and**
- **Mitigating measures shall not be a factor when determining whether an impairment substantially limits a major life activity. The only mitigating measures that can be considered are ordinary eyeglasses or contact lenses that fully correct visual acuity or eliminate refractive error.**
- **People who are regarded as being disabled are not entitled to reasonable accommodations or modifications. Previously, courts had debated whether the ADA required having to accommodate a disability that didn't actually exist.**

The ADAAA is not some revolutionary new law. It simply attempts to bring the law back to what Congress intended it to be when it passed the ADA in 1990.