

ADA Amendments Act of 2008: A Pocket Guide for Rehabilitation Professionals

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In 2008 the U.S. Congress enacted major amendments to the 1990 Americans with Disabilities Act. The reasons for these amendments, provisions which favor individuals with disabilities, provisions which favor employers, observations of the legislative process, and the net effects are outlined in this article. Rehabilitation professionals can reasonably expect an up tick in EEOC and litigation activity. Their expertise in training implementation, mediation, and expert witness roles is likely to increase.

This is intended as an educational primer in the history and significant specifics of the ADA Amendments Act of 2008 (ADAA, P.L. 110-325). It is prudent to begin with a review of Title I of the Americans with Disabilities Act of 1990 (ADA, P.L. 101-336) which was enacted in 1990:

1. All personnel actions must be unrelated to the existence or consequence of disability.
2. In your human resources manual, every policy and procedure may be subject to reasonable accommodation when applied to a qualified individual with a disability.
3. ADA is an anti-discrimination law and not an affirmative action law with goals, objectives or time-tables. As such, its original intent is to reduce and eventually eliminate discrimination in employment and public access.

To be sure this is an oversimplification of the ADA which is comprised of the statute itself, regulations for each of the five titles, interpretive guidelines, and a technical assistance manual (all are available for download at <http://www.adata.org>). The ADA was the most ambitious civil rights law in U.S. history since the 1964 Civil Rights Act. The ADA passed both the House and Senate by large bipartisan majorities. Whereas the ADAA is also important, it addresses mostly Title I (Employment Provisions) of the Act which suggests that the remaining four titles (mostly public access provisions) were working rather well. This is worth noting to correct any misconception that the ADA was somehow "broken."

How and Why the ADAA Came About

Since 1990, the courts were struggling with a consistent interpretation of the basic definition of "disability." Nine years after passage, a series of Supreme Court decisions narrowed the definition, and by extension the number of people protected, in ways that Congress never intended. In 1999, the Court ruled that mitigating measures—medication, prosthetics, hearing aids, other auxiliary devices, diet and exercise, or any other treatment—must be considered in determining whether an individual has a disability under the ADA. This meant people with serious health conditions who were fortunate enough to find a treatment that makes them more capable and independent—and more able to work—often found that they were not protected by the ADA at all. These three court cases—*Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service*, 527 U.S. 516 (1999); *Albertsons v. Kirkingburg*, 527 U.S. 555 (1999)—became known as the "Sutton Trilogy." The knockout punch arrived in 2002 when the Supreme Court stated that courts should interpret the definition of "disability" strictly in order to create a demanding standard for qualifying as disabled. This was the case of *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184, 197 (2002).

The net effect of these restrictive rulings was obvious. The very people whom Congress intended to protect—those with epilepsy, diabetes, cancer, HIV, mental illness—were suddenly denied protection from disability discrimination. In a "post-Sutton" society, the person is impaired but not impaired enough to

substantially limit a major life activity (like walking or working), or the impairment substantially limits something — like liver function — that does not qualify as a “major life activity.” In brief, far fewer people could meet the new definition of “disability” even when they were clearly discriminated against because of it. The result was a Catch-22 situation in which an employer may say a person is “too disabled” to do the job but not “disabled enough” to be protected by the law. This is not what Congress intended (Blanck, Hill, Siegal and Waterstone, 2004). The scope of the ADA suddenly narrowed such that both litigation and formal complaint activity with the Equal Employment Opportunity Commission (EEOC) began to plummet.

Is there a real life example that would illustrate the Catch-22? There are many, some of which were presented in Congressional hearings regarding the ADAA, such as *Littleton v. Walmart Stores*, 231 Fed.Appx. 874 (11th cir. 2007) or *McClure v. General Motors* 75 Fed.Appx 983 (5th cir. 2003). The case of Stephen Orr provides perhaps the best illustration — *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 722 (8th Cir. 2002):

Stephen Orr was a pharmacist at Wal-Mart in Chandron, Nebraska, a town of 6,000 nestled in the rural northwestern part of the state. Stephen was hired in early 1998. During his interview, he told his soon-to-be boss that he had diabetes and needed to take regular, uninterrupted lunch breaks. Stephen was authorized to take a 30-minute lunch break during his ten-hour work shift.

