

# ADAAA Compliance: The New Regulations

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Presented by:

**Robert M. Williams, Jr.**

**165 Madison Avenue**

**Suite 2000**

**Memphis, Tennessee**

**901.577.2215**

**[rwilliams@bakerdonelson.com](mailto:rwilliams@bakerdonelson.com)**

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

EXPAND YOUR EXPECTATIONS<sup>SM</sup>

## Amendments Act of 2008

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Covers more people to prevent more discrimination.

ADAAA became effective January 1, 2009.

The EEOC's regulations went into effect on May 24, 2011.



# Understanding The New EEOC Regulations

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The Regulations Reinforce that:

**The Primary Purpose: To make it easier for people with disabilities to obtain protection under the ADA.**

# The New Focus

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Not whether the employee has a disability.

# The New Focus

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The question is whether employers have complied with their obligations

and

Whether discrimination occurred – not whether the individual meets the definition of disability.

# Has The Definition Of “Disability” Changed?

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- Physical or mental impairment that substantially limits one or more major life activities
- A record of such an impairment
- Being regarded as having such an impairment

# So What Has Changed?

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The definitions of a “major life activity” and “substantially limits.”



# Major Life Activities

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- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking





# Major Life Activities

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- Standing
- Sitting
- Reaching
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Interacting with others
- Working

# Major Life Activities

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The operation of a major bodily function, including functions of the:

- Immune system
- Special sense organs and skin
- Normal cell growth
- Digestive
- Genitourinary
- Bowel



# Not Finished Yet...

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- Bladder
- Neurological
- Brain
- Respiratory
- Circulatory
- Cardiovascular
- Endocrine
- Hemic
- Lymphatic
- Musculoskeletal
- Reproductive functions
- Operation of a major bodily function includes the operation of an individual organ within a body system

# Other Considerations

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- EEOC anticipates that courts will recognize other major life activities
- The term “major” does not create a demanding standard
- No longer determined by “activities that are of central importance to most people’s daily lives”

# “Substantially Limits”

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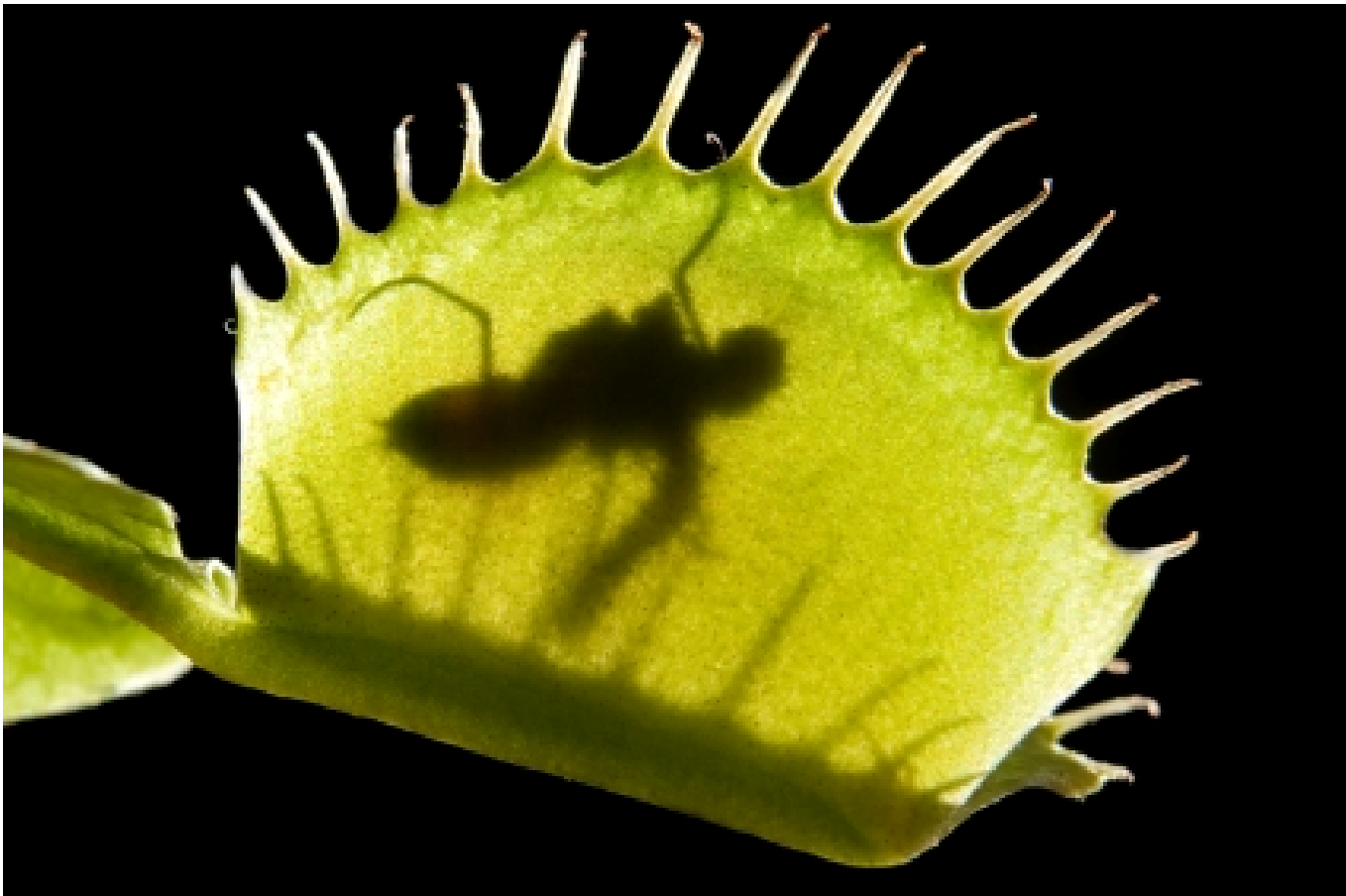
The Nine Rules of Construction

