



Fighting since 1989 for the rights and dignity of people living with HIV/AIDS

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The ADA Amendments Act of 2008 Restoring Broad Protection under the ADA

The Need for Legislative Action

The Americans with Disabilities Act of 1990 (“The ADA”) was enacted to protect people living with disabilities from discrimination based on those disabilities. Yet in the years since its passage, courts have eroded those protections by narrowing the scope of ADA coverage. The ADA Amendments Act of 2008 (“The Act”) would reverse the harm caused by these court decisions by explicitly calling for broad ADA coverage. The Act was passed by the House of Representatives on June 25, 2008, and is currently on the calendar in the U.S. Senate.

The Purpose of the ADA

The stated purpose of the ADA is "(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;" and "(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."¹

ADA Definition of Disability

The ADA defines a disability as (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 impairment.²

Erosion of ADA Protections

Court decisions have thwarted the intention of the ADA by narrowing the definition of disability so that many who seek the Act’s protections are turned away for failing to qualify as disabled. If the individual is not found to be “disabled”, then the ADA’s protections against discrimination cannot be extended to that individual.

- In *Sutton v. United Airlines, Inc.*, the United States Supreme Court held that “if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures -both positive and negative- must be taken into account when judging whether that person is ‘substantially limited’ in a major life activity and thus ‘disabled’ under the Act.”³

¹ 42 U.S.C. § 12101(a)

² 42 U.S.C. § 12102(2)

³ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 482 (1999).

Consequently, if medication, for example, can correct the limitations imposed by an impairment, then the individual with the impairment should not be considered “disabled” for ADA purposes.⁴

- In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Supreme Court held that “to be substantially limited in performing (a major life activity), 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.”⁵

Consequently, it is not enough to demonstrate that the individual is substantially limited in a major life activity as applied to the context of the individual’s job, or even her own life, but rather that the impairment impacts her ability to do activities of central importance to **most people’s lives**.

HIV and the ADA

Congress intended that people living with HIV and AIDS be considered disabled under the first part of the definition. The House Report on the ADA, at the time of passage, noted that “Persons infected with the Human Immunodeficiency Virus are considered to have an impairment that substantially limits a major life activity, and thus are considered disabled under this first test of the definition.”⁶ Yet when presented with ADA claims by plaintiffs living with HIV, courts have nonetheless examined whether HIV substantially limits a major life activity for the individual plaintiff.

Ironically, as many people living with HIV and AIDS are able to stay healthy and strong thanks to available treatment, in order to prove disability plaintiffs have had to argue that they are limited in the major life activity of reproduction. This has resulted in a contorted shift of focus, and has forced plaintiffs into a lengthy examination of their intimate lives that should have no bearing on a claim of discrimination.⁷

Remedying Past Wrongs: The ADA Amendments Act of 2008

The ADA Amendments Act of 2008 (“The Act”), which has broad bipartisan support, would relax the narrow standards laid out by the Supreme Court decisions, and would go a long way to restoring protection for individuals with disabilities, including people living with HIV. The Act’s stated purposes include⁸:

- “reinstating a broad scope of protection to be available under the ADA”
- rejecting the requirement from *Sutton* that “whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures”

⁴ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

⁵ *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

⁶ H.R. Rep. No. 101-485 pt. 3 at 28 n. 18 (1990).

⁷ See, e.g. *Bragdon v. Abbott*, 524 U.S. 624 (1998), *Lederer v. BP Products North America*, 2006 WL 3486787 (S.D.N.Y.), *Rodriguez v. Manpower TNT Logistics Inc.*, 2006 WL 2726871, *Cruz-Carrillo v. AMR Eagle, Inc.*, 148 F. Supp. 2d 142 (2001).

⁸ ADA Amendments Act of 2008, H.R. 3195, 110th Congress, 2d Session (2007-2008) at 3-4.

- reinstating a broad view of the third prong of the definition of disability (“being regarded as having” a disability).
- rejecting the standard set forth in *Toyota* that the terms “substantially” and “major” in the definition of disability ““need to be interpreted strictly to create a demanding standard for qualifying as disabled””
- rejecting the standard from *Toyota* that ““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””

Specific additions and amendments, as proposed, include:

- A new definition of the term “substantially limits” to mean “materially restricts”⁹
- New language enumerating “major life activities”, as well as “major bodily functions”. The proposed amendments state that “a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” This language would seem to obviate the future need for the distracting analysis of whether an HIV-positive claimant is limited in the major life activity of reproduction.¹⁰
- Explicit guidance for analyzing claims under the third prong (perceived disability)¹¹
- Language stating that the definition of disability shall be construed broadly¹²
- Language stating that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active¹³
- The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures¹⁴

The ADA Amendments Act of 2008 offers an important opportunity to remedy the erosion of the ADA’s protections. Tell your Senators that restoring ADA protections is important to you.

Call the United States Capitol switchboard at (202) 224-3121 to reach your Senators, or find their direct contact information at

http://www.senate.gov/general/contact_information/senators_cfm.cfm

⁹ H.R. 3195, 110th Congress, 2d Session (2007-2008) at 6.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6-7.

¹² *Id.* at 7.

¹³ *Id.* at 7.

¹⁴ *Id.* at 8.