

## **Important Changes to the "Americans with Disabilities Act"**

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The Americans with Disabilities Act (ADA) is a federal law which protects people with disabilities from discrimination in areas such as employment, government services (including public higher education), public accommodations, and transportation. To be protected by the ADA, one must either have a "disability" as that term is defined by the law or have a relationship or association with someone with a "disability." On January 1, 2009, a new law known as the ADA Amendments Act of 2008 ("ADA-AA") went into effect and significantly changed several important aspects of the ADA with which employers and public institutions must comply. As summarized below, the ADA-AA has dramatically broadened the scope of protections provided by the ADA, both in terms of the number of people whom it will now cover, as well as the number and types of conditions which now most likely will be deemed to constitute "disabilities." Some of the most sweeping changes include:

### *Broader Definition of "Disability"*

Under the ADA, an individual with a disability is defined as a person who has a physical or mental impairment that "substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment". The changes brought about by the ADA-AA do not include any revision to the wording of that definition. However, the ADA-AA does change how a "disability" will be defined insofar as it declares that courts have restricted the term too narrowly in the past, and that this demanding interpretation has caused individuals who should have been protected by the law to be left unprotected. With this in mind, Congress has now made its intent clear, stating that the term "disability" must be construed to provide "a broad scope of protection", which in effect means that people who might not have been deemed protected as "disabled" before the ADA-AA's passage might now be so. The ADA-AA does state, however, that persons with "transitory or minor conditions" (that is, conditions with an actual or expected duration of six months or less) will still not be considered disabled under the law.

### *Expansion of "Major Life Activities"*

In order to be deemed a "disability" under the ADA's definition, a person must show that his/her impairment "substantially limits a major life activity." Prior to the ADA-AA's enactment, courts were left to decide what activities constituted "major life activities" on case-by-case determination which hinged on whether the activity was "of central importance" to a person's daily life. The ADA-AA now provides a non-exhaustive list of activities that are to be considered to be such major life activities and has expanded upon the commonly recognized activities (walking, seeing, speaking, breathing, learning, working, etc.) to include activities such as "eating, sleeping, standing, lifting, bending, reading, concentrating, thinking" as well as "the operation of a major bodily function." Thus, as a result of more activities now recognized by the

law as being "major life activities", the scope of people whose impairments might now be considered to constitute "disabilities" is greatly expanded.

### *Rejection of the "Mitigating Measures" Rule*

In the years following the enactment of the original ADA, the Supreme Court issued a series of cases which addressed the issue of "mitigating measures" (measures which correct or lessen the effects of a disability). In those cases, the Supreme Court ruled that in determining whether a person was disabled, an examination of the effects of any mitigating measures must be taken into account. For example, a leg amputee, who through the use of a prosthetic device was able to walk, would not, according to the Supreme Court's rule, be considered "substantially limited" in the major life activity of walking because his/her "mitigating measure" (i.e., the prosthetic device) eliminated the limiting effect of his/her impairment. The ADA-AA has expressly overturned those Supreme Court rulings. Now, under the ADA-AA, consideration of whether a person is disabled must be made without reference to the effects of mitigating measures such as medications, equipment, prosthetics, hearing aids and cochlear implants, assistive technology, or "learned behavioral or adoptive neurological modifications." Accordingly, the scope of people potentially covered by the ADA is now dramatically wider. One major exception to this change, however, is that mitigating effects of "ordinary eyeglasses or contact lenses" are still to be considered in determining whether an impairment substantially limits a major life activity.

### *Coverage of Chronic Conditions in Remission*

Under the ADA-AA, an impairment that is in remission or episodic may now qualify as a "disability" if it would substantially limit a major life activity when it is active. This change in the law was prompted in reaction to a host of pre-ADA-AA federal court decisions in which persons who suffered from chronic conditions prone to flare-ups (such as seizure disorders, bipolar disorder, multiple sclerosis) were deemed not to be disabled because, other than an occasional flare-up, they had no significant limitations.

### *Claims of "No Disability" Discrimination*

The Act provides that the ADA does not cover claims by non-disabled individuals contending that they were subjected to discriminatory treatment because they do not have a disability.

As these and other important changes flowing from the ADA-AA begin to establish their footing in the legal landscape, it is now more important than ever for University community members to be mindful of the important legal duty that the University has to provide reasonable workplace or classroom accommodations/modifications to its employees and students with disabilities.

For more information concerning the ADA reasonable accommodation process in the employment context, or about the above-described changes to the ADA, please email Ryan Bangham or call (860) 486-2036.

For more information concerning the ADA reasonable accommodation process in the academic context, please contact the Center for Students with Disabilities, at (860) 486-2020, or visit its website, at: <http://www.csd.uconn.edu/>.