

# Legal Briefings

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## **Court Interpretations of Major Life Activities Under the ADA: What Will Change After the ADA Amendments Act?**

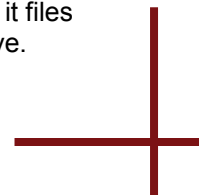
### I. Introduction

Is concentrating a major life activity? What about sexual relations? Or how about eliminating bodily waste? Plaintiffs seeking relief under the Americans with Disabilities Act (“ADA”) must prove that they have a physical or mental impairment that substantially limits one or more major life activities. But just what is considered a major life activity under the ADA? How have the courts interpreted this term? And how have things changed with the passage of the ADA Amendments Act?

This legal brief will first review how the term major life activity was addressed when the ADA was first passed in 1990. Second, the brief will review how the term major life activity has been more clearly defined by the recently enacted ADA Amendments Act of 2008 (“ADAAA”). Third, the brief will review how the courts interpreted particular major life activities prior to the ADAAA, and hypothesize whether those interpretations will change under the ADAAA. Finally, the brief will discuss the application of the ADAAA on cases arising prior to the January 1, 2009 effective date.

### II. Major Life Activities After the Passage of the ADAAA

Under the ADA, disability is defined as “a physical or mental impairment that substantially limits one or more major life activities.”<sup>2</sup> When Congress passed the ADA, it did not define major life activities in the text of the Act, nor did it provide any examples of what constituted major life activities. However, in its regulations, the Equal Employment Opportunity Commission (“EEOC”) states that major life activities are basic activities that the average person can perform with little or no difficulty, such as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”<sup>3</sup> In the Appendix to its regulations, the EEOC also identified sitting, standing, lifting and reaching as major life activities.<sup>4</sup> Subsequently, in its Compliance Manual, the EEOC identified that mental and emotional processes, such as thinking, concentrating and interacting with others were other examples of major life activities.<sup>5</sup> Thereafter, the EEOC also identified sleeping as a major life activity.<sup>6</sup> And while the EEOC has continued to add to the list of major life activities over the years such as when it files *amicus* briefs, it was always clear that any list of major life activities is illustrative, not exclusive.



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Many believed these various statements by the EEOC would provide clear guidance to the courts on how to determine what constituted a major life activity and other aspects of the definition of disability. However, in 1999, the Supreme Court ruled that Congress had not delegated the EEOC the authority to interpret the definition of disability, but had limited the EEOC to only interpret the employment provisions of the ADA. Thus, the Supreme Court found that the EEOC's interpretation of the definition of disability, including what constitutes a major life activity, would not be entitled to any deference.<sup>7</sup>

A great deal of confusion has resulted by not having major life activity defined in the ADA and also by the Supreme Court not affording any deference to the EEOC's interpretation of major life activity. Thus, lower courts have been forced to grapple with this issue on a case-by-case basis, which has resulted in the courts taking a very narrow view of who is covered by the ADA, issuing seemingly conflicting decisions regarding who is covered by the ADA, and dismissing a significant number of ADA cases without ever addressing the underlying alleged discrimination.

## III. Major Life Activities After the Passage of the ADAAA

As a result of the Supreme Court's narrow interpretation of the definition of disability, and its refusal to give any deference to the EEOC's regulations interpreting the definition of disability, Congress passed the ADA Amendments Act to correct what it perceived as incorrect interpretations of the definition of disability.

