

The ADA Amendments Act of 2008 Now Law

On January 1, 2009 the [Amendment Act \(ADAAA\)](#) went into effect.

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. On September 25, 2008, President George W. Bush signed the ADAA into law.

The ADAA was an important step in ensuring that people with disabilities receive an equal opportunity to the pursuit of gainful employment. The ADA was originally passed in 1990 and carried a three pronged definition, which essentially is the same under the ADAAA. Under the ADA a person is considered to have a disability if that person experiences a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Congress intended this definition to be broad enough to prevent an employer from limiting an employment opportunity of an otherwise qualified individual simply because of a functional impairment. However, in 1999 a series of US Supreme Court decisions started to narrow the definition of disability thereby limiting the civil rights protections afforded by the ADA. In [v. United Air Lines](#), the court decided that a person would not be considered to have a disability if the use of mitigating measures – such as medications or prosthetic devices – resulted in less than a substantial limitation. The Court did one other thing in *Sutton*. It essentially overturned an old Rehab Act case, [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 [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 Equal Employment Opportunity Commission (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.

All this attention on who is and is not considered to be disabled has resulted in unfair treatment based on a technicality. This is why Congress decided that the ADA needed to be amended.

The ADA begins with Congresses “findings,” which 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 ADA, 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 ADA 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 ADA; 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 ADA 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.