Doctors diagnosed Stephen with diabetes in 1986. He requires multiple injections of insulin daily and uses a device called a glucometer to monitor his blood sugar levels. In order to keep his blood sugar stable, Stephen follows a regimented diet, monitoring what and when he eats in coordination with his medication regimen. If he does not, he experiences episodes of either hypoglycemia (low blood sugar) or hyperglycemia (high blood sugar).

When his blood sugar levels are not in his target range, Stephen experiences:

- seizures;
- deteriorated vision;
- trouble talking;
- the need to urinate frequently;
- loss of consciousness;
- lack of physical strength and energy;
- coordination problems;
- difficulty reading or typing; and
- impaired concentration and memory.

Complications caused by fluctuating blood sugar levels can, and have, resulted in hospitalization.

After he started working, Stephen took lunch breaks as agreed, closing the pharmacy to eat without being interrupted. During this time, Stephen did not experience severe hypoglycemia and performed his job well. No one complained about the pharmacy being closed for the half hour that Stephen was taking lunch. When a new district manager took over, he told Stephen to stop closing the pharmacy, and to eat lunch whenever possible during down times in the pharmacy.

Stephen obeyed this order, but started having problems with low blood sugar because he was no longer able to control the times that he ate. Stephen told his new boss that, because of the no-lunch-break order, he had experienced several hypoglycemic incidents and that he needed to resume his noon lunch breaks to control his blood sugar. Stephen's boss continued to deny the request for a lunch break and ultimately fired him. Stephen decided to challenge his firing and filed a claim against Wal-Mart under the ADA.

Wal-Mart responded that Stephen did not have a “disability” because Stephen was able to manage his diabetes with insulin and diet. The courts agreed. Because the Supreme Court directed courts to consider “mitigating measures” in deciding whether an individual has a disability, the Court of Appeals for the 8th Circuit found that Stephen did so well managing his condition that he was not disabled enough to be protected by the ADA.

Wal-Mart's refusal to allow Stephen to take a lunch break was never questioned.

Although Wal-Mart vigorously defended its refusal to allow Stephen a lunch break, Wal-Mart voluntarily changed company policy in 2000 to allow one-pharmacist pharmacies to close for 30 minutes at lunch because of “retention” problems.

ADAA Provisions which Favor the Individual with a Disability.

Although “disability” continues to be defined as a physical or mental impairment that substantially limits a major life activity, the following constitute significant changes (McGowan & Lenard, 2008):

1. Broad interpretation of “disability.” The Equal Opportunity Commission is the enforcement agency for Title I. The ADAA clearly directs the EEOC to relax the regulations defining the term “substantially limits” in a way that is inclusive, stating it should be read as “. . . impairment that prevents or severely restricts a major life activity.” The idea is that a demanding standard for meeting the criteria for disability is to be disallowed. As such, Congress rejected the standards stated in *Toyota v. Williams*: “The question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis (by the courts).”

2. Specification of "major life activities." The ADAA expands the notion of "major life activity" by creating two non-exhaustive lists as follows:
 - a. caring for oneself; performing manual tasks; everyday activities such as breathing, seeing, hearing, speaking, eating, sleeping, and walking; standing, lifting, and bending; learning, reading, concentrating, thinking, and communicating; and working.
 - b. major bodily functions such as those of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

ADA also clarifies that one need be substantially limited in a single major life activity to meet the definition. To simplify the process it is generally recommended that the life activity of "working" be considered only when no other major life activity applies. To do so obviates confusion with the social security and worker compensation depictions of "working," which are not ADA-consistent. ADA disability is not tantamount to "work disability".

3. Clarification of impairments while inactive. The ADAA clarifies that an "impairment" that is episodic or in remission (such as multiple sclerosis, diabetes, epilepsy, HIV, or cancer) is a disability if the impairment would be substantially limited to a major life activity when active.
4. Disallowing "mitigating circumstances." Most important, the ADAA explicitly states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability. A mitigating measure is anything that can reduce a substantial limitation and it includes every conceivable product and service that rehabilitation professionals provide such as medications, prosthetics, orthotics, counseling or assistive technology. Considered the most powerful of all ADAA changes, by disallowing consideration of mitigating measures the determination of disability status involves evaluating the individual in his/her "naked state." Clearly this will broaden the umbrella of ADA protections.

