CHAPTER ONE
INTRODUCTION

This is the tenth edition of the *Federal Sector Disability Discrimination Law Deskbook*. In the time since we have authored this text, disability discrimination law has seen two major events. The first being the important and far reaching changes made by the Americans with Disabilities Act Amendments Act of 2008, which greatly expanded and clarified who is covered by disability laws and which is in more detail below. The second major event is the shift many of us made in March 2020 to a remote working environment due to the COVID-19 pandemic. In addressing requests for telework as a reasonable accommodation, much effort had been expended by agencies in arguing that certain functions of a job required in-person meetings and interactions that could not be performed remotely. The pandemic provided an opportunity for employees with disabilities to demonstrate how essential functions of their position could be performed remotely. In 2025, the current administration has directed federal agencies to return employees to working in offices. However, remember that qualified individuals with disabilities are entitled to effective accommodations, absent a showing of undue hardship. For many employees with disabilities, telework is the effective accommodation that allows them to continue working. Agencies that ignore this reality do this at their own peril.

We would also be remiss not to mention the contributions to the field of disability law made by our colleague and mentor, Ernie Hadley, who passed away in 2021. Although Ernie was an expert in all areas of discrimination law, working to ensure individuals with disabilities had equal access to the full benefits of employment held a special place for him, shaped by his father's own experiences as someone with a disability. Ernie preached that management should never lose sight of the fact that individuals with disabilities are individuals first, and that receiving an accommodation is not receiving special treatment. He will be sorely missed.

This *Deskbook* is not intended as a treatise on either the history of disability law or as a comprehensive discussion of the law. Rather, it assumes a basic knowledge of disability employment matters and is intended to assist practitioners specifically with finding EEOC cases that are on point to the specific topic being researched. For practitioners looking for a good resource on the EEO federal sector process generally, we recommend *A Guide to Federal Sector Equal Employment Law and Practice* (Dewey Publications, Inc.), a guide founded by and authored for many years by Ernest C. Hadley, and now written by Natania Davis.

There are many textbooks, articles, and other guidance about disability employment law available to the practitioner, but nearly all of these works disregard entirely the very important body of law that is of particular importance to practitioners in the federal sector. That body of law, of course, is the case law from the EEOC in its capacity as adjudicator for employment claims of discrimination brought by federal employees. Commission decisions are available from a number of sources, most notably from the Commission's website at www.eeoc.gov. They are also available from Westlaw, Lexis Nexis, and Cyberfeds.

This *Deskbook* is a compilation of significant decisions from the EEOC presented in a manner that should assist the practitioner in finding appropriate cases on particular matters. It should be used as only one step in your research. The synopsis of EEOC cases is intended to help practitioners identify cases that are on point to their research and is not intended to replace the need to actually read cases that the reader may wish to cite.

The *Deskbook* is organized so that the reader can seek relevant Commission cases on nearly any aspect of disability law. When seeking information about Commission cases

that concern particular types of disabilities such as diabetes, the reader should consider Chapter 8: Specific Impairments. The chapter reviews cases on many different types of impairments, and in particular the reader should note whether individuals in particular cases with particular impairments were found by the EEOC to have a disability.

Similarly, the reader may wish to consult Chapter 4: Individuals With a Disability, to see examples of how the Commission analyzed whether an individual was substantially limited in the ability to hear, see, work, or perform any number of other major life activities, although most substantive analysis has dwindled after passage of the ADAAA, which emphasized that the definition of disability should be construed in favor of broad coverage. Or it may be more useful to consult Chapter 7: Regarded as Having a Disability, Chapter 12: The Direct Threat Defense or other sections if some other concern is being researched. In each instance, specific cases decided in the EEOC's appellate role are briefly discussed to assist the reader in determining whether to look at the cases in more depth.

Commission decisions are often discussed in more than one section, and the discussion of cases in each instance is generally limited to the specific subject matter of the section. It is imperative that the reader look at the actual decision before relying on the case as it may have implications beyond that discussed in any particular section of this *Deskbook*.

The emphasis of this *Deskbook* is decisions from the EEOC and accordingly, far less discussion than might otherwise be appropriate has been afforded to the many important decisions from the federal courts. A select few decisions from the Supreme Court and Courts of Appeals have been included, but there may be any number of federal court cases important to the particular point of law the reader is seeking. This work should not be the totality of research but should be only the starting point for finding Commission decisions.

