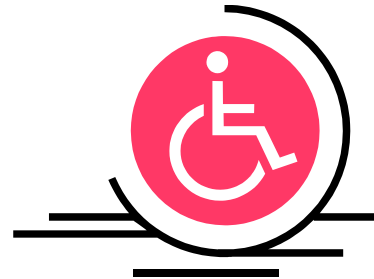


AMERICANS WITH DISABILITIES ACT

(ADA)

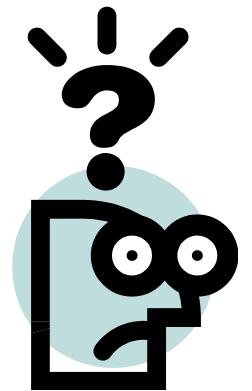


In the Scope of Civil Rights Legislation, It is Still Fairly New

Enacted in 1990



- As time went on, courts started narrowing definitions of a disability.
- No consistency among courts.
- Legislators began to feel the courts were defeating the purpose of the ADA.

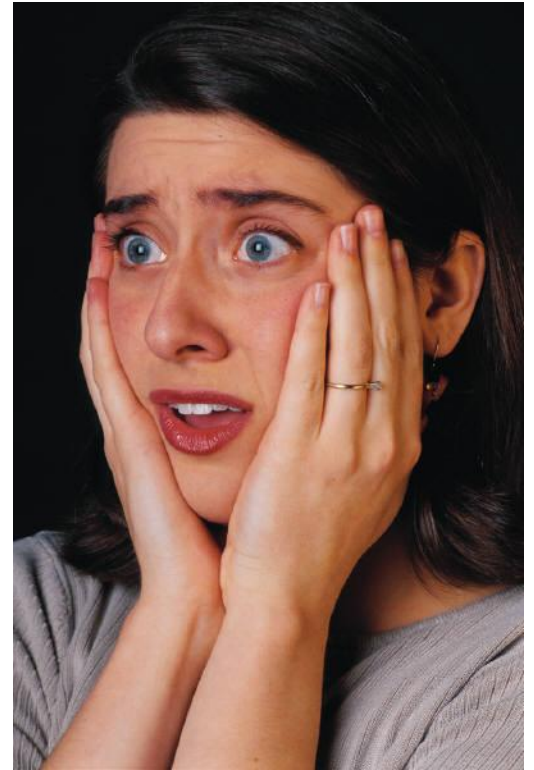


JANUARY 1, 2009

SUBSTANTIAL CHANGES ENACTED BY
CONGRESS TOOK EFFECT



According to the Equal Employment Opportunity Commission, these changes will add 1 million employees to the ranks of the disabled.



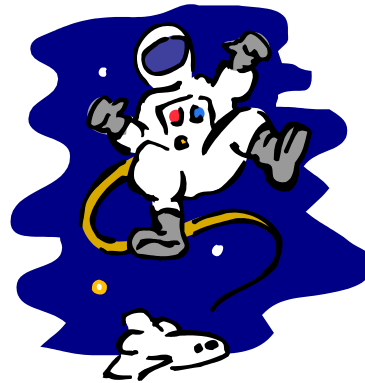
BUT MORE PROBLEMS

ALMOST BACK TO WHERE WE BEGAN

1. No court cases yet developed for guidance.
2. Language still vague.
3. No regulatory guidance.

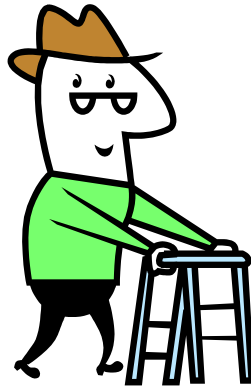
LET'S EXPLORE

WHAT IS THE ADA TODAY?



IN EMPLOYMENT

CANNOT DISCRIMINATE AGAINST A
PERSON WITH A DISABILITY

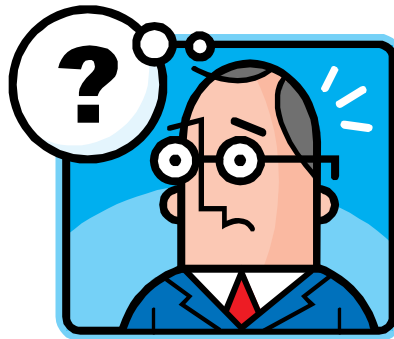


WHAT IS A DISABILITY?