The ADAA and the Alternative Prongs of the Definition of Disability.

The ADA protects not only those people who are disabled in real time, but also those who have a record of disability, who are regarded (mistakenly) as disabled, and who are known associates (typically family members) of a person with disability. In the early stages, business interests had hoped that the Amendments would strike all of the alternative prongs. Disability

advocates, however, provided compelling statistics that there was substantial allegation activity in the alternative prongs and that they were competitive in terms of merit outcomes (actual discrimination). Some of these data derived from the National EEOC ADA Research Project.

In the end, all the prongs were maintained. However, there were adjustments to the "regarded as" prong which favored both sides in the debate. Favoring the individual, while it must be demonstrated that the employer regarded him/her as disabled, the standard of proof is that he/she be subjected to an adverse personnel action based on a perceived impairment that is not transitory or minor. A transitory impairment has an expected duration of six months or less. There is no need to demonstrate substantial limitation of a major life activity. Favoring the employer, there is no duty to accommodate those who meet only the definition of disability only under an alternative prongs.

ADAA Provisions which Favor the Employer

First, employers were able to retain the stipulation that individuals with disabilities must be "qualified to perform the essential functions of the job" in order to receive Title I protections. This was no small victory because no other protected class in civil rights law must assume the burden to of proving him/herself qualified. There is no such language pertaining to a "qualified" woman, African American, religious minority, or older worker. It is entirely likely that employer defenses will shift from establishing one's disability to demonstrating one's qualifications, or the reasonableness of requested accommodations. However, the Amendments did affirm that being a recipient of Social Security Disability Income or worker compensation (even given a rating permanent or total disability status) is not relevant in deciding whether or not an individual has a disability under the ADA.

Second, the ADAA does not provide a basis for a reverse discrimination (known as "no disability") claim. If a federal agency must meet affirmative action quotas or any employer chooses to reassign a worker with disability to a vacant position, other non-disabled workers could not claim discrimination under ADA.

Third, it is still true that employers who wish to use reassignment to a vacant position as a reasonable accommodation solution are not required to breach well established seniority systems or interfere with the seniority provisions of a collective bargaining agreement.

The Net Effect of ADAA

In simple terms, these fundamental clarifications to the definition of disability will dramatically expand the range of people protected by the ADA as the Congress originally intended. It is no longer difficult to prove that one has the right to bring an ADA Title I claim. In the absence of greater compliance efforts by employers, more civil law suits and EEOC activity are entirely possible.

Furthermore, the ADAA directs the focus of the Courts and the EEOC away from the question of "Is the charging party a person with a disability?" and toward the question of "Did a discriminatory event occur?" The latter focus is more consistent with the "anti-discrimination" nature of the ADA, which is a remedial statute intended to "remedy" past decades of willful discrimination.

Characterizing the Legislative Process of the ADAA

What may be construed as battle lines around passage of the ADAA began to be drawn in 2007. Representing business interests were the Chamber of Commerce, the Society of Human Resources Management, the Equal Employment Advisory Council, and the Heritage Foundation. The initial impetus for the ADAA was spurred by a 200 report to Congress by the National Council on Disability. The advocates' torch was carried by the American Association of People with Disabilities in concert with virtually every national disability-related organization. Advocates were organized - clearly establishing themselves as a powerful constituency. However, the U.S. Congress was supportive in a bi-partisan matter almost from the outset due its concern over "judicial activism." There was much discussion and compromise, numerous hearings and negotiations. Indeed the face to face engagement of business and disability principals was unprecedented. At the time of passage, even Congressional decision makers had minimal opposition. The House of Representatives passed the bill 402-17. The Senate passed the bill by unanimous consent which is remarkable in this era of extreme partisanship. President G.W. Bush signed the ADAA on October 19, 2008, in partial consideration to the legislative legacy of his father, President George H. Bush, the signatory in 1990. The ADAA became effective on January 1, 2009.

References

- Blanck, P., Hill, E., Siegal, C.D., & Waterstone, M. (2004). *Disability Civil Rights Law and Policy*. St. Paul, MN: Thomson-West.