I. THE REHABILITATION ACT OF 1973

Passage of the Rehabilitation Act of 1973 brought two dramatic changes to the existing civil rights laws. First, it was the first serious effort to protect persons with disabilities from discrimination in the workplace, albeit somewhat limited in application as it only applied to federal agencies and certain employers that received federal funding. Second, it was remarkable in that it not only protected workers with disabilities from discriminatory treatment, but it affirmatively required covered employers to make reasonable accommodations of the known limitations caused by such disabilities.

The EEOC's regulations implementing the Rehabilitation Act, 29 CFR 1614.203(a) (2010), recognized the unique responsibility of the United States to be the role model for equality in employment and provide, "The Federal Government shall be a model employer of individuals with disabilities. Agencies shall give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities."

Although federal employees have received protection against discrimination because of a disability under the Rehabilitation Act since 1973, the passage of the Americans with Disabilities Act ("ADA") in 1990 (the ADA was enacted in July 1990 but did not take effect until July 1992) brought similar protections to employees in the private sector. Passage of the ADA also caused a surge in complaints from federal workers as a result of the collateral publicity about the ADA and the publicity about employment rights of persons with disabilities in general. As a result, federal workers, who previously had only limited knowledge about the existing rights of persons with disabilities, became more educated about their rights. The number of disability related EEO complaints filed under the Rehabilitation Act dramatically increased after enactment of the ADA.

The development of civil rights protection for persons with disabilities is a recent phenomenon for the most part beginning with enactment of the Rehabilitation Act in 1973. But, even after passage of the Rehabilitation Act, protections for persons with disabilities against discrimination in the workplace remained limited. In passing the

ADA nearly 20 years later, Congress noted that "unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination." 42 USC 121021 (a)(4).

The EEOC has primary responsibility for enforcement of the Rehabilitation Act as it pertains to employees of the United States government. The Commission has developed a large body of case law in its adjudicatory decision making process in the federal sector. The EEOC is also responsible for enforcement of Title I of the ADA and has developed considerable guidance for employers and employees. Most of that guidance is easily accessible and, perhaps more importantly, intended to be easily understood by the lay person and the experienced practitioner alike. One of the most recent guidance issued is *Mental Health Conditions: Resources for Job Seekers, Employees, and Employers* published by the Commission in 2022. See Reference Materials V to this *Deskbook*. Unfortunately, while most of the Commission's guidance is written in plain language, often in a question and answer format that is generally regarded as reader friendly, the complexity of these two laws is such that even experienced practitioners are often left with more questions than definitive answers.

Generally, references to the Rehabilitation Act and the ADA in disability law in this *Deskbook* are used interchangeably. This is because the Rehabilitation Act was amended in 1992 to apply the standards in the Americans with Disabilities Act to complaints of discrimination by federal employees or applicants for employment.

II. THE AMERICANS WITH DISABILITIES ACT

The ADA was enacted in July 1990 and went into effect in July 1992. As mentioned above and discussed in more detail below, dramatic revisions to the ADA and Rehabilitation Act were passed by Congress in September 2008 and the EEOC has published regulations implementing those changes. Title I of the ADA contains most of the employment related portions of the law, although some miscellaneous provisions are contained in Title V. The ADA protects covered employees from discrimination in nearly all aspects of employment, including job application and hiring procedures, training, pay, benefits, and leave. It also protects covered employees from being unfairly passed over in promotions or from being unjustly disciplined or terminated. It protects employees from harassment because of a disability and prohibits an employer from retaliating against an individual for asserting rights under the ADA.

Perhaps the most important aspect of the ADA is the extension to the private sector of the right of persons with disabilities to request a reasonable accommodation for the known limitations caused by physical or mental impairments. The right to request reasonable accommodation applies to assistance needed during the hiring process as well as to assistance needed once on the job.

Reasonable accommodation can be any change or adjustment to a job, the work environment, or the way things usually are done that would allow someone to perform job responsibilities that the employee might otherwise not be able to do without assistance. Reasonable accommodation can also be something that enables an applicant for employment to apply for a job or an employee to enjoy equal access to benefits of employment available to other employees. There is no limit to the kinds of things that may comprise reasonable accommodation, but the specific type of accommodation appropriate is always made on a case by case basis after considering the unique needs of the employee because of his or her specific disability and the particular functions of the job that are essential to the position at issue.

A. WHO IS PROTECTED BY THE ADA AND REHABILITATION ACT?

In general, to be protected under the ADA and Rehabilitation Act, a person must be a qualified individual with a disability. This means that the individual must have a disability as defined by the ADA and meet any job qualifications for the position at issue.