In the ADAAA, Congress found that the Supreme Court's interpretation of the definition of disability had improperly narrowed the ADA and eliminated protection for many individuals that Congress intended to protect.<sup>8</sup> One purpose of the ADAAA was to convey that whether a person's impairment is an ADA disability should not demand the extensive analysis that had been done by the Supreme Court and many lower courts. Rather, the focus should be on whether entities covered by the ADA have complied with their obligations.<sup>9</sup> And while Congress did not alter the language of the definition of disability when it passed the

ADAAA, it clearly stated that the definition of disability "shall be construed in favor of broad coverage" ... "to the maximum extent permitted by the terms of this Act."<sup>10</sup>

With respect to term major life activity, Congress decided to explicitly list examples of major life activities in the text of the ADA. This would prevent the courts from continuing to ignore the EEOC's interpretation of the definition of disability, because examples of major life activities would now be in the text of the ADA itself.<sup>11</sup>

For the list of major life activities added to the text of the ADA, Congress included major life activities previously identified by the EEOC in its regulations, publications and court filings. These major life activities are: caring for oneself, performing manual tasks, walking and standing, seeing, hearing, eating, sleeping, learning, thinking and concentrating, lifting, speaking, breathing, and working. Congress also added three major life activities that had not previously been identified by the EEOC - bending, communicating and reading.<sup>12</sup>

Moreover, in addition to an explicit list of major life activities, Congress explained that the term major life activity also includes the operation of the following major bodily functions: immune system, neurological, normal cell growth, brain, digestive, respiratory, bowel, circulatory, bladder, endocrine and reproductive functions.

It is anticipated that this addition of major bodily functions to the text of the ADA will make it much easier for certain impairments to be deemed a disability by the courts. For instance, prior to the ADAAA, it was often challenging for people with diabetes to fit within the ADA's definition of disability. Now, a person with diabetes should be able to simply allege that her diabetes substantially limits the functioning of her endocrine system. Similarly, people with cancer or heart disease were often not deemed to have an ADA disability because their impairments did not easily correspond to a particular major life activity. Now, people with cancer should be able to more easily prove that they have an ADA disability by alleging that their cancer substantially limits the major life function of normal cell growth, and people with heart disease should be able to more easily prove that their heart disease substantially limits the

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major life function of their circulatory system.

With the passage of the ADAAA, Congress actually removed major life activities as a component for the “regarded as” prong of the definition of disability. No longer do plaintiffs have to prove that the defendant regarded them as being substantially limited in a major life activity. Rather, the ADAAA states that plaintiffs simply have to show that they have been subjected to an action prohibited by the ADA because of a real or perceived impairment, whether or not the impairment limits or is perceived to limit a particular major life activity.<sup>13</sup> For people with disabilities, this is a very important change. Prior to ADAAA, courts were dismissing many regarded as claims because plaintiffs were having such a difficult time proving that the employer regarded them as being limited in a particular major life activity. The ADAAA no longer requires this for coverage. Also, it should be noted that in the ADAAA, Congress instructed the EEOC to revise its current ADA regulations to no longer define “substantially limits” in the definition of disability as “significantly restricts.” Congress found that the EEOC’s definition was too stringent to effectuate Congress’ underlying purpose to address discrimination against people with disabilities.<sup>14</sup> It is anticipated that when the EEOC revises its regulations on this issue, it will also be revising its regulations on other aspects of the ADAAA, such as major life activities.

## IV. Specific Major Life Activities

Although many of the ADA court cases addressing the definition of disability have focused upon whether the plaintiff is “substantially limited,” there has also been significant analysis by courts as to what constitutes a major life activity. To better understand the impact of the ADAAA, the brief will now examine how the courts interpreted various major life activities under the ADA prior to the passage of the ADAAA, and how the ADAAA could change those prior interpretations. It should be noted that even if a court agrees that a particular activity is a major life activity under the ADA, the plaintiff still has the burden to demonstrate that he/she is substantially limited in that major life activity.

### A. Bending

In its regulations interpreting the ADA, the EEOC identified a list of activities as an example of major life activities. The EEOC regulations were clear that the list was non-exhaustive, meaning that courts could find activities in addition to those on the EEOC’s list to be major life activities under the ADA. Bending was not listed as a major life activity on the EEOC’s list of examples in its regulations. And, over the years, some courts questioned whether bending could constitute a major life activity.<sup>15</sup> However, under the ADAAA, bending is one of the major life activities specifically listed as an example of a major life activity.<sup>16</sup> Accordingly, courts will no longer have to speculate as to whether bending is a major life activity under the ADA.

