

## <http://www.adata.org/whatsada-definition.html>

### What is the ADA: Definition of Disability

The following information is excerpted from the Core Curriculum developed by Adaptive Environments, Inc. for the National Institute on Disability and Rehabilitation Research.

**Please note:** The ADA has been amended several times since its passage in 1990 and is undergoing continuous interpretation in the court systems. Contact your regional DBTAC at 1-800-949-4232 V/TTY for the most up-to-date information.

#### General Definition

References: TAM I-2.2, TAM II-2.1000, TAM III-2.1000

The ADA has a three-part definition of "disability." This definition, based on the definition under the Rehabilitation Act, reflects the specific types of discrimination experienced by people with disabilities. Accordingly, it is not the same as the definition of disability in other laws, such as state workers' compensation laws or other federal or state laws that provide benefits for people with disabilities and disabled veterans.

Under the ADA, an individual with a disability is a person who:

- 0. has a physical or mental impairment that substantially limits one or more major life activities;
- 0. has a record of such an impairment; or
- 0. is regarded as having such an impairment.

#### Physical and Mental Impairments

References: TAM I-2.2(a)(i), TAM II-2.2000, TAM III-2.2000, 28 CFR 35.104

A **physical impairment** is defined by the ADA as:

"Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine."

Neither the statute nor the regulations lists all diseases or conditions that make up "physical or mental impairments," because it would be impossible to provide a comprehensive list, given the variety of possible impairments.

A **mental impairment** is defined by the ADA as:

"[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Neither the statute nor the regulations list all diseases or conditions that make up "physical or mental impairments," because it would be impossible to provide a comprehensive list, given the variety of possible impairments.

An impairment under the ADA is a physiological or mental disorder; simple physical characteristics, therefore, such as eye or hair color, left-handedness, or height or weight within a normal range, are not impairments. A physical condition that is not the result of a physiological disorder, such as pregnancy, or a predisposition to a certain disease would not be an impairment. Similarly, personality traits such as poor judgment, quick temper or irresponsible behavior, are not themselves impairments.

Environmental, cultural, or economic disadvantages, such as lack of education or a prison record also are not impairments.

Example: A person who cannot read due to dyslexia is an individual with a disability because dyslexia, which is a learning disability, is an impairment. But a person who cannot read because she dropped out of school is not an individual with a disability, because lack of education is not an impairment.

"Stress" and "depression" are conditions that may or may not be considered impairments, depending on whether these conditions result from a documented physiological or mental disorder.

Example: A person suffering from general "stress" because of job or personal life pressures would not be considered to have an impairment. However, if this person is diagnosed by a psychiatrist as having an identifiable stress disorder, s/he would have an impairment that may be a disability.

A person who has a contagious disease has an impairment.

Example: Infection with the Human Immunodeficiency Virus (HIV) is an impairment. The Supreme Court has ruled that an individual with tuberculosis which affected her respiratory system had an impairment under Section 504 of the Rehabilitation Act.

### Substantially Limits

An impairment is a "disability" under the ADA only if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. References: TAM I-2.2(a):

The regulations provide three factors to consider in determining whether a person's impairment substantially limits a major life activity:

- 0. its nature and severity;
- 0. how long it will last or is expected to last;
- 0. its permanent or long term impact, or expected impact.
- 0. Examples: A person with a minor vision impairment, such as 20/40 vision, does not have a substantial impairment of the major life activity of seeing.
- 0. A person who can walk for 10 miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

These factors must be considered because, generally, it is not the name of an impairment or a condition that determines whether a person is protected by the ADA, but rather the effect of an impairment or condition on the life of a particular person. Some impairments, such as blindness, deafness, HIV infection or AIDS, are by their nature substantially limiting, but many other impairments may be disabling for some individuals but not for others, depending on the impact on their activities.

Example: Although cerebral palsy frequently significantly restricts major life activities such as speaking, walking and performing manual tasks, an individual with very mild cerebral palsy that only slightly interferes with his ability to speak and has no significant impact on other major life activities is not an individual with a disability under this part of the definition.

