

## What does the ADA Amendments Act of 2008 mean?

The proposed ADA Amendments Act of 2008 would change the definition of disability used by ADA and Rehabilitation Act cases, as well as other definitions. If passed, the amendments will become effective on Jan. 1, 2009. Here is a breakdown of the changes the bill would make:

Issue	Section of the ADA and US Code	What the ADA Amendments Act of 2008 does:	What the changes mean:
The definition of disability would change.	Section 2(a), <a href="#">42 USC 12101</a> (a)	Amend the findings and purpose of the ADA and the overall definition of disability.	A new definition of disability will apply in all ADA and Rehabilitation Act cases.
Several Supreme Court cases would be overturned.		Specifically overturn four Supreme Court cases defining disability:  <i>Sutton v. United Airlines, Inc.</i> ; <i>Murphy v. United Parcel Service, Inc.</i> ; <i>Albertson's, Inc. v. Kirkingburg</i> ; <i>Toyota Motor Manufacturing, Kentucky, Inc. v. Williams</i> .	Courts cannot consider the effect of mitigating measures in defining a disability. The substantial limitation on major life activity standard would no longer apply.
Substantial limitation of major life activity standard would be redefined.	Section 3, <a href="#">42 USC 12102</a>	A condition will be substantially limiting if it "materially restricts" a major life activity, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.	This would likely result in an increase of individuals covered and include those with less severe impairments. The Congressional Budget Office predicts the act will cause a 10 percent increase in discrimination complaints over a five-year period.
Certain bodily functions are designated as major life activities.	Section 3, <a href="#">42 USC 12102</a>	A major life activity 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.	Certain major bodily functions must be treated as a major life activity. Courts cannot automatically exclude impairments that affect these functions from the definition of disability.
The standard for being regarded as having a disability would change.	Section 3, <a href="#">42 USC 12102</a>	An individual meets the requirement of "being regarded as disabled" if he establishes that he has been subjected to an action prohibited under this act 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.	The bill seeks to reinstate the definition used in <i>School Board of Nassau County v. Arline</i> , which considered the effect of an impairment on others. The change removes the <i>Sutton v. United Airlines, Inc.</i> requirement that the perceived impairment limits a major life activity.
Conforming amendments would apply the new definition of disability to the Rehabilitation Act.	Section 7 of the Rehabilitation Act, <a href="#">29 USC 705</a>	The definition of a person with a disability under the Rehabilitation Act would include "any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990."	The ADA and the Rehabilitation Act would use the same definition of disability. Federal agencies, employers receiving federal funds, and private sector employers would use the same definition of disability.
The ADA will not require entities to accommodate individuals with perceived disabilities.	Section 501(g) <a href="#">42 USC 12201</a>	A covered entity need not provide a reasonable accommodation or a reasonable modification to policies, practices or procedures to an individual who only meets the "regarded as" definition of disability.	This resolves a split among U.S. Circuit Courts of Appeals over whether the ADA requires accommodations for individuals who are regarded as disabled.
The effect of mitigating	Section 3,	Courts could not consider whether an individual could mitigate the effects of his	Entities would need to accommodate not only the effects

measures could not be considered.	<a href="#">42 USC 12102</a>	impairment by medication or assistive technology. The bill also prohibits discrimination due to the impact, side effects or consequences of any mitigating measures.	of a disability, but also the effects of any mitigating measures.
The definition excludes visual impairments corrected by ordinary eyeglasses.	Section 3, <a href="#">42 USC 12102</a>	The bill specifically states that "the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity."	Visual impairments that are correctable with ordinary eyeglasses or contact lenses will not qualify as disabilities. The mitigating effects of other low-vision devices would not be considered.
The definition would cover episodic and latent conditions during their active phases.	Section 3, <a href="#">42 USC 12102</a>	The bill states that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.	This would extend some coverage to conditions that appear only occasionally, such as certain seizures, or could produce an impairment later, such as asymptomatic HIV infections.
The definition would exclude minor and transitory conditions.	Section 3, <a href="#">42 USC 12102</a>	The definition of disability does not apply to impairments that are transitory and minor. A transitory impairment is defined as an impairment with an actual or expected duration of six months or less.	The Bush administration has questioned the requirement that an excluded impairment be both transitory and minor, instead of one or the other.
The bill would define auxiliary aids and services.	Section 4, <a href="#">42 USC 12102</a>	Expands the definition of auxiliary aids and services to include:  1. Qualified interpreters or other methods of providing materials to individuals with hearing impairments.  2. Qualified readers, taped texts, or other methods of providing visual materials to individuals with visual impairments.  3. Acquisition or modification of assistive equipment or devices.  4. Other similar services and actions.	While the ADA focused on specific accommodations such as sign language interpreters and readers, the amendments focus on making information available in a format usable to individuals with disabilities.
New regulations may be issued.	Section 501 <a href="#">42 USC 12201</a>	The bill grants authority to issue regulations to the EEOC, the attorney general, and the Department of Transportation.	Agencies can issue new regulations and guidance but are not required to do so.
The bill would not alter rules for workers' compensation eligibility.		Nothing in this act alters the standards for determining eligibility for benefits under workers' compensation laws or under federal disability benefit programs.	Employees could not use the new broader definition of disability to receive benefits under state or federal workers' compensation or disability benefits programs.