

Legal Briefings

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“The ADA Amendments Act”

I. Introduction

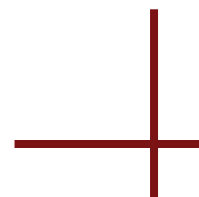
The Americans with Disabilities Act of 1990 (ADA) was passed “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”¹ However, decisions of the U.S. Supreme Court and other courts have resulted in ADA protections that are neither clear nor comprehensive. As a result of these court decisions, Congress has amended the ADA to ensure that the ADA can fulfill its original promise.

On July 26, 2007, the 17th Anniversary of the ADA, Congressmen Steny Hoyer (D-Maryland) and James Sensenbrenner, Jr. (R-Wisconsin), and Senators Tom Harkin (D-Iowa) and Arlen Specter (R-Pennsylvania) introduced the ADA Restoration Act of 2007.² The bill’s sponsors characterized it as bipartisan legislation that sought to restore the civil rights protections originally intended by the ADA that have been lost as a result of decisions by the U.S. Supreme Court and lower courts. Initially, the sponsors of the ADA Restoration Act sought to achieve this goal by amending the ADA’s definition of disability, enabling ADA cases to focus on the alleged discriminatory conduct rather than on the medical condition of the individual with a disability. However, there was some opposition within the business community to change the definition of disability. In the spring of 2008, leaders from the business community and disability community met to craft legislation that both sides could support. The result was the ADA Amendments Act that was signed into law by President Bush on September 25, 2008 and will become effective on January 1, 2009.

II. The ADA

The ADA seeks to “assure equality of opportunity, full participation, independent living, and economic self-sufficiency” for people with disabilities.³ When the ADA was passed, Congressional support was bipartisan and overwhelming.⁴ The ADA adopted the definition of disability set forth in Section 504 of the Rehabilitation Act of 1973, an earlier federal anti-discrimination law protecting people with disabilities.⁵ The ADA defines “disability” as follows:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.⁶



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When analyzing this definition of disability under the Rehabilitation Act, the U.S. Supreme Court held that, “the definition of ‘handicapped individual’ is broad...”⁷ However, the Supreme Court deviated from this precedent when analyzing definition of disability issues under the ADA, opting instead for a narrow definition of disability.⁸ Such an approach is contrary to traditional rules of statutory construction requiring liberal interpretation of civil rights laws and remedial statutes.⁹ As a result of rulings by the Supreme Court and lower courts, individuals with impairments that Congress intended to protect, have often been left unprotected by the courts.

III. Court Rulings that Altered the ADA

The first ADA case heard by the U.S. Supreme Court followed a traditional civil rights analysis and the liberal approach articulated in *Arline*. In *Bragdon v. Abbott*, the Court held that an individual who was HIV positive was protected by the ADA as she was substantially limited in the major life activity of reproduction even though the condition was not symptomatic at the time.¹⁰ However, the Supreme Court’s analysis and approach regarding the definition of disability changed in 1999 in a trio of cases known as the *Sutton* trilogy.¹¹

A. The *Sutton* Trilogy

When the Supreme Court decided the *Sutton* trilogy, eight of the nine Federal Courts of Appeals that had decided the issue previously, held that mitigating measures should not be examined in determining whether an individual is substantially limited in a major life activity. These rulings were consistent with the “Interpretive Guidance” issued by the Equal Employment Opportunity Commission (EEOC), the federal agency charged with issuing regulations and guidance under the employment provisions of Title I of the ADA, stating that disability determinations should be made “without regard to mitigating measures.”¹² According to prior Supreme Court decisions, EEOC interpretations were due “great deference” by the courts.¹³ Nevertheless, the *Sutton* Court chose not to follow the EEOC’s

guidance or the position taken by eight of the nine U.S. Circuit Courts of Appeal and held that mitigating measures should be examined when assessing whether an individual’s impairment substantially limits a major life activity.¹⁴

Specifically, the *Sutton* Court held that corrective or mitigating measures, such as eyeglasses, prosthetic devices, or medication, must be considered in determining whether a person with a correctable condition has a disability under the first “prong” of the ADA (a physical or mental impairment that substantially limits a major life activity).¹⁵ Therefore, the Court found that the individuals in the three “*Sutton*” cases were not persons with disabilities under the ADA because the individuals were not substantially limited in any major life activity when evaluated in their corrected state.¹⁶