### B. Reading

While most courts have agreed that reading is a major life activity under the ADA,<sup>17</sup> reading had never been identified by the EEOC as a major life activity in its regulations or other publications.<sup>18</sup> With the passage of the ADAAA, however, any uncertainty about reading as a major life activity has been removed since it was one of the major life activities explicitly added to the text of the ADA.<sup>19</sup>

### C. Communicating

In its regulations, the EEOC identified “speaking” as a major life activity, but did not identify “communicating” as a major life activity.<sup>20</sup> This may have been because it was thought that speaking and communicating are interchangeable, and to list both would be redundant. However, there have been some cases where the person’s impairment, such as mental illness or Attention Deficit Disorder, did not necessarily limit them in speaking, but did limit their ability to communicate.<sup>21</sup> To address this issue, Congress added communicating to the list of major life activities when it passed the ADAAA.<sup>22</sup> This should make it easier for plaintiffs who have communication issues, as opposed to speaking issues, to be covered under the ADA.

### D. Concentrating

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Prior to the passage of the ADAAA, courts were split as to whether concentrating is a major life activity under the ADA.<sup>23</sup> However, after the ADAAA, concentrating is specifically listed as an example of a major life activity.<sup>24</sup> This should eliminate the situation in which different courts treat people with similar disability-related limitations differently. And since the list of major life activities is now expressly in the statute, instead of only in the EEOC's regulations, the courts will be required to apply the major life activities listed by Congress, rather than contemplating whether it should give deference to federal agency regulations. Also, after the ADAAA, plaintiffs who previously relied upon the major life activity of concentrating may also want to allege a limitation in the major bodily function of brain activity.

## **E. Lifting**

Similar to concentrating, courts were also split prior to the passage of the ADAAA whether lifting is a major life activity under the ADA.<sup>25</sup> Now that Congress has specifically included lifting as a major life activity in the ADAAA, courts will no longer be able to find that lifting is not a major life activity. The cases in which lifting is the major life activity will likely now turn on whether the plaintiff's impairment *substantially limits* the major life activity of lifting, e.g. how much of a weight restriction constitutes a substantial limitation in lifting. In those cases, plaintiffs will want to rely upon the ADAAA rules of construction that the definition of disability "shall be construed in favor of broad coverage" ... "to the maximum extent permitted by the terms of this Act."<sup>26</sup>

## **F. Sleeping**

Sleeping was not identified by the EEOC as a major life activity when the agency first issued its regulations.<sup>27</sup> However, in its subsequent guidance issued on psychiatric disabilities, the EEOC did identify sleeping as a major life activity.<sup>28</sup> Most courts have adopted the EEOC's position and found that sleeping is a major life activity.<sup>29</sup> With the passage of the ADAAA, Congress eliminated any remaining question on this issue by expressly including sleeping on the list of major life activities.<sup>30</sup> As with lifting, the question of whether

the person has a disability will now turn on whether there is a substantial limitation. In order to demonstrate a substantial limitation in sleeping courts have held that "vague assertions of poor sleep do not support a substantial limitation claim without specific evidence that the difficulty is worse than that experienced by a large portion of the population"<sup>31</sup> and that that the difficulty sleeping "must be severe."<sup>32</sup> One court even held that "getting between two and four hours of sleep a night, while inconvenient, simply lacks the kind of severity we require of an ailment before we say that the ailment qualifies as a substantial limitation under the ADA."<sup>33</sup> While that court's position is on the extreme end of these cases, it demonstrates that cases prior to the ADAAA took a very strict view of what constitutes being substantially limited in the major life activity of sleeping. However, after the ADAAA's repudiation of courts using a strict and demanding standard on determining whether someone has an ADA disability, it seems likely that it may be easier to prove a substantial limitation in the major life activity of sleeping. Also, the EEOC's anticipated regulations may provide more guidance on this issue.