Under the ADA, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity, such as hearing, seeing, speaking, thinking, walking, breathing, or performing manual tasks. The person must also be able to do the job being sought or that he or she was hired to do, with or without reasonable accommodation.

B. CERTAIN PROVISIONS OF THE ADA APPLY TO EVERYONE

There are some aspects of the ADA that are not limited in application to persons with disabilities, but rather apply to everyone. Employers are limited in the extent that they can make certain disability related inquiries or require medical examinations of applicants or employees. This prohibition protects all employees and one need not prove that he or she has a disability to be protected. Similarly, the ADA requires employers to keep certain medical information to be maintained on separate forms and in separate medical files and to be treated as a confidential. Again, the requirement to maintain certain medical files separately and to ensure confidentiality of those records applies to all applicants and employees.

III. THE AMERICANS WITH DISABILITIES AMENDMENTS ACT OF 2008

The ADAAA, signed into law by President Obama on September 25, 2008, emphasized that the definition of disability is to be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis. The ADA also made clear that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis and expands the scope of coverage for persons who are regarded by an employer as having a disability. Importantly, the ADAAA changed the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and largely returned the law to the way it was before the Supreme Court's decision in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

Congress' intent in enacting the ADAAA was to shift the focus from an extensive inquiry into whether the individual has standing to whether the employer has fulfilled its obligations under the Americans with Disabilities Act (Act). Prior to enactment of the ADAAA, the vast majority of disability discrimination claims focused on whether the complainant qualified as having a disability, and in particular, whether he or she was substantially limited in a major life activity.

The ADAAA does not apply to claims of discriminations where the allegedly unlawful acts occurred prior to January 1, 2009, the effective date of the ADAAA. As such, we warn against reliance on any cases that predate the effective date of the ADAAA, as well as several years after, where the EEOC's Office of Federal Operations worked to address cases taking place under the prior relevant legal framework.

The 2008 Amendments reversed several decisions of the Supreme Court, including *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999), that had narrowed the definition of an individual with a disability. But the Amendments Act law went further than merely restoring the *status quo*, expanding the definition of major life activities, and providing greater nondiscrimination protections to persons regarded as having a disability. We have seen dramatic changes to the nature of litigation after passage of the ADAAA. In the context of reasonable accommodation, as Congress intended, the focus of litigation has shifted from whether an individual has a disability to whether there is a need for an accommodation, and if so, whether one was available. The days of compiling a voluminous record of medical information is mostly behind us at last. As the Second Circuit observed in *Rodriguez v. Village Green Realty, Inc*., 788 F.3d 31, 44 (2nd Cir. 2015), there will be instances where there is no need for medical information because "non-medical evidence that conveys, in detail, the substantially limiting nature of an impairment may be sufficient to survive summary judgment."

There are several far reaching changes brought about by the ADAAA and the Commission's

implementing regulations. First, the law mandates that mitigating measures shall not be considered in assessing whether an individual has a disability with a relatively minor exception; "ordinary eyeglasses or contact lenses" may be considered. This was a direct swipe at the Supreme Court's decision in *Sutton* which, as discussed in some detail later in the text, held otherwise. The ADAAA also makes clear that an impairment that is episodic or in remission is a disability under the ADA if it would substantially limit a major life activity when the impairment was active.

Coverage under the ADAAA also increased as a result of language in the Act that modifies the definition of "major life activities" by expanding the definition of major life activities to clarify that the definition includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating). In addition, the list of major life activities now explicitly includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions"). The Commission also changed its regulations to eliminate use of the term "qualified individual with a disability," consistent with the ADAAA's elimination of that term. The Commission replaced the phrase with simply "an individual with a disability."

This means that more employees are now subject to the protections of the ADA and more persons are entitled to reasonable accommodations in employment. But Congress also used the opportunity to expand coverage of what is often referred to as the third prong of the definition of a disability. The ADA defines disability with regard to an individual as: (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. After the Supreme Court's decision in *Sutton*, the third, or "regarded as" prong of the definition was considerably weakened. But the ADAAA went beyond merely restoring the law to its pre-*Sutton* status and bolstered the protection afforded persons who are subjected to adverse actions because of a medical condition. The ADAAA provides that:

> An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

The exception is that the "regarded as" provision does not apply to impairments that are both transitory and minor; i. e. an impairment with an actual or expected duration of 6 months or less.

