

## ADA AMENDMENTS ACT OF 2008

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On January 1, 2009, the ADA Amendments Act of 2008 (ADAAA) became effective, significantly expanding the scope of the previous law. The previous law, which prohibited employers with 15 or more employees from discriminating against individuals in employment, public accommodations and other areas, still remains in-tact but now employers must comply with the new set of rules.

The Amendments significantly broaden the existing definition of a “disability,” defining it as “a physical or mental impairment that substantially limits one or more life activities.” This Act now includes certain types of diseases and cancers such as epilepsy, diabetes, intellectual and developmental disabilities, among others, in the definition of “disability”. The law also provides a defined list of life activities which include but are not limited to: caring for oneself, performing manual tasks, the operation of major bodily functions, seeing, hearing, walking, standing, breathing, etc.

Another critical difference in the Amendments is the interpretation of the meaning of “substantially limits a major life activity” which is now clearly defined as “materially restricts a major life activity.” Under the new law, an individual’s disability is not limited to impairing a central or primary life activity; rather, the individual's life activities are restricted to the conditions, manner, or duration which can be performed in comparison to most people. Further, the Amendment states an impairment may be considered a disability if it is episodic or in remission. The ADAAA also overturns the precedent that the determination of whether impairment substantially limits a major life activity should be made without regard to mitigating measures or devices, such as but not limited to medication, prosthetics and hearing aids. These changes make it easier for individuals to demonstrate that their impairment can be considered a disability.

Lastly, the ADAAA has lowered the standard for individuals to prove employer discrimination. The new law redefines the “regarded as” portion of the “disability” definition, which required that an individual demonstrate he/she have or are perceived to have an impairment that substantially limits a major life activity. Individuals must now show that they have been discriminated against because of an actual or perceived impairment, which can not be transitory, meaning an impairment that has a duration of less than six months. The new law also implies that employers do not have to provide reasonable accommodations to individuals who are perceived as having a disability.

In order to for associations to protect themselves, it is important for boards to review their governing documents to ensure that their policies comply with the new laws set forth. It is also recommended that associations provide training to all managers and supervisors on these new laws and what standards must be met. Lastly, it is important

for associations to review all job descriptions, making sure to establish and include specific detail as to all the functions of the job.