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1. Construe the term “substantially limits” broadly.



2. An impairment is a disability if it substantially limits the ability of an employee to perform a major life activity as compared to most people in the general population.

Does not mean that impairment “prevents” or “significantly restricts” or “severely restricts.” This is a lower threshold.



3. The focus is on whether employers have complied with their obligations and whether discrimination has occurred. Consequently, whether an impairment “substantially limits” a major life activity should not demand extensive analysis.





4. Must make an individualized assessment.

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5. Comparison of individual's performance of major life activity to general population usually will not require scientific, medical, or statistical analysis.
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6. Don't consider mitigating measures (except ordinary eyeglasses or contact lenses).
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7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
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8. Substantial impairment of one major life activity is enough.
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9. Impairments that last or are expected to last less than six months may be enough.
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The focus is no longer on the duration or permanency of a medical condition. The Regulations make clear that an impairment can be considered a disability even if it is only expected to last a few months. The interpretive guidance provides this example:

“If an individual has a back impairment that results in a 20 pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting and, therefore, covered under the first prong of the definition of disability.”

# Per Se Disabilities?

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- The new regulations state that there are no “per se” disabilities
- However, the inherent nature of some types of medical conditions “will in virtually all cases give rise to a substantial limitation of a major life activity”



## “In Virtually All Cases...”

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- Autism
- Cerebral Palsy
- Diabetes
- Epilepsy
- HIV infection
- Multiple Sclerosis
- Muscular Dystrophy
- Major depressive disorder
- Bipolar disorder
- Post-traumatic stress disorder (PTSD)
- Obsessive Compulsive Disorder (OCD)
- Schizophrenia

## By The Way . . .

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Definition of impairment does not include common personality traits such as poor judgment or a quick temper where there are not symptoms of a mental or psychological disorder.

# Regarded as Being Disabled

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The ADAAA broadened this definition of disability by prohibiting discrimination because of actual or perceived physical or mental impairment whether or not that impairment substantially limits or is perceived to substantially limit a major life activity.

Prohibited actions by an employer under this definition includes refusal to hire, demotion, placement on involuntary leave, termination, harassment and denials of other terms and conditions of employment.

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If an employer can establish that the impairment is or would be “transitory and minor” the Regulations explain a defense to claims of “regarded as” discrimination. “Transitory” is defined as a condition that lasts less than 6 months. It must be proven objectively that the impairment is or would be both transitory and minor.

# Examples

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An individual who is denied a promotion because he has a minor back injury would be “regarded as” an individual with a disability if the back impairment lasted or was expected to last more than 6 months. Although minor, the impairment is not transitory.

Similarly, if an employer discriminates against an employee based on the employee’s bipolar disorder (an impairment that is not transitory and minor), the employee is “regarded as” having a disability even if the employer subjectively believes that the employee’s disorder is transitory and minor.

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The Regulations indicate that the “regarded as” definition of disability will be the primary means for bringing disability discrimination claims when an accommodation request is not involved.

# What does this mean for disability discrimination?

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# Develop An Interactive Reasonable Accommodation Problem Solving Process

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# The Process

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- Identify essential functions of the job
- Identify what the employee can and cannot do (either in total or partially)
- Identify all potential accommodations
- Explore effectiveness of various accommodations
- Conduct undue hardship analysis
- Select an effective accommodation or advise employee no effective accommodations are available absent undue hardship

# Document The Interactive Nature Of The Process

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- Reasonable accommodation request forms
- Essential job functions worksheets
- Communications with employee's health care provider
- Emails
- Memos to file
- Talking points for meetings
- Correspondence with the employee