



U.S. Equal Employment Opportunity Commission

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## Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. This law made a number of significant changes to the definition of “disability.” It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The [final regulations were published in the Federal Register](#) on March 25, 2011.

The ADAAA did not change the basic legal requirement that employers must not discriminate against individuals with disabilities who are qualified for a job, with or without reasonable accommodation. The questions and answers below provide information on what has changed because of the ADAAA, what in the law remains the same, and some tips for complying with the law as amended. For general information on how the ADA’s employment provisions apply to small businesses, you may consult “The ADA: A Primer for Small Business” at [www.eeoc.gov/eeoc/publications/adahandbook.cfm](http://www.eeoc.gov/eeoc/publications/adahandbook.cfm).

### 1. What is the purpose of the ADAAA?

Among the purposes of the ADAAA is reinstatement of a “broad scope of protection” by expanding the definition of the term “disability.” Congress found that persons with many types of impairments – including epilepsy, diabetes, multiple sclerosis, major depression, and bipolar disorder – had been unable to bring ADA claims because they were found not to meet the ADA’s definition of “disability.” Yet, Congress thought that individuals with these and other impairments should be covered. As a result of the ADAAA and EEOC’s regulations, it will be much easier for individuals seeking the law’s protection to demonstrate that they meet the definition of “disability.”

### 2. Must all small businesses comply with the ADAAA and these regulations?

No. These regulations apply to all private employers with 15 or more employees. State or local laws, however, may apply to smaller employers. Additionally, the ADAAA’s changes to the definition of disability would apply to employers who are federal contractors or subcontractors subject to Section 503 of the Rehabilitation Act and to employers who receive federal financial assistance under Section 504 of the Rehabilitation Act, regardless of the number of employees they have. Finally, although these regulations do not apply to the employment practices of businesses with fewer than 15 employees, such businesses, if they are considered places of public accommodation, are required to comply with the ADAAA’s changes to the definition of disability under Title III of the ADA with respect to the goods and services they provide to the public.

### 3. Does the ADAAA apply to discriminatory acts that occurred prior to January 1, 2009?

No. The ADAAA does not apply retroactively. For example, the ADAAA would not apply to a situation in which an employer allegedly failed to hire, terminated, or denied a reasonable accommodation to someone with a disability in December 2008, even if the person did not file a charge with the EEOC until after January 1, 2009. The original ADA definition of disability would be applied to such a charge. However, the ADAAA would apply to denials of reasonable accommodation where a request was made (or an earlier request was renewed) or to other alleged discriminatory acts that occurred on or after January 1, 2009.

### 4. How do the ADAAA and the EEOC regulations define “disability?”

The ADAAA and the regulations define “disability” as:

- a physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an “actual disability”), or
- a record of a physical or mental impairment that substantially limited a major life activity (“record of”), or
- when an employer takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor (“regarded as”).

We will address each of these definitions (sometimes called the three “prongs” of the definition) of disability.