

# The ADA Amendments Act

Catherine Wan, Trial Attorney  
EEOC  
New York District Office

## Equal Employment Opportunity Commission (EEOC)

- The key federal agency responsible for ensuring equal employment opportunity by enforcing federal laws prohibiting employment discrimination against individuals based on certain protected categories.

## Protected Federal Categories

Race



National Origin



Color



Genetic Information



Religion



Disability



Sex/Pregnancy

Age  
40 & older

## Other Federal Agencies (DOJ, DOE, HHS, DOL, etc.)

- Under Title II, a public school may not discriminate against individuals with disabilities.
- Under Title III, a private school is subject to the same restriction.
- Under Title IV, any institution receiving federal financial assistance may not discriminate against individuals with disabilities.

## Definition of “Disability”

- A physical or mental impairment that substantially limits a major life activity;
- A record of such an impairment;
- Being regarded as having such an impairment

## Major Life Activities

These are basic activities that the average person in the general population can perform with little or no difficulty.

- Caring for Oneself
- Performing Manual Tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Concentrating
- Learning
- Working
- Sitting
- Standing
- Lifting

## Major Life Activities (cont.)

- The term “major life activities” also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

## “Regarded As” Disabled

- Broader definition of “regarded as” disabled that would cover anyone subjected to an action “prohibited by this Act” because of a real or perceived physical or mental impairment
- “Regarded as” would exclude impairments that are transitory (less than six months) and minor
- Individuals “regarded as” disabled not entitled to reasonable accommodation

## Job Applicants – Before a Job Offer is Made:

An employer may NOT:

- ask questions about an applicant's medical condition,
- nor require an applicant to have a medical examination before it makes a conditional job offer.

## Job Applicants - After a Job Offer is Made

- Similarly, an employer may require a medical examination after making a job offer, as long as it requires the SAME medical examination of other applicants offered the same type of job.

## Reasonable Accommodations

Any changes in the work setting that enable qualified workers to accomplish their tasks, without significant difficulty or expense.

## Examples of Accommodations that are NOT Reasonable

- Eliminating essential functions of the job
- Lowering production standards
- Providing personal use items (e.g. prosthetic limb, eyeglasses, hearing aids, wheelchair, hot pot or refrigerator)
- Creating a job
- Promoting an employee
- Bumping another employee from his/her job

## EEOC Coverage for Undocumented Employees

- *EEOC and Castrejon v. Tortilleria La Mejor*: despite the passage of IRCA in 1986, undocumented workers are covered by Title VII; Title VII makes no exception based on immigration status for workers in the U.S. and its territories

## Retaliation: Attempts to Deport

- *EEOC v. Queen's Medical Center*: initiated deportation proceedings for national origin complaint, 4 years after hire of doctor; \$150,000 for retaliation
- *EEOC v. Holiday Inn Express*: employer reported workers to INS after they engaged in protected activity under NLRA and Title VII

## Protective Orders to Stop Immigration Status Inquiry

- *Rivera v. NIBCO*: in national origin, termination case, court issued protective order to bar company lawyer's inquiry into immigration status, place of birth, place of education;