

Comparison Between the ADA Restoration Act and the ADA Amendments Act

Issue	The ADA Restoration Act (H.R. 3195/S. 1881)	The ADA Amendments Act (Negotiated Compromise)
<p>Definition of disability</p>	<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 such an impairment. § 4(2)(A-C).</p> <p><u>Substantially Limits:</u> The phrase “substantially limits” means “materially restricts.” §4(3).</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 such an impairment,” 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 limits 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. The term “transitory” impairment would be 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>
<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). Episodic conditions are considered in their active state.</p>

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<p>Qualified Individual With A Disability</p>	<p><u>Qualified</u>: The term “qualified” would be eliminated from 42 U.S.C. § 12112(a). The provision would thus simply prohibit discrimination “against an individual with a disability”. § 5(1); § 5(2).</p> <p><u>Burden of Proof (Employer’s Affirmative Defense)</u>: An employer is provided an affirmative defense if an employee/applicant is “not qualified” to perform the essential functions of the job. § 6</p>	<p><u>Qualified</u>: The phrase “qualified individual” is preserved in the ADA. The provision thus states that it is unlawful to discriminate against a <i>qualified</i> individual on the basis of disability. § 5(a)(1-2).</p> <p><u>Burden of Proof (Employee’s Prima Facie Case)</u>: The usual prima facie case requirements for plaintiffs remain with regard to proving qualifications.</p>
<p>Regulatory Authority</p>	<p>Title V of the ADA (42 U.S.C. 12201) 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>Title V of the ADA (42 U.S.C. 12201) is amended to grant the EEOC, the Attorney General, and the Secretary of Transportation authority 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>“To achieve the remedial purposes of this Act, the definition of “disability” shall be construed broadly.” §4(6)(A).</p>
<p>Effective Date</p>	<p>Upon enactment</p>	<p>The effective date would be January 1, 2009</p>