To understand the significance of Congressional action in passing the ADAAA, one need only look at the language of the findings and purposes section. Seldom has the Congress so aggressively revised a law to undo the interpretive actions of the Supreme Court. Declaring in the Findings and Purposes of the ADAAA that:

> (1) "in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage"

The ADAAA reversed several of the major interpretive decisions of the ADA issued by the Supreme Court. Congress made clear that it did not expect a repeat of the judicial tampering with the ADAAA that followed enactment of the original ADA and emphasized the expectation of judicial hands off with the remainder of the findings that preceded the substantial changes to the law. Congress noted:

> (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently

precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

These findings, making clear congressional dissatisfaction with decisions by the Supreme Court interpreting the ADA, were followed by the following "Purposes" evidencing Congress' expectation that there would not be a repeat after passage of the ADAAA:

b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment

that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for "substantially limits," and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act.

A. EEO INVESTIGATIONS OF DISABILITY CLAIMS PRESENT UNIQUE REQUIREMENTS

The Commission requires that a federal agency's investigation of disability claims must be tailored to the specific facts of the claim and may require more case specific inquiries. For example, in *Murray H. v. Bunch, Sec'y, Smithsonian Inst.*, 2021000171 (January 11, 2022), the Commission vacated a FAD and remanded a complaint where further development of the record was necessary regarding how Schedule A applicants (an excepted service hiring authority federal agencies can use to hire and promote individuals with disabilities) were considered by a review panel.

In *Georgeann R. v. DeJoy, Postmaster. Gen., USPS*, 2019005191 (December 3, 2020), the Commission vacated a FAD finding no discrimination and remanded the case for a supplemental investigation into whether there were vacant, funded positions that the complainant could have performed with or without accommodation. In *Cassandra N. v. Pompeo, Sec'y, Dept. of State*, 2019005423 (November 18, 2020), the Commission also vacated a FAD finding no discrimination because the record did not contain her medical limitations, or information as to whether there was an effective accommodation she could utilize that would not pose an undue burden on the agency, or any evidence regarding the agency's decision to place the complainant on leave restriction.

In the Commission found the record insufficient and remanded the case for a supplemental investigation in *Deena B. v. Brennan, Postmaster Gen., USPS*, 0120171139 (March 26, 2019), because the investigation into whether the agency failed to accommodate an employee with a hearing impairment did not detail what "tour talks" were, including how long they last, who conducts them, and who attended them, such that the Commission could not determine if failure to provide an interpreter for these talks resulted in a failure to provide accommodation. And in *Kirby S. v. Spencer, Sec'y, Dept. of Navy*, 0120160280 (September 25, 2018), the Commission vacated a FAD finding no discrimination and remanded the case for supplemental investigation where there was a question regarding whether the complainant, who had sleep apnea, was an individual with a disability. The Commission ordered that the record be amended to include the nature and extent of the condition upon his sleep patterns, whether the supervisor knew the complainant had sleep apnea, and whether the complainant actually ever requested a reasonable accommodation.

In this text, where applicable, we have identified where the ADAAA did not alter the legal analysis, such as Chapter 12: The Direct Threat Defense and Chapter 13: The Good Faith Defense to a Claim for Compensatory Damages.

IV. THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

Also altering the field of disability law was the Genetic Information Nondiscrimination Act of 2008. Effective November 21, 2009, this law makes illegal discrimination based on genetic information of employees and applicants as well as retaliation based on raising discrimination under the Act. Specifically, the Act makes it an unlawful employment practice for an employer to not hire, discharge any employee, or otherwise discriminate against an employee with respect to compensation or other terms or conditions of employment because of genetic information. Employers are also prohibited from segregating or classifying employees in a way that would deprive them of employment opportunities or otherwise adversely affect the status as an employee because of genetic information. Further, employers cannot request, require, or purchase genetic information of an employee or family member of an employee except under specific circumstances. However, in actuality, claims alleging violations of GINA are not often raised in federal sector EEO complaints.

V. THE PREGNANT WORKERS FAIRNESS ACT

Finally, the Pregnant Workers Fairness Act (PWFA), effective June 27, 2023, requires covered employees to provide "reasonable accommodation" to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an "undue hardship." The final regulations for the PWFA went into effect on June 18, 2024. As with the ADAAA, the definitions of key terms indicate that coverage under the PWFA is intended to be broad, and employers do not need to, nor should they, engage in substantial analysis to determine coverage.

CHAPTER TWO
WHO IS COVERED BY THE ADA?

