

Comparison Between the ADA Restoration Act and the ADA Amendments Act

Issue	The ADA Restoration Act (S. 1881)	The ADA Amendments Act (S. 3406, Negotiated Compromise)
Definition of Disability	<p><u>Definition</u>: Disability means (i) a physical or mental impairment; (ii) a record of a mental or physical impairment; or (iii) being regarded as having a mental or physical impairment. § 4(2)(A).</p> <p><u>Substantially Limits</u>: No need to consider whether the impairment substantially limits the individual in any fashion.</p> <p><u>Major Life Activity</u>: No need to consider whether the impairment substantially limits a major life activity of the individual.</p>	<p><u>Definition</u>: Disability is defined as (A) a physical or mental impairment that substantially limits one or more major life activities of an individual; (B) a record of such an impairment; or (C) being regarded as having an impairment described in (A) or (B). § 4(2)(A-C).</p> <p><u>Substantially Limits</u>: <u>The term substantially limits is to be interpreted consistently with the findings and purposes of the Act.</u></p> <p><u>The findings of the Act state that the term “substantially limits” was defined by the EEOC and the Supreme Court to establish a greater degree of limitation than intended by Congress.</u></p> <p><u>Major Life Activity</u>: A non-exhaustive list of major life activities are identified and included in the definition. These 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. § 4(4)(a).</p> <p>Major life activities also include the operation of “major bodily functions” which include but are not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. § 4(4)(b).</p>

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	<p><u>Regarded As</u>: Being “regarded as” having any impairment is sufficient to satisfy the requirements of that prong. There is no limitation on the duration or seriousness of the impairment.</p>	<p><u>Regarded As</u>: The “regarded as” prong of the definition of disability uses an impairment standard, but limitations are added to the provision.</p> <p>The “regarded as” definition would be as follows:</p> <p>In General — An individual will meet the requirement of “being regarded as having an impairment described in (A) or (B),” as set forth in the third prong, 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.” This will be the case whether or not the individual actually has the impairment or whether or not the impairment is perceived to substantially limit a major life activity. § 4(5)(a).</p> <p>However, the “regarded as” prong of the definition will not apply to transitory and minor impairments. A “transitory” impairment is an impairment with an actual or expected duration of six months or less. § 4 (5)(b).</p> <p>In addition, in a change from some current cases, an employer or other covered entity has no duty to provide a “reasonable accommodation” to individuals who fall solely under the “regarded as” provision. § 4(5)(c).</p>
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<p>Mitigating Measures</p>	<p>Mitigating measures may not be considered in determining whether an individual has an impairment. § 4(B).</p>	<p>Mitigating measures may not be considered in determining whether an individual has an impairment that substantially limits a major life activity. An exception is made for “ordinary eyeglasses or contact lenses” that may be taken into account. § 4(6)(D-F). Conditions that are episodic or in remission are considered in their active state.</p>
<p>Regulatory Authority</p>	<p>The bill directs the Attorney General to issue regulations and guidance implementing the provisions of the Act. The EEOC and Secretary of Transportation are directed to issue implementing directives either in the form of regulations or policy guidance. § 7(f).</p> <p>The regulations and/or policy guidance, including the provisions implementing the definition of disability, are entitled to deference by administrative bodies, officers and courts. § 7(g).</p>	<p>The bill grants authority to the EEOC, the Attorney General, and the Secretary of Transportation to issue regulations interpreting the definition of disability under the ADA. § 6.</p>
<p>Broad Construction</p>	<p>“In order to ensure that this Act achieves its purpose of providing a comprehensive prohibition of discrimination on the basis of disability, the provisions of this Act shall be broadly construed to advance their remedial purpose.” § 7(e).</p>	<p>“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.” §4(6)(A).</p>
<p>Effective Date</p>	<p>Upon enactment</p>	<p>The effective date would be January 1, 2009</p>