## **G. Eating**

Eating was not identified as a major life activity in the EEOC's original regulations.<sup>34</sup> However, in 1999, following the Supreme Court's decision in *Sutton*, the EEOC identified eating as a major life activity.<sup>35</sup> Subsequently, many courts also recognized eating as a major life activity.<sup>36</sup> Cases recognizing eating as a major life activity typically arose when the plaintiff was a person with diabetes. When Congress passed the ADAAA, it included eating as on the list illustrating major life activities.<sup>37</sup> As with sleeping and lifting discussed above, cases involving the major life activity of eating will likely not be decided on whether or not eating is a major life activity, but instead whether the person is *substantially limited* in the major life activity of eating. However, for people with diabetes, the ADAAA's listing of the endocrine system as a major bodily function will likely provide a much clearer path to proving disability than trying to prove a substantial limitation in eating.

## **H. Reproduction/Sexual Relations**

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In 1996, the Supreme Court decided *Bragdon v. Abbott*, a case in which a woman with asymptomatic HIV/AIDS had been denied dental services. She sued under the ADA and alleged that she was substantially limited in the major life activity of reproduction. The Supreme Court agreed that reproduction is a major life activity under the ADA.<sup>38</sup> As a result, plaintiffs with HIV, and other disabilities that impact reproduction, have been successful in having reproduction recognized as a major life activity.<sup>39</sup>

However, over the years, courts have differed on whether sexual relations constitute a major life activity under the ADA. Some courts extended the Supreme Court's decision in *Bragdon* to also recognize sexual relations as an ADA major life activity.<sup>40</sup> Other courts, however, have not recognized sexual relations to be a major life activity under the ADA.<sup>41</sup> Issues have also arisen as to what constitutes a substantial limitation in sexual relations. See, e.g., *Cornman v. N.P. Dodge Mgmt.*, 43 F. Supp. 2d 1066 (D. Minn. 1999)(a breast cancer survivor was found to be substantially limited in the major life activity of sexual relations because our society considers a woman's breasts to be an integral part of her sexuality), and *Christner v. American Eagle Airlines, Inc.*, 2003 WL 21267105 (N.D. Ill. May 30, 2003), (being prevented from having sexual relations in "certain positions" due to an inability to bend one's arms is not a substantial limitation.)

Unlike some of the major life activities listed above, the EEOC's regulations never listed reproduction or sexual relations as major life activities under the ADA.<sup>42</sup> And, when the ADA was amended to add a list of examples of major life activities to the text of the ADA, neither reproduction nor sexual relations was on the illustrative list.<sup>43</sup> However, even though the ADA repudiates some ADA decisions by the Supreme Court, it did not address the Supreme Court's decision in *Bragdon* that reproduction is a major life activity, so that still is a precedent that people can rely upon. Moreover, in the ADA, Congress did list "reproductive functions" as a major bodily function that constitutes a major life activity. Whether this will be extended to sexual relations is an open question that the EEOC may address in its forthcoming regulations.

## I. Driving

Most courts have rejected that driving is a major life activity under the ADA.<sup>44</sup> Additionally driving has never been identified as a major life activity by the EEOC, nor was it one of the major life activities listed in the ADA. However, with the addition of "major bodily functions" to the ADA discussed previously, many people who previously could only rely upon driving as their proposed major life activity may now be covered. For instance, many plaintiffs with epilepsy or other seizure disorders have unsuccessfully argued that driving is a major life activity. Under the ADA, they no longer have to rely upon driving to prove they have an ADA disability, but instead can assert that epilepsy falls under the neurological major bodily function. This is a good example of achieving Congress' goal under the ADA to cover people with impairments that were intended to be covered, but had been unsuccessful under previous interpretations of the definition of disability.