The *Sutton* Court’s decision not to follow EEOC guidance, Congressional intent, nor the holdings of eight out of nine of Federal Courts of Appeals regarding mitigating measures, was based on an introductory Congressional finding in the ADA that “some 43,000,000 Americans have one or more physical or mental disabilities...”¹⁷ The *Sutton* Court stated that:

Had Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number of disabled persons in the findings. That it did not is evidence that the ADA’s coverage is restricted to only those whose impairments are not mitigated by corrective measures.¹⁸

The Court seemed to recognize that its holding would mean that many people with impairments that were not substantially limiting would be subject to adverse treatment stating that:

By its terms, the ADA allows employers to prefer some physical attributes over others and to establish physical criteria... Accordingly, an employer is free to decide that physical characteristics or medical conditions that do not rise to the level of an impairment...are preferable to others, just as it is free to decide that someone limiting, but not *substantially* limiting,

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Impairments make individuals less than ideally suited for a job. (Emphasis in original)¹⁹

B. Ramifications of *Sutton*

The Court's holding in *Sutton* regarding mitigating measures significantly restricted ADA protections. While some plaintiffs who use mitigating measures were found to have an ADA disability under *Sutton*, a high proportion of cases brought by plaintiffs who use mitigating measures were dismissed. Specifically, courts found that people living with epilepsy,²⁰ positive HIV status,²¹ diabetes,²² depression,²³ heart disease,²⁴ hypertension,²⁵ cancer,²⁶ asthma,²⁷ attention deficit disorder,²⁸ narcolepsy,²⁹ muscular dystrophy,³⁰ mental retardation,³¹ multiple sclerosis,³² lupus,³³ sleep apnea,³⁴ and who are hard of hearing,³⁵ were not substantially limited in a major life activity when the person's mitigating measure was taken into account.

C. The Supreme Court's Ruling in *Toyota v. Williams*

Toyota v. Williams is another Supreme Court decision that further narrowed the ADA's definition of disability. In *Toyota*, an employee claimed that she was substantially limited in "performing manual tasks."³⁶ The Court did not look at limitations involving "major life activities" but rather created a new standard by examining activities of "central importance to most people's daily lives," stating:

We therefore hold that to be substantially limited in performing manual tasks, 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. The impairment's impact must also be permanent or long term. [Citations omitted].³⁷

The Court in *Toyota* also addressed the rules of construction for interpreting the ADA and further departed from the "broad" definitional

reading required under *Arline*.³⁸ Rather, the *Toyota* Court stated that the elements of the definition "need to be interpreted strictly to create a demanding standard for qualifying as disabled."³⁹ This represents a marked departure from traditional civil rights jurisprudence. Further, while the Court seems to explicitly link its new restrictive analysis to limitations involving "manual tasks," lower courts have applied *Toyota's* analysis to a variety of other major life activities.⁴⁰

As a result of Supreme Court and lower court rulings, many people with disabilities, both actual and perceived, have been subject to discriminatory acts without the ability to seek redress. Congress has noticed what the court rulings have done to the ADA. Under the U.S. Constitution, when Congress believes that the courts are interpreting a law improperly, the only recourse is to amend the law. Hence, the ADA Restoration Act was introduced to restore the original intent of the ADA.

IV. The ADA Restoration Act

The central component of the ADA Restoration Act was to change the definition of disability to address the problems caused by the Supreme Court's ADA decisions. First, the Restoration Act eliminated the requirement that an impairment cause a "substantial limitation" of a "major life activity." Disability was defined as "a physical or mental impairment; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment" and the terms "physical impairment" and "mental impairment" were specifically defined.⁴¹ However, as noted above, many in the business community were not supportive of a new definition of disability and were concerned that the amended definition would unnecessarily expand the ADA to include impairments not intended by Congress, such as the flu. Without the support of the business community, it became much less likely that Congress would pass the ADA Restoration Act and the problems caused by the Supreme Court's narrow interpretations of the ADA would not be addressed. Accordingly, the business community and the disability community came together to craft legislation that both could support, addressing the concerns of the disability community, but not

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exposing employers to ADA liability beyond Congress' original intent.