The determination as to whether an individual is substantially limited must always be based on the effect of an impairment on *that* individual's life activities.

Examples: An individual who had been employed as a receptionist-clerk sustained a back injury that resulted in considerable pain. The pain permanently restricted her ability to walk, sit, stand, drive, care for her home, and engage in recreational activities.

Another individual who had been employed as a general laborer had sustained a back injury, but was

able to continue an active life, including recreational sports, and had obtained a new position as a security guard.

The first individual was found by a court to be an individual with a disability; the second individual was found not significantly restricted in any major life activity, and therefore not an individual with a disability.

Sometimes, an individual may have two or more impairments, neither of which by itself substantially limits a major life activity, but that together have this effect. In such a situation, the individual has a disability.

Example: A person has a mild form of arthritis in her wrists and hands and a mild form of osteoporosis. Neither impairment by itself substantially limits a major life activity. Together, however, these impairments significantly restrict her ability to lift and perform manual tasks. She has a disability under the ADA.

### **Substantially Limits-Additional Considerations**

(References: TAM II-2.400)

Whether a person has a disability is assessed without regard to the availability of mitigating measures such as reasonable modifications, auxiliary aids and services, services and devices of a personal nature, or medication. (The June, 1999 Supreme Court Decisions have changed this part of the law. Further clarification will be forthcoming.)

Example: A person who has epilepsy and uses medication to control seizures, or a person who walks with an artificial leg may be considered to have a disability, even if the medicine or prosthesis reduces the impact of that impairment.

Temporary impairments may or may not be disabilities under the ADA. How long an impairment lasts is a factor to be considered, but does not by itself determine whether a person has a disability under the ADA. The basic question is whether an impairment "substantially limits" one or more major life activities. This question is answered by looking at the extent, duration, and impact of the impairment. Temporary, non-chronic impairments that do not last for a long time and that have little or no long term impact usually are not disabilities.

Example: Broken limbs, sprains, concussions, appendicitis, common colds, or influenza generally would not be disabilities. A broken leg that heals normally within a few months would not be a disability under the ADA.

However, if a broken leg took significantly longer than the normal healing period to heal, and during this period the individual could not walk, s/he would be considered to have a disability. Or, if the leg did not heal properly, and resulted in a permanent impairment that significantly restricted walking or other major life activities, s/he would be considered to have a disability.

### **Major Life Activities**

To be a disability covered by the ADA, an impairment must substantially limit one or more major life activities. These are activities that an average person can perform with little or no difficulty. Examples include walking, seeing, hearing, speaking, breathing, learning, performing manual tasks, caring for oneself, working. These are examples only. Other activities such as sitting, standing, lifting, or reading are also major life activities.

### **Record of Such an Impairment**

References: TAM I-2.2(b)

This part of the definition protects people who have a history of a disability from discrimination, whether

or not they currently are substantially limited in a major life activity. It protects people with a history of cancer, heart disease, or other debilitating illness, whose illnesses are either cured, controlled or in remission. It also protects people with a history of mental illness.

This part of the definition also protects people who may have been misclassified or misdiagnosed as having a disability. It protects a person who may at one time have been erroneously classified as having mental retardation or having a learning disability. This person has a record of disability. If an employer relies on any record (such as an educational, medical or employment record) containing such information to make an adverse employment decision about a person who currently is qualified to perform a job, the action is subject to challenge as a discriminatory practice. Examples of individuals who have a record of disability, and of potential violations of the ADA if an employer relies on such a record to make an adverse employment decision:

0. A job applicant was a patient at a state institution. When very young she was misdiagnosed as being psychopathic and this misdiagnosis was never removed from her records. If this person is qualified for a job, and an employer does not hire her based on this record, the employer has violated the ADA.
0. A person who has a learning disability applies for a job as secretary/receptionist. The employer reviews records from a previous employer indicating that he was labeled as "mentally retarded." Even though the person's resume shows that he meets all requirements for the job, the employer does not interview him because he doesn't want to hire a person who has mental retardation. This employer has violated the ADA.
0. A job applicant was hospitalized for treatment for cocaine addiction several years ago. He has been successfully rehabilitated and has not engaged in the illegal use of drugs since receiving treatment. This applicant has a record of an impairment that substantially limited his major life activities. If he is qualified to perform a job, it would be discriminatory to reject him based on the record of his former addiction.