## J. Elimination of Bodily Waste

For plaintiffs with kidney disease it was sometimes difficult identifying a major life activity in which they were substantially limited.<sup>45</sup> However, prior to the passage of the ADA, courts began to identify the "elimination of bodily waste" as a major life activity<sup>46</sup> and thus, allowed people with kidney disease to be covered by the ADA. While Congress did not list elimination of bodily waste as a major life activity when it passed the ADA, plaintiffs with kidney disease should be able to successfully argue that Congress' identification of the bladder as a major bodily function will cover kidney disease. This may become more clear when the EEOC issues its new regulations as required under the ADA.

## K. Pumping and Circulating of Blood

Like plaintiffs with kidney disease, plaintiffs with heart disease frequently had a difficult time identifying a major life activity in which they were substantially limited.<sup>47</sup> However, recently courts have ruled that pumping and circulating of blood is a major life activity that is substantially limited when a person has heart disease.<sup>48</sup> Congress has

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essentially codified these decisions in the ADAAA by including the circulatory system as a major bodily function that is to be treated as a major life activity.<sup>49</sup> Thus, it is anticipated that people with heart disease will be deemed to have an ADA disability since their circulatory system is substantially limited.

## L. Performing Manual Tasks

The EEOC identified performing manual tasks when it first issued its regulations after the passage of the ADA.<sup>50</sup> Generally, most courts have agreed that performing manual tasks is a major life activity under the ADA. The more contentious issue has been whether the person is *substantially limited* in performing manual tasks. The United States Supreme Court addressed this issue in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).

In *Toyota*, the plaintiff was required to perform tasks that exacerbated her carpal tunnel syndrome. She sought accommodations to limit her from performing the tasks that were problematic, but her request was denied and ultimately, she was terminated. She sued under the ADA alleging that she was substantially limited in various major life activities, including performing manual tasks. The Supreme Court found that in order to be substantially limited in the major life activity of performing manual tasks, the plaintiff must show that she was prevented or restricted her from performing tasks that are of a “central importance to most people’s daily lives.” The Court went on to say that definition of disability is to be “interpreted strictly” to create a “demanding standard.”<sup>51</sup> As a result, lower courts took a more strict view when determining whether someone is substantially limited in the major life activity of performing manual tasks.<sup>52</sup>

In the ADAAA, Congress explicitly repudiated the Supreme Court’s analysis in *Toyota*. Specifically, Congress found that the Supreme Court in *Toyota* “created an inappropriately high level of limitation necessary to obtain coverage under the ADA.”<sup>53</sup>

As a result, courts will be applying a less strict analysis in cases in which plaintiffs allege a substantial limitation in performing manual tasks. Moreover, Congress included performing manual

tasks in the illustrative list of major life activities. Accordingly, plaintiffs should have no difficulty in getting courts to agree that performing manual tasks is a major life activity, and it should be easier to prove a substantial limitation under the major life activity of performing manual tasks.

## M. Interacting with Others

In its Appendix to its regulations, the EEOC identified interacting with others as a major life activity.<sup>54</sup> However, courts have differed over whether interacting with others is in fact a major life activity under the ADA.<sup>55</sup> Interestingly, unlike other major life activities that the EEOC had previously identified, Congress did not include interacting with others when it listed major life activities in the ADAAA.<sup>56</sup> Although the list in the ADAAA is illustrative and not exclusive, it is likely that there will continue to be litigation on this issue.

## N. Working

Working was identified as a major life activity when the EEOC first issued its ADA regulations,<sup>57</sup> and almost every court has agreed that working is a major life activity.<sup>58</sup> To prove a substantial limitation in the major life of working, the EEOC regulations require that a person be “significantly restricted in the ability to perform in a class of jobs or a broad range of jobs in a variety of classes as compared to the average person having comparable training, skills and abilities.”<sup>59</sup> This is a very difficult burden for plaintiffs to meet and many cases have been dismissed because plaintiffs have been unable to meet this standard.<sup>60</sup> The EEOC has suggested that plaintiffs should use working as a “last resort” and only if an individual is not “substantially limited in any other major life activity.”<sup>61</sup> Courts have generally followed this approach.<sup>62</sup>

Even if plaintiffs can prove that they are substantially limited in the major life activity of working, it presents a dilemma. Once plaintiffs put forth evidence that they are substantially limited to work in a class of jobs or a broad range of jobs to prove an ADA disability, they must then submit evidence that they are qualified to do their particular job.