V. The ADA Amendments Act

When enacting the ADA Amendments Act, Congress' primary focus was to make clear that the Supreme Court and lower courts had unduly narrowed the definition of disability and, as a result, many people with impairments that it had intended to be covered, had been deemed not to have an ADA disability. To ensure that its intentions were clear that the definition of disability should be interpreted broadly, Congress reiterated this point throughout the Act in its Findings, Purposes and Rules of Construction.

A. Congressional Findings and Purposes

Section 2 of the ADA Amendments Act set forth numerous Congressional findings seeking to counteract the narrow court interpretations of the ADA's definition of disability including:

- Congress intended that the ADA would provide a clear national mandate to eliminate disability discrimination and provide broad coverage;
- Congress expected that "disability" under the ADA would be interpreted consistently with previous court interpretations of "handicapped" under Section 504 of the Rehabilitation Act, but that expectation has not been fulfilled;
- The Supreme Court's Sutton and Toyota decisions narrowed the ADA and eliminated protection for many individuals that Congress intended to protect;
- As a result of these Supreme Court cases, lower courts have incorrectly found in numerous cases that people with a range of substantially limiting impairments do not have an ADA disability; and
- The current Equal Employment Opportunity Commission ADA regulations defining "substantially limits" as "significantly restricted" are inconsistent with Congress' intent.⁴²

Section 2 of the ADA Amendments Act also sets forth the purposes of the Act to further clarify Congress' view that the courts had incorrectly interpreted the ADA's definition of disability. These purposes included:

- To reject the reasoning in the Sutton and Toyota cases and reinstate the reasoning from the Arline case;
- To convey that Congress intended that the primary focus in ADA cases is whether entities covered by the ADA have complied with their obligations, and not on the definition of disability;
- To convey that whether a person's impairment is an ADA disability should not demand extensive analysis; and
- To make clear that Congress expects that the EEOC will revise its current regulations that defines the term "substantially limits" as "significantly restricted."⁴³

B. Codified Findings

Section 3 of the ADA Amendments Act amended findings from the ADA to further address the Supreme Court's narrow ADA decisions. Specifically, Section 3 removes the statement that "some 43,000,000 Americans have one or more disabilities, and this number is increasing as the population is growing older." Justice O'Connor relied upon this provision in the Sutton case to support her finding that Congress did not intend to cover people who use mitigating measures. By removing this provision from the ADA, Congress not only clearly repudiated Justice O'Connor's reasoning, but also further clarified that Congress wanted the definition of disability under the ADA to be read expansively.⁴⁴

C. Definition of Disability

As noted above, the ADA Amendments Act retains the ADA's original definition of disability by adding back in the language regarding being "substantially limited in one or more major life activities" that had been removed when the ADA Restoration Act was introduced.⁴⁵ However, Section 4 also contains numerous "Rules of

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Construction” to assist courts in their analysis of the definition of disability. These Rules of Construction include:

- Definition of disability is to be construed in favor of broad coverage to the maximum extent permitted;
- “Substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008;
- An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active, such as mental illness, HIV, cancer, epilepsy and diabetes;
- Whether an impairment substantially limits a major life activity shall be made without taking into account mitigating measures – explicitly rejecting the findings in the *Sutton* case; and
- Only the ameliorative effects of ordinary eyeglasses and contact lenses shall be taken into account when determining whether an impairment is substantially limiting.⁴⁶

D. Major Life Activities

When the ADA was passed Congress did not include specific examples of “major life activities” in the actual text of the ADA. In the ADA Amendments Act, numerous specific examples are listed, although Congress has made clear that this is not an exhaustive list. The list of major life activities is as follows:

- Caring for oneself;
- Walking and standing;
- Performing manual tasks;
- Reading;
- Seeing;
- Lifting;
- Hearing;
- Bending;
- Eating;
- Speaking;
- Sleeping;
- Breathing;
- Learning;
- Communicating;
- Concentrating and thinking; and

- Working.⁴⁷

In addition, Congress listed a number of “major bodily functions” under the definition of “major life activities.” This is consistent with recent court decisions that have found that limitations of certain bodily functions have qualified as a disability under the ADA.⁴⁸ Again, Congress has made clear that this is not an exhaustive list. The list of major bodily functions is as follows:

- Immune system;
- Neurological;
- Normal cell growth;
- Brain;
- Digestive;
- Respiratory;
- Bowel;
- Circulatory;
- Bladder;
- Endocrine; and
- Reproductive functions.⁴⁹

E. “Regarded As” Prong

Many plaintiffs have been unsuccessful bringing their cases under the “regarded as” prong of the definition of disability because some courts had held that a plaintiff had to prove that a defendant regarded them as being substantially limited in a particular major life activity. Because of the subjective nature of this requirement, many people with disabilities were unable to demonstrate that they fit within the regarded as prong. Congress has sought to rectify this with the ADA Amendments Act.