In the last example above, the individual was protected by the ADA because his drug addiction was an impairment that substantially limited his major life activities. However, if an individual had a record of casual drug use, s/he would not be protected by the ADA, because casual drug use, as opposed to addiction, does not substantially limit a major life activity.

To be protected by the ADA under this part of the definition, a person must have a record of a physical or mental impairment that substantially limits one or more major life activities. A person would not be protected, for example, merely because s/he has a record of being a "disabled veteran," or a record of "disability" under another federal statute or program unless this person also met the ADA definition of an individual with a record of a disability.

### **Regarded As Having Such an Impairment**

An individual may be protected under this part of the definition in three circumstances:

0. The individual may have an impairment that is not substantially limiting but is perceived by the covered entity as constituting a substantially limiting impairment.
0. Examples: X, an individual with mild diabetes controlled by medication, is barred by the staff of a private summer camp from participation in certain sports because of her diabetes. Even though X does not actually have an impairment that substantially limits a major life activity, she is protected under the ADA because she is treated as though she does.
0. An employee has controlled high blood pressure which does not substantially limit his work activities. If an employer reassigns the individual to a less strenuous job because of unsubstantiated fear that the person would suffer a heart attack if he continues in the present job, the employer has "regarded" this person as disabled.

0. The individual may have an impairment that is only substantially limiting because of the attitudes of others toward the impairment.
0. Examples: B, a three-year-old child born with a prominent facial disfigurement, has been refused admittance to a private day care program on the grounds that her presence in the program might upset the other children. B is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.
0. An experienced assistant manager of a convenience store who had a prominent facial scar was passed over for promotion to store manager. The owner promoted a less experienced part-time clerk, because he believed that customers and vendors would not want to look at this person. The employer discriminated against her on the basis of disability, because he perceived and treated her as a person with a substantial limitation.
0. The individual may have no impairment but be regarded by the employer or other covered entity as having a substantially limiting impairment.
0. Examples: C is excluded from a private elementary school because the principal believes rumors that C is infected with the HIV virus. Even though these rumors are untrue, C is protected under the ADA, because he is being subjected to discrimination by the school based on the belief that he has an impairment that substantially limits major life activities (i.e., the belief that he is infected with HIV).
0. An employer discharged an employee based on a rumor that the individual had cancer. This person did not have any impairment, but was treated as though she had a substantially limiting impairment.

This part of the definition protects people who are "perceived" as having disabilities from discriminatory decisions based on stereotypes, fears, or misconceptions about disability. Such protection is necessary because, as the Supreme Court has stated and the Congress has reiterated, "society's myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments."

## **Exclusions**

References: TAM I-2.2(a), TAM II-2.3000, TAM III-2.3000

A person who currently illegally uses drugs is not protected by the ADA, as an "individual with a disability," when the covered entity acts on the basis of such use. However, an individual who is engaged in or has completed drug rehabilitation and is no longer illegally using drugs is protected under the ADA. Homosexuality and bisexuality are not impairments and therefore are not covered by the ADA. The Act also states that the term "disability" does not include the following sexual and behavioral disorders: transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.

## **Qualified Individual with a Disability - Title I**

Reference: TAM I-2.3

To be protected by the ADA, a person must not only be an individual with a disability, but must be qualified. An employer is not required to hire or retain an individual who is not qualified to perform a job. The regulations define a qualified individual with a disability as a person with a disability who:

"satisfies the requisite work, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation can perform the essential functions of such position."

There are two basic steps in determining whether an individual is "qualified" under the ADA:

0. Determine if the individual meets necessary prerequisites for the job, such as:
  0. education
  0. skills
  0. experience
  0. licenses
  0. training
  0. certificates
  0. job-related requirements, such as good judgment or ability to work with other people

Examples: The first step in determining whether an accountant who has significant vision loss is qualified for a certified public accountant job is to determine if the person is a licensed CPA. If not, s/he is not qualified.