Passage of the ADAAA dramatically increased the number of persons covered by the ADA and Rehabilitation Acts. Much to the displeasure of the drafters of the original ADA legislation, the bulk of litigation in disability employment law dealt with the preliminary question of whether the complainant or plaintiff was even covered by the Rehabilitation Act or ADA. This has not been the case in other civil rights employment cases, as questions of standing are far less common because the race, gender, age, or national origin of an employee is seldom in dispute. Moreover, determining who Congress actually intended to protect under the ADA was not without controversy prior to passage of the Amendments Act. The Supreme Court rendered multiple decisions interpreting the definition of a disability. Most notably, the Supreme Court rejected the EEOC's initial position that, in considering whether an individual has a disability, no consideration is given to mitigating measures such as medicines, or assistive or prosthetic devices. But the EEOC was subsequently vindicated, as passage of the ADA Amendments Act of 2008 made clear Congressional intent that "[t]he determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures…."

There are many provisions of the ADA that apply to everyone regardless of whether an individual has a disability. These provisions were largely unaffected by the ADAAA. However, for those provisions that limit the protections to persons who meet one or more of the definitions of an individual with a disability, the determination of who is covered was greatly expanded by the ADAAA.

As the Supreme Court noted in *Bragdon v. Abbott*, 524 U.S. 624, 641 (1998):

> In the end, the disability definition does not turn on personal choice. When significant limitations result from the impairment, the definition is met even if the difficulties are not insurmountable.

The Court in *Bragdon* also noted that, "the ADA addresses substantial limitations on major life activities, not utter inabilities." *Id*. at 661.

I. DEFINITION OF A DISABILITY

Although some portions of Title I of the ADA provide protection to all employees and applicants for employment, the law was primarily intended to protect persons who have disabilities or who are perceived by an employer as having a disability.

Under the ADA as amended, the definition of a 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 an impairment; or
>
> (C) being regarded as having such an impairment (as described in paragraph (3)).

This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both "transitory and minor."

As we discuss elsewhere in more detail, only persons meeting the first or second prongs of the definition of a disability are entitled to reasonable accommodation. Persons who are regarded as having a disability are not entitled to reasonable accommodation, but

they are covered by the ADA's other prohibitions against discrimination. With regard to the "regarded as" prong of the definition of a disability, the ADAAA substantially expanded the definition to include virtually any individual where the employer acts on a personnel matter because of an individual's medical condition, unless the medical condition is one that is transitory and minor. An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. But, the regarded as prong of the definition of a disability does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less. We will discuss the "regarded as" prong of the definition in greater detail later. First, let's consider the first prong of the definition of a disability.

Prior to passage of the ADAAA, there had been so many considerations that entered the determination of whether an individual had a disability, the analysis became one that often baffled even the most skilled practitioners. Passage of the ADAAA resulted in an end to the tortuous process of determining whether an individual has a disability. As noted above, the determination of whether an individual has a disability is made without regard to the ameliorative effects of mitigating measures. Moreover, the ADAAA provides several rules of construction regarding the definition of disability intended to ensure that coverage under the statutes is interpreted to provide broad coverage. First among these rules of construction is that the definition of disability is to be construed in favor of broad coverage of individuals under this Act "to the maximum extent permitted by the terms of this Act." Seeking to fend off further restrictive interpretation by the courts, Congress clearly signaled its intent that coverage be expansive. Second, the rules of construction provide that "the term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008." Taken together, the findings and purposes section and the rules of construction section of the ADAAA make clear that Congress intended the phrase "substantially limited" in a major life activity to be one that, in lay terms, is not an onerous burden to meet. In fact, there will be times when no medical documentation is needed because "non-medical evidence that conveys, in detail, the substantially limiting nature of an impairment may be sufficient to survive summary judgment." *Rodriguez v. Village Green Realty, Inc*., 788 F.3d 31, 44 (2nd Cir. 2015).

The rules of construction also provide that an impairment need not substantially limit more than one major life activity. This clarifies that an individual with a substantial limitation in any one major life activity meets the definition of having a disability and rejects decisions of the courts that seemed to suggest otherwise. The rules of construction also clarify another area that previously generated considerable confusion, providing that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Finally, as we discussed earlier, the rules of construction state that the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. The ADAAA gives the following as examples of mitigating measures:

> (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
>
> (II) use of assistive technology;
>
> (III) reasonable accommodations or auxiliary aids or services; or
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> (IV) learned behavioral or adaptive neurological modifications.

There is an exception, however, as discussed below for ordinary eyeglasses.