The ADA Amendments Act now states that a person meets the regarded as prong of the definition of disability if the person establishes that he or she has been subjected to an action prohibited under the 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.⁵⁰ This language in the ADA Amendments Act makes clear that Congress wants the focus to be on the alleged unequal treatment of people with disabilities rather than on the employer’s specific perceptions.

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A concern of the business community is that the ADA not be amended to expose them to liability for minor or temporary impairments. To address this concern, Congress included a provision in the ADA Amendments Act that makes clear that the regarded as prong will not apply to impairments that are transitory and minor. The Act defines a transitory impairment as one that has an actual or expected duration of 6 months or less.⁵¹

Also, the ADA Amendments Act clarifies that individuals who only qualify under the regarded as prong are not entitled to a reasonable accommodation. Prior to the enactment of the ADA Amendments Act, the majority of courts had ruled that only people with an actual disability are entitled to a reasonable accommodation. However, a minority of courts have held that reasonable accommodations should also be provided to people who qualify under the regarded as prong. The ADA Amendments Act makes clear that employers do not have to provide reasonable accommodations to people who only qualify under the regarded as prong.⁵²

F. Definition of Discrimination

The ADA Amendments Act also amends the definition of discrimination under the ADA to bring its language more in line with the language of other federal civil rights statutes, notably Title VII of the Civil Rights Act of 1964. The Bill accomplishes this by defining discriminatory acts as being “on the basis of disability” rather than being “against a qualified individual with a disability...” This change would put the focus of an ADA case on the alleged discriminatory conduct rather than the limitations of the aggrieved individual’s disability.⁵³ This section also prevents reverse discrimination claims by clarifying that discrimination “on the basis of disability” means discriminating against an individual with a disability.⁵⁴

G. Vision Issues

As noted above, the ADA Amendments Act generally prohibits considering mitigating measures when determining whether a person falls

within the definition of disability. The only exception is when the mitigating measure is when the person wears glasses or contact lenses. In those instances, mitigating measures can be taken into account. Congress was careful to distinguish between “ordinary eyeglasses or contact lenses that are intended to “fully correct visual acuity or eliminate refractive error” and “low vision devices” that “magnify, enhance or otherwise augment a visual image.” If a person uses a low vision device, that cannot be taken into account when assessing whether he or she falls within the definition of disability.⁵⁵

The ADA Amendments Act provides further guidance to employers who may decide to have applicants or employees to undergo eye examinations in their unmitigated state. The Act provides that employers shall not use those types of tests unless it can be shown that the test is job-related for the position and consistent with business necessity.⁵⁶ This is consistent with the original ADA text and regulations.

H. Regulatory Authority

As noted above, the Supreme Court in *Sutton* failed to give any deference to the findings of federal agency interpretations of the definition of disability. Justice O’Connor stated that because Congress had not expressly given any federal agency authorization to interpret the definition of disability, their interpretations were not entitled to deference.

The ADA Amendments Act seeks to rectify this by explicitly granting authority to the EEOC, Department of Justice and Department of Transportation to issue regulations interpreting the definition of disability under the ADA. The Act expressly repudiates the Supreme Court’s ruling in *Sutton* allowing courts to ignore federal regulations interpreting the definition of disability.⁵⁷ As noted previously, the Act also directs the EEOC to change its regulation that interprets that “substantially limited” as “significantly restricts.”