It is a company's policy that all its managers have at least three years' experience working with the company, an individual with a disability who has worked for two years for the company would not be qualified for a managerial position.

This first step is sometimes referred to as determining if an individual with a disability is "otherwise qualified." Note, however, that if an individual meets all job prerequisites except those that s/he cannot meet because of a disability, and alleges discrimination because s/he is "otherwise qualified" for a job, the employer would have to show that the requirement that screened out this person is "job related and consistent with business necessity."

0. Determine if the individual can perform the essential functions of the job, with or without reasonable accommodation.
0. The second step has two parts:
  0. Identify the "essential functions of the job"
  0. Consider whether the person with a disability can perform these functions, unaided or with a "reasonable accommodation."

The ADA requires an employer to focus on the essential functions of a job to determine whether a person with a disability is qualified. This is an important nondiscrimination requirement. Many people with disabilities who can perform essential job functions are denied employment because they cannot do things that are only marginal to the job.

Example: A file clerk position description may state that the person holding the job answers the telephone, but if in fact the basic functions of the job are to file and retrieve written materials, and telephones actually or usually are handled by other employees, a person whose hearing impairment prevents use of a telephone and who is qualified to do the basic file clerk functions should not be considered unqualified for this position.

If an individual with a disability who is otherwise qualified cannot perform one or more essential job functions because of his or her disability, the employers, in assessing whether the person is qualified to do the job, must consider whether there are modifications or adjustments that would enable the person to perform these functions. Such modifications are called "reasonable accommodations."

### **Qualified Individual with a Disability**

References: TAM II-2.8000, 28 CFR 36.301

Protections under Title II and Title III are afforded to qualified individuals with disabilities. Not every person with a disability is necessarily qualified.

For purposes of determining eligibility for participation in the services and programs offered by a public

or private entity, a person with a disability is considered to be qualified if the individual meets the essential eligibility requirements with or without:

- 0. Reasonable modifications to rules, policies or practices;
- 0. Auxiliary (communications) aids or services; or
- 0. Removal of architectural, communications or transportation barriers.

The "essential eligibility requirements " for participation in many activities may be minimal.

Example: Most public and private entities provide information about their programs, activities and services upon request. In such situations the only 'eligibility requirement' for receipt of such information would be the request of it.

However, under other circumstances, the "essential eligibility requirements" imposed by a public entity may be quite stringent.

Example: A medical school may require those admitted to its programs to have successfully completed specified undergraduate science courses.

## **Association**

References: 29 CFR 1630.8, 28 CFR 35.130(g), 28 CFR 36.205

Public and private entities may not discriminate against an individual or entity because of the known disability of a person with whom the individual or entity has a relationship.

Examples: A county recreation center may not refuse admission to a summer camp program to a child whose brother has tuberculosis.

A local government could not refuse to allow a theater company to use a school auditorium on the grounds that the company has recently performed at a hospice for people with HIV.

If a private sports arena refuses to admit an individual with a mobility disability and her sister, due to the individual's mobility disability, the arena would be illegally discriminating against both individuals.

People without disabilities are not entitled to reasonable accommodation, modifications to policies, practices and procedures, or other accommodations.

## **Retaliation or Coercion**

Reference: TAM II-3.11000, TAM III-3.6000

Individuals who exercise their rights under the ADA or individuals who assist others in exercising their rights are protected against retaliation or coercion. This includes any form of retaliation or coercion including threats, intimidation or interference.

Examples: A private individual, harasses X, an individual who is blind, in an effort to prevent X from attending a concert in a state park. Y has violated the ADA.

A state tax official delays a tax refund for M because M testified in a Title II grievance proceeding involving inaccessibility of the tax office. The state has illegally retaliated against M.

A restaurant may not refuse to serve a customer because s/he filed an ADA complaint against the restaurant.

A dry cleaner may not refuse to serve an individual because s/he encouraged an individual to file an ADA complaint.

You have reached the end of the Definition section. [Select this link to go to the History section.](#)