

CITY OF MADISON  
**CITY ATTORNEY'S OFFICE**  
Room 401, CCB  
266-4511

DATE: April 25, 2011

**MEMORANDUM**

TO: Cindy Wick, Disability Rights and Services Specialist

FROM: Adriana Peguero, Assistant City Attorney

SUBJECT: **Summary of ADA Amendments**

I was asked to prepare a summary of the ADA Amendments Act (the "ADAAA" or "Amendments Act"), which went into effect on January 1, 2009 and significantly expands the Americans with Disabilities Act. The changes incorporated in the ADAAA will take effect on May 24, 2011. These Amendments are summarized below.

**Easier for an individual seeking protection under the ADA to establish he or she has a disability**

- The ADAAA states that the definition of a disability should be interpreted in favor of broad coverage of individuals. It does not specifically change the specific definition of disability in the ADA, but changes the manner in which the term is construed by including specific language saying the term disability should be broadly construed to the maximum extent permitted by the ADA. Courts have previously construed the term in a relatively narrow fashion, which has led to individuals with impairments such as cancer, diabetes, and epilepsy being denied.
  - Disability is defined in the ADA as "a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or begin regarded as having a disability."
  - The ADAAA adopts 9 new "rules of construction" to use when determining whether an individual is limited in a major life activity which require a lower degree of functional limitation than previously applied by the courts and favors expansive coverage.
  - It also includes a list of activities that will be considered "major life activities" and a list of "major bodily functions that are also considered major life activities. It is made very clear that these lists are not exhaustive.
  - The determination of whether an impairment substantially limits a major life activity requires an individualized assessment and an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
    - Some examples provided that may be episodic include hypertension, diabetes, asthma, major depressive disorders, and schizophrenia.
  - Under the definition of disability, the "regarded as" standard should be focused on how a person has been treated because of an impairment, rather

than on what an employer may believe about the nature of the impairment.

**Clarification that an individual must be covered under the first prong (“actual disability”) or second prong (“record of disability”) in order to request a reasonable accommodation.**

**There are no longer lists of impairments that would “consistently,” “sometimes,” or “usually not” be disabilities, but rather rules of construction to guide analysis of what is a disability.**

- Applying these principals, ADAAA makes it clear there are some impairments that will always constitute a disability. These include deafness, blindness, an intellectual disability (previously referred to as mental retardation), autism, cerebral palsy, etc.
- There are also impairments that should be easily concluded to be disabilities, including epilepsy, diabetes, cancer, HIV infection, and bipolar disorder.

In summary, the ADAAA was intended to be a broad expansion of the ADA, and essentially overturn Supreme Court and other court cases that Congress believed had interpreted the definition of disability too narrowly. They switch the focus from whether an individual is disabled und the ADA to whether an accommodation can be, or has been, offered.