1. Has a physical or mental impairment that **substantially limits one or more major life activities**, or
2. Has a record of such impairment, or
3. Is regarded as having such impairment

MAJOR LIFE ACTIVITY

Seeing, hearing, eating, **lifting**, **bending**,
breathing, **learning**, standing, **reading**,
concentrating, **thinking**.



JUST NEED ONE

Formerly, unless one was obviously disabled (i.e. blind, deaf, mute, wheelchair bound, major amputee) would need to show a combination of limiting factors.

New legislation, just one.



“Without Regard to Mitigating Measures”

Formerly, if medication controlled the disability (i.e. diabetes) or could be improved with a medical device (i.e. hearing aid), was not a disability. Person had duty to take mitigating measures.

No so, now. The condition itself is the disability.

EXCEPTION

EYEGASSES AND CONTACTS

If vision corrected by these, then it is not a disability.



TEMPORARY CONDITIONS

What about:

Fractured leg?

Gallbladder operation?

Flu?

If condition lasts less than six months, it is not a disability.



HAS A RECORD OF SUCH IMPAIRMENT

Examples:

Cancer in remission or cured

Previous long term disability due to heart
ailment

IS REGARDED AS HAVING SUCH IMPAIRMENT

Does not Have to Be True

Examples:

Homosexual employee starts a weight-loss program.
Coworkers assume he is losing weight due to contracting HIV.

Employee has high blood pressure and can fully perform the functions of the job. However, his boss fears he may one day have a heart attack and limits his work duties.

REASONABLE ACCOMMODATION

APPLIES TO THOSE WITH AN ACTUAL
DISABILITY OR RECORD OF ONE

BUT NOT THOSE WHO ARE SIMPLY
REGARDED AS HAVING ONE.

REASONABLE ACCOMMODATION

No changes under new amendments:

Except:

Clarified that secondary effects of a medical condition are subject to reasonable accommodation.

EXAMPLE

Chemotherapy causes nausea and fatigue.

This is not caused by the cancer itself, but by the therapy to treat it.

Formerly, was unclear whether this qualified as something to warrant reasonable accommodation.

REQUEST PROCEDURES

Sounds basic, but it has to be requested.

But, by whom?

Does the employer have an affirmative duty to provide it without request?

NO !!

Moses v. American Nonwovens (U.S. 11th
Circuit Court of Appeals)

Held that employer has no duty to investigate whether an employee needs reasonable accommodation.

It is up to the employee to request it.

A Dialogue

Beck v. University of Wisconsin Board of Regents (U.S. 7th Circuit Court of Appeals)

In reasonable accommodation requests, should be a dialogue and interactive process between employer and employee.

EEOC regulations encourage the same.

Request Requirements

Concern an essential function of the job.

Be reasonable.

Not cause “undue hardship” for the employer.

WHAT AN EMPLOYER DOES NOT HAVE TO DO

Provide a personal use item (i.e. hearing aid)

Change the qualifications of the position

Create a new position

Lower the standards

EMPLOYER'S CHOICE OF WHICH OPTION

Willis v. Lever Brothers (U.S. 11th Circuit Court of Appeals)

If an accommodation is identified as reasonable, it's not the employee's choice to accept or reject it.

MOST REQUESTS ARE MINOR

According to the EEOC, the average accommodation request cost the employer \$233.



Examples

Raising a desk so that a wheelchair can fit under it.

A mask

Providing a chair

Installing a device to enlarge text on a computer screen if eyeglasses don't help

Designated parking spot for the employee

Examples (Cont'd)

Switching job duties. Custodian cannot climb steps to clean them, but can clean the kitchen floor. Switch the cleaning areas with another custodian.

Changing report or departure time so that employee can catch bus (employee unable to drive due to impairment)

UNCLEAR WHERE THIS WILL GO

In combination with the amendments; a new EEOC Director; and forthcoming new rules; unknown changes may be coming with how reasonable accommodation and undue hardship is interpreted.

INTERACTION WITH FMLA

A complicated subject.



In a nutshell:

Employee can exhaust 12 weeks of FMLA,
but still have job protected if ADA
reasonable accommodation allows
employee time off for medical
appointments and treatments.

JUST REMEMBER

1. Employee must ask for reasonable accommodation.
2. Must be relevant to job – enable the employee to perform the essential functions.
3. Must be reasonable and not cause undue hardship
4. Should be a dialogue and ongoing communication between employee and employer.