

# Americans With Disabilities Act:

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## A Primer

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The Americans with Disabilities Act Amendments Act (“ADAA”)<sup>1</sup> passed in 2008, sent the state of ADA law into a bit of an upheaval. Passed in response to case law that Congress felt restricted the protections of the ADA, the amendments broadened coverage for what is covered and what constitutes a disability. In addition, the correspondent agency regulations<sup>2</sup> and guidance<sup>3</sup> have shifted focus from whether an employee is covered to whether an employer is complying with the law.

It is through this prism that this paper will serve as a short paper of a few of the considerations to be taken into account, for employees and employers, as we all navigate through the practical aspects of the newest developments.

### **The Law: Federal & State**

The Americans with Disabilities Act is the starting point, of course, but certainly not the only source to provide instruction for maneuvering within this subject-matter. On top of the ADA, final agency rule, and guidance, there is also interplay between federal and state law. It is in the Texas Commission on Human Rights Act (“TCHRA”)<sup>4</sup> that we find the corresponding state law prohibiting employment discrimination based upon disability. Case law is clear, though, that with regard to claims of disability discrimination, the applicable precedents established by federal courts interpreting the ADA and the Rehabilitation Act of 1973<sup>5</sup> will be applied by Texas

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<sup>1</sup> 42 U.S.C. §12101, et. seq.

<sup>2</sup> 29 C.F.R. Part 1630

<sup>3</sup> See [www.eeoc.gov/laws/guidance/subject.cfm](http://www.eeoc.gov/laws/guidance/subject.cfm).

<sup>4</sup> Tex. Labor Code §21.001, et. seq.

<sup>5</sup> 29 U.S.C.A. §701 et. seq.

courts. There are some small distinctions between the TCHRA and the ADA, particularly in regard to the definition of “disability” which will not be discussed in this paper.<sup>6</sup>

But let us get down the nitty gritty of what the law really does. The purpose of the ADA is “to provide clear, strong, consistent enforceable standards addressing discrimination...” To facilitate this, the ADAA shifted focus from whether an employee is protected to what an employer is doing to comply with the law. It also shifted focus for establishing coverage as the impetus is now on how a person has been treated because of a physical or mental impairment rather than on what an employer may have believed about the nature of the person’s impairment. *See* [www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm). It did not, however, change the elements that must be established to make a case for disability discrimination.

### **Disability**

The general rule of the ADA is that “no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” We will examine all of the different elements of the ADA’s protection but we must first start with...what is a disability?

Disability is defined as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment...” 42 U.S.C. §12102(1). According to final rule of the ADAAA, published in 2010, “the definition of ‘disability’ in this part shall be construed broadly

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<sup>6</sup> The TCHRA specifically excludes from its disability definition “a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance.”

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