- McGowan, K., & Lenard, G. L. (2008). *Guide to the ADA Amendments Act*. Washington, DC: Thompson Publishing Group.

Author Notes

The information presented in this article is intended solely as informal guidance, and is neither a determination of legal rights or responsibilities under the ADA or the ADAA, nor is it binding on any agency with enforcement responsibilities under the ADA. The opinions and observations of the author, who is not an attorney, are entirely his own. Readers are referred to the ADA Document Portal for free downloads of original source material at <http://wwwadata.org/adaportal>. The entire text of the ADA Amendments is reprinted following the references.

ADA Amendments Act of 2008 PUBLIC LAW 110-325 SEPTEMBER 25, 2008

An Act.

To restore the intent and protections of the Americans with Disabilities Act of 1990. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADA Amendments Act of 2008".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

- (1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;
- (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;
- (3) 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;
- (4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases 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;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) 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;

(7) in particular, 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; and

(8) Congress finds 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.

(b) Purposes.—The purposes of this Act are—

(1) to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court’s reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms “substantially” and “major” in the definition of disability under the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and that to be substantially limited in performing a major life activity under the ADA “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives”;

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota*

Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress 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 to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term “substantially limits” as “significantly restricted” to be consistent with this Act, including the amendments made by this Act.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;”;

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) Definition of Disability.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

“SEC. 3. DEFINITION OF DISABILITY. ”As used in this Act:

“(1) Disability.—The term ‘disability’ means, with respect to an individual—

“(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

“(B) a record of such an impairment; or

“(C) being regarded as having such an impairment (as described in paragraph (3)).

“(2) Major life activities.—

“(A) In general.—For purposes of paragraph (1), 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.

“(B) Major bodily functions.—For purposes of paragraph (1), 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.

“(3) Regarded as having such an impairment.—For purposes of paragraph (1)(C):

“(A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she 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.

“(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

“(4) Rules of construction regarding the definition of disability.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:

“(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

“(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

“(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

“(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

“(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

“(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

“(II) use of assistive technology;

“(III) reasonable accommodations or auxiliary aids or services; or

“(IV) learned behavioral or adaptive neurological modifications.

“(ii) 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.

“(iii) As used in this subparagraph—

“(I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

“(II) the term ‘low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.”.

(b) Conforming Amendment.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

“SEC. 4. ADDITIONAL DEFINITIONS. ”As used in this Act:

“(1) Auxiliary aids and services.—The term ‘auxiliary aids and services’ includes—

“(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

“(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

“(C) acquisition or modification of equipment or devices; and

“(D) other similar services and actions.

“(2) State.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

(c) Amendment to the Table of Contents.—The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

“Sec. 3. Definition of disability.

“Sec. 4. Additional definitions.”.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) On the Basis of Disability.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking “with a disability because of the disability of such individual” and inserting “on the basis of disability”; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking “discriminate” and inserting

“discriminate against a qualified individual on the basis of disability”.

(b) **Qualification Standards and Tests Related to Uncorrected Vision.**—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

“(c) **Qualification Standards and Tests Related to Uncorrected Vision.**—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.”.

(c) **Conforming Amendments.**—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(A) in the paragraph heading, by striking “with a disability”; and

(B) by striking “with a disability” after “individual” both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking “the term ‘qualified individual with a disability’ shall” and inserting “a qualified individual with a disability shall”.

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following:

“(e) **Benefits Under State Worker’s Compensation Laws.**—Nothing in this Act alters the standards for determining eligibility for benefits under State worker’s compensation laws or under State and Federal disability benefit programs.

“(f) **Fundamental Alteration.**—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

“(g) **Claims of No Disability.**—Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability.

“(h) **Reasonable Accommodations and Modifications.**—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.”;

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

“SEC. 506. **RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.** “The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.”; and

(3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking “511(b)(3)” and inserting “512(b)(3)”.

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item:

“Sec. 506. Rule of construction regarding regulatory authority.”.

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking “a physical” and all that follows through “major life activities”, and inserting “the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)”;

(2) in paragraph (20)(B), by striking “any person who” and all that follows through the period at the end, and inserting “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).”.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

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