I. Consistency Between the ADA and the Rehabilitation Act

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As noted above, in *Arline*, the Rehabilitation Act case decided prior to the enactment of the ADA, the Supreme Court held that the definition of disability should be interpreted broadly. In the ADA Amendments Act, Congress seeks to restore the *Arline* Court's interpretation of the definition of disability. Congress also made clear that the provisions of the ADA Amendments Act apply to the Rehabilitation Act and that the two Acts should be read consistently. This will ensure that people who work for federal employees, like postal workers, will have the same rights and protections as other employees.⁵⁸

VI. Ramifications of the ADA Amendments Act

As a result of confusing and often conflicting court rulings regarding who has a disability under the ADA, the definition of disability has been the most litigated area of the ADA.⁵⁹ Litigation resulting from a lack of legal clarity does not benefit individuals with disabilities, businesses, or government agencies and other organizations.

Prior to the enactment of the ADA Amendments Act, human resource personnel, managers, supervisors, and other professional staff were forced to make medical judgments regarding which employees are covered by the ADA. In order to make this assessment, staff responsible for implementing the ADA were forced to try to make sense out of a complex maze of legal rulings. Additionally, employers often requested medical records in addressing accommodations potentially exposing them to liability for violations of the confidentiality provisions of the ADA, HIPAA, and other federal and state confidentiality laws. The ADA Amendments Act allows employers to focus more on workplace issues and less on medical issues.

The ADA Amendments Act provides clarity to the business and disability community about Congress' intentions and should make life easier for the people it protects as well as the organizations that it covers. The Act will allow human resource personnel and business managers to make the workplace decisions they are qualified to make regarding the effectiveness

of proposed accommodations. Staff will not be forced to make complex legal and medical analyses that the previous state of the law promoted. The Act may even result in less litigation as the most complex area of the ADA has now been clarified. The ADA Amendments Act brings the ADA in line with other civil rights laws where there has been very little litigation over who is covered by the law.

VII. Conclusion

The ADA Amendments Act is a congressional effort to restore the civil rights protections originally intended under the ADA. The goals of the ADA and the ADA Amendments Act are consistent with business goals of hiring, employing, and retaining qualified employees while enabling them to be as productive as reasonably possible. Just as the ADA had widespread support nationally when it was enacted, business should not fear the ADA Amendments Act, but should work to understand their obligations under the law and develop a blueprint for efficient and effective ADA compliance.

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Notes:

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- 1) 42 U.S.C. § 12101(b)(1).
- 2) House Bill (HR 3195) and Senate Bill (S 1881).
- 3) 42 U.S.C. § 12101(a)(8).
- 4) The ADA passed the Senate 76-8. 135 CONG. REC. S10803 (daily ed. September 7, 1989); The ADA passed the House 403-20. 136 CONG. REC. H2638 (daily ed. May 22, 1990).
- 5) 29 U.S.C. § 706(7); See House Committee on the Judiciary Report 101-485, page 31, *see also* “Memorandum Legislative and Regulatory History -- Foundation for the Proposed ADA Restoration Act,” pages 2-3.
- 6) 42 U.S.C. § 12102(2).
- 7) *School Board of Nassau County v. Arline*, 480 U.S. 273, 285 (1987).
- 8) See, e.g., *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
- 9) See *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967), where the Supreme Court stated that it is a “familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes.” See also, *McDonald v. Santa Fe Trail Transportation Company*, 427 U.S. 273, 295-296 (1976); *Gratz v. Bollinger*, 539 U.S. 244, 276 (2003).
- 10) *Bragdon v. Abbott*, 524 U.S. 624 (1998).
- 11) *Sutton v. United Air Lines*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service*, 527 U.S. 516 (1999); *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
- 12) 29 C.F.R. pt. 1630 App. § 1630.2(j) (1998); Similar positions regarding mitigating measures were issued by the U.S Department of Justice (DOJ) and U.S. Department of Transportation (DOT). See *Sutton*, 527 U.S. 471, 495-496, (J. Ginsburg concurring).
- 13) See, e.g., *McDonald v. Santa Fe Trail Transportation Company*, 427 U.S. 273, 279 (1976).
- 14) *Sutton*, 527 U.S. at 482.
- 15) *Sutton v. United Air Lines*, 527 U.S. 471, 482 (1999).
- 16) *Sutton v. United Air Lines*, 527 U.S. 471, 488-489 (1999); *Murphy v. United Parcel Service* 527 U.S. 516, 521 (1999); *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555, 565-566 (1999).
- 17) 42 U.S.C. § 12101(a)(1); *Sutton*, 527 U.S. at 487
- 18) *Sutton*, 527 U.S. at 487.
- 19) *Id.* at 490-491.
- 20) *Carlson v. Liberty Mutual Insurance Co.*, 2007 WL 1632267 (11th Cir. June 7, 2007).
- 21) *EEOC v. Lee’s Log Cabin, Inc.*, 436 F.Supp.2d 992 (W.D. Wis 2006).
- 22) *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002).
- 23) *Boerst v. General Mills*, 2002 WL 59637 (6th Cir. 2002).

