

ADDENDUM # 5
TO THE VIGO COUNTY
EMPLOYEE AND MANAGEMENT
HANDBOOK DATED OCTOBER 2007

On April 21, 2009, the Vigo County Commissioners made the following addendum to the Vigo County Employee and Management Handbook Dated October 2007:

In Section III- Subsection 3.3, titled Disabilities and Reasonable Accommodation, On September 25, 2008, the Americans with Disabilities Amendments Act of 2008 (ADAAA or the Act), was signed into law. The primary effect of the amendments is that far more people will fall within the scope of the ADA. The law became effective on January 1, 2009. Therefore, amendment #5 will be adapted to the Vigo County Employee and Management Handbook to follow the new provisions of the ADAAA.

3.3A ADA Amendments Act of 2008: The Expansion of the Americans with Disabilities

Act

Under the ADA. The ADA generally prohibits discrimination based on disability in recruitment, hiring, training, promotions, wages, and other terms and conditions of employment.^[1] It requires employers to provide individuals covered under the law with employment opportunities and accommodations equal to those of their non-disabled coworkers. To be covered under the ADA, an individual must be a “qualified individual with a disability.” In order to be “qualified,” the individual must be capable, with or without reasonable accommodation, of performing the essential functions of his or her job.^[2] A disability includes: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) having a record of such an impairment, or (3) being regarded as having such an impairment. Much of the litigation in this area has centered on what constitutes a disability for purposes of the ADA. Since its inception, the courts, including the United States Supreme Court, have limited the definition of the term “disability” and effectively narrowed its scope. The ADAAA was implemented to reverse this course and to broaden the scope of coverage for disability under the law.

Changes under the ADAAA The ADAAA makes several important changes to the ADA. Its foremost goal is to restore the intent and protections of the ADA by “reinstating a broad scope of protections to be available under the ADA.” The most significant changes are discussed below.

Broader Definition of Disability

Although the definition of disability remains unchanged, its meaning has been broadened. Under the ADA, the Supreme Court has implemented a rule of construction that requires the term “substantially” to be interpreted strictly in order to create a demanding standard for qualifying as disabled. Consistent with this rule, the term “substantially limits” (contained in the definition of

disability) has been interpreted to mean “prevent or severely restrict the individual from doing activities that are of central importance to most people’s lives” and/or “significantly [restrict] the condition, manner, or duration under which an individual can perform the activity, as compared to the average person in the general population.”

The ADAAA redefines “substantially limits” as “materially restricts,” a term that is new and not otherwise defined in the legislation. The intent of the new law is to give a broad and far-reaching meaning to the term disability, and to include, rather than exclude, disabilities from its coverage. To further this purpose, the Act instructs the agency authorized to enforce it, the Equal Employment Opportunity Commission (EEOC), to promulgate new regulations interpreting “substantially limits” consistent with the expansive scope set forth in the Act.

The definition of disability has also been expanded by the instructions that 1) an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability, and 2) an impairment that is episodic or in remission will nevertheless constitute a disability if it would substantially limit a major life activity when active. This second instruction will likely be the more significant of the two and will require, for example, that an individual with diabetes or cancer be considered disabled for purposes of the law, even though the condition is under control or in remission.^[3]

Designated Major Life Activities

In conjunction with the broadening of what constitutes a disability, the ADAAA adds a non-exhaustive list of “major life activities.” The list is expansive and includes, but is not limited to, the activities of “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.” The Act also provides that a major life activity includes the operation of a “major bodily function.” The new law expressly includes the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions as major bodily functions. The list is not exhaustive. Any of these bodily functions and possibly others, if substantially limited, will bring an individual within coverage of the law.

Elimination of Mitigating Measures

Another significant change is the elimination of the consideration of the ameliorative effects of mitigating measures in determining whether an individual is substantially limited by his or her disability. Prior to these amendments, when determining whether an individual was “substantially limited,” courts considered any and all additional measures that were taken to correct the disability (*e.g.*, medication, medical supplies, equipment, assistive technology, hearing aids, etc.). Under the ADAAA, mitigating measures and their effects can no longer be taken into consideration. This change alone will likely significantly broaden the scope and coverage of the ADA. There is a notable exception to this new rule. The use of ordinary eyeglasses and contact lenses must be considered to determine whether an individual is disabled under the Act. This means that the use of eyeglasses or contact lenses will not, in and of itself, qualify an individual as disabled.

Expansion of "regarded as" disability

Under the ADA, an individual may be covered, and therefore entitled to the law's protections, if an employer regards or perceives him or her as having a disability that substantially limits a major life activity, even though the individual may not actually be disabled. Under the ADAAA, the requirement that the perceived impairment be substantially limiting has been eliminated. Therefore, if an employer makes an employment decision regarding an individual based on a perceived physical or mental impairment or disability, the individual will be covered under the statute regardless of whether the perceived impairment could or would substantially limit a major life activity. This change is subject to two important limitations. First, individuals with impairments that are transitory and minor (with an actual or expected duration of less than six months) will not qualify under the revised standard. Second, employers are under no obligation to make reasonable accommodation for individuals who are only covered under the "regarded as" standard.

Here is a basic overview of the changes:

- **The EEOC must now revise its regulation which define the term "substantially limits";**
- **The Act expands the definition of "major life activities" by including two non-exhaustive lists, one relating to many currently recognized by the EEOC and one that relates to major bodily functions.**
- **Reverses judicial interpretation of the original law and now requires mitigating measures other than "ordinary eyeglasses or contact lenses" cannot be considered in assessing whether an individual has a disability;**
- **Adds and clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;**
- **Clarifies and provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and**
- **Asserts that the definition of "disability" should be interpreted broadly.**