

## ADA AMENDMENTS OF 2008

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### OLD ADA AND CASES INTERPRETING IT

DEFINITION UNDER OLD ADA (1990):

(2) Disability. The term "disability" means, with respect to an individual--

(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.

### FIRST PRONG

#### **Impairment: Mitigating Measures Considered**

"[W]e hold that the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment." *Sutton v. United Airlines, Inc*, 527 U.S. 471, 475 (1999); *see also Murphy v. UPS*, 527 U.S. 516 (1999); *Albertson's v. Kirkingburg*, 527 U.S. 555 (1999).

#### **Substantially Limiting Major Life Activities**

"[T]hese terms need to be interpreted strictly to create a demanding standard for qualifying as disabled . . . . 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." *Toyota Motor Mfg. v. Williams*, 534 US 184, 197-98 (2002).

"When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." *Sutton v. United Airlines, Inc*, 527 U.S. 471, 491 (1999).

#### **Episodic Events Not Covered**

"Orr controls his disease to the best of his ability. When his diabetes is not well controlled, he suffers from vision impairment, low energy, lack of concentration and mental awareness, lack of physical strength and coordination, slurred speech, difficulties typing and reading, and slowed performance."

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"[A] diabetic is not per se disabled but must demonstrate his condition substantially limits one or more major life activities. . . . Most disabilities from which people suffer, including diabetes, do not have a substantial enough effect on their major life activities. Health conditions that cause moderate limitations on major life activities do not constitute disabilities under the ADA." *Orr v. Wal-Mart Stores*, 297 F.3d 720, 722, 724 (8<sup>th</sup> Cir. 2002).

### THIRD PRONG

"Congress extended coverage . . . to those individuals who are simply 'regarded as having' a physical or mental impairment. The Senate Report provides as an example of a person who would be covered under this subsection 'a person with some kind of visible physical impairment which in fact does not substantially

limit that person's functioning.' Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 282-82 (1987).

"Subsection (C) provides that having a disability includes 'being regarded as having,' 'a physical or mental impairment that substantially limits one or more of the major life activities of such individual.' There are two apparent ways in which individuals may fall within this statutory definition: (1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities." *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 489 (1999)

## ADA AMENDMENTS ACT OF 2008: FINDINGS AND PURPOSES

(a) Findings. Congress finds that—

(4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress.

(b) Purposes. The purposes of this Act are—

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Airline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong . . . ;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "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) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.

## STATUTORY LANGUAGE

### § 12101. Congressional findings and purposes

#### (a) Findings. The Congress finds that--

~~(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;~~

*(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;*

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~~(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;~~

### § 12102. Definitions

As used in this Act:

~~(1) Auxiliary aids and services. The term "auxiliary aids and services" includes--~~

~~(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;~~

~~(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;~~

~~(C) acquisition or modification of equipment or devices; and~~

~~(D) other similar services and actions.~~

(21) Disability. The term "disability" means, with respect to an individual--

(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 *(as described in paragraph (3))*.

(2) Major life activities.

*(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.*

*(B) Major bodily functions. For purposes of paragraph (1), 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.*

(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):

*(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this 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.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability. The definition of 'disability' in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)

(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

#### § 12103. Additional definitions

As used in this Act:

(1) Auxiliary aids and services. The term "auxiliary aids and services" includes--

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.