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- 24) *Taylor v. Nimock's Oil Co.*, 214 F.3d 957 (8th Cir. 2000).
- 25) *Hill v. Kansas Area Transportation Authority*, 181 F.3d 891 (8th Cir. 1999).
- 26) *EEOC v. R.J. Gallagher Co.*, 181 F.3d 645 (5th Cir. 1999).
- 27) *Muller v. Costello*, 187 F.3d 298, 314 (2d Cir. 1999).
- 28) *Collins v. Prudential Investment and Retirement Services*, 119 Fed. Appx. 371, (3rd Cir. 2005).
- 29) *Hoskins v. Northwestern Mem. Hosp.*, 2002 WL 1424562 (N.D. Ill. Jun. 28, 2002).
- 30) *McClure v. GMC*, 2003 WL 124480 (N.D. Tex. Jan. 10, 2003).
- 31) *Littleton v. Wal-Mart*, 2007 WL 2211131, (11th Cir. 2007) (unpublished).
- 32) *Berry v. T-Mobile USA, Inc.*, 490 F.3d 1211 (10th Cir. 2007).
- 33) *Smith v. Quintiles Transnational Corp.*, 2007 WL 1099105 (M.D. Fla. Apr. 10, 2007).
- 34) *Rossi v. Alcoa, Inc.*, 129 Fed.Appx. 154 (6th Cir. 2005).
- 35) *Godfrey v. New York Transit Authority*, 2006 WL 2505223 (E.D.N.Y. Aug. 28, 2006).
- 36) *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).
- 37) *Id.* at 198.
- 38) *School Board of Nassau County v. Arline*, 480 U.S. 273, 285 (1987).
- 39) *Toyota*, 534 U.S. at 197.
- 40) *See, e.g., Calef v. Gillette Co.*, 322 F.3d 75 (1st Cir. 2003) (learning or speaking); *Capobianco v. City of New York*, 422 F.3d 47 (2nd Cir. 2005) (seeing); *Carroll v. Xerox Corp.*, 294 F.3d 231 (1st Cir. 2002) (working); *Velarde v. Associated Regional and University Pathologists*, 61 Fed.Appx. 627, (10th Cir. 2003) (lifting).
- 41) ADA Restoration Act, Section 4.
- 42) ADA Amendments Act Section 2(a)(1)-(8)
- 43) ADA Amendments Act Section 2(b)(1)-(6)
- 44) ADA Amendments Act Section 3
- 45) ADA Amendments Act Section 4(a)
- 46) ADA Amendments Act Section 4(a)
- 47) ADA Amendments Act Section 4(a)
- 48) *See Walton v. U.S. Marshals Service*, 476 F.3d 723 (9th Cir. Feb. 9, 2007)
- 49) ADA Amendments Act Section 4(a)
- 50) ADA Amendments Act Section 4(a)
- 51) ADA Amendments Act Section 4(a)
- 52) ADA Amendments Act Section 6(a)
- 53) ADA Amendments Act Section 5(a)
- 54) ADA Amendments Act Section 6(a)
- 55) ADA Amendments Act Section 4(a)

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Notes:

- 56) ADA Amendments Act Section 5(b)
- 57) ADA Amendments Act Section 6(a)
- 58) ADA Amendments Act Section 7
- 59) See National Council on Disability (NCD) Report: *The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA*, July 26, 2007; 51 Vill. L. Rev. 1031, 1039 (2006), Elizabeth Fordyce, *Comment: The Elusive Protected Class – Who Is Worthy under the Americans with Disabilities Act*, *Stigma without Impairment: Broadening the Scope of Disability Discrimination Law* by David Wasserman, School of Public Affairs at the University of Maryland, The Institute for Philosophy and Public Policy.