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The ADAAA lists working as a major life activity.<sup>63</sup> However, it is unclear whether the EEOC will still take the position that plaintiffs must prove a substantial limitation in a broad range of jobs or a class of jobs to be covered under the major life activity of working. The anticipated regulations from the EEOC may address this issue.

## V. Does the ADA Amendments Act Apply Retroactively?

When Congress passed the ADAAA, it stated that the effective date of the law would be January 1, 2009.<sup>64</sup> Clearly, any alleged discrimination occurring on or after January 1, 2009 would fall under the provisions of the ADAAA. But what about cases involving alleged discriminatory conduct prior to the ADAAA's effective date? Will the ADAAA be applied in those cases?

The Supreme Court has held that statutes are not applied retroactively.<sup>65</sup> The reasoning is that it is unfair to hold a defendant liable for a standard that is articulated after the alleged violation occurred. And the courts that have looked at this issue so far have held that the ADAAA, as a general matter, does not apply retroactively.<sup>66</sup>

However, there is an argument that the ADAAA should be applied retroactively since it has a "restorative purpose" that reflects Congress' original intent that the Supreme Court did not follow.<sup>67</sup> And in fact, courts have held that the ADAAA provides guidance on Congress' original intent.<sup>68</sup>

One court has applied the ADAAA retroactively when the plaintiff was only seeking prospective injunctive relief, as opposed to monetary damages. *Jenkins v. National Board of Medical Examiners*, 2009 WL 331638 (6th Cir. Feb. 11, 2009) In *Jenkins*, the plaintiff had a reading disorder and was seeking an accommodation of additional time on a medical licensing examination. Relying on previous Supreme Court precedent taking a narrow view of the definition of disability, the trial court found that the plaintiff did not have an ADA disability. On an appeal taken after the ADAAA was enacted, the Sixth Circuit reversed and held that the ADAAA should be applied to the case relying on Supreme Court precedent that allows

statutes to be applied retroactively when the only remedy is prospective injunctive relief. To support its position, the court reasoned that rather than seeking damages for some past act of discrimination, the plaintiff was seeking the right to receive an accommodation on a test that will occur in the future, well after the ADAAA's effective date. The Sixth Circuit also allowed for the recovery of attorneys' fees. Relying on Supreme Court precedent that recovery of attorneys' fees is collateral to the main cause of action, the court found that seeking attorneys' fees did not convert the case into a damages action.<sup>69</sup>

## VI. Conclusion

Over the years, there has been significant litigation over whether particular activities qualify as major life activities under the ADA. One reason for this litigation is the lack of a definition of major life activity or examples in the text of the ADA. Although the EEOC provided significant regulations and guidance on this issue, courts have been very inconsistent on its applications of the EEOC's interpretations in light of the Supreme Court's view that Congress had not delegated the EEOC authority to interpret the definition of disability, including what constitutes a major life activity.

With the passage of the ADA Amendments Act, Congress has listed examples of major life activities and included a variety of major bodily functions to be treated as major life activities. This should provide much needed clarity for employers and employees on what constitutes a major life activity. Also, Congress has specifically granted the EEOC the authority to interpret the definition of disability, which should result in more consistent court decisions. While there will still be some litigation over what constitutes a major life activity for some activities not listed in the text of the ADA Amendments Act, such litigation should be greatly diminished.

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## Notes:

1. Equip for Equality is providing this information under a subcontract with the DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S. Department of Education, National Institute on Disability Rehabilitation and Research Award No. H133A060097. Mr. Taylor would like to thank Equip for Equality Senior Attorney Alan Goldstein for his assistance with this legal brief.
2. 42 U.S.C. 12102(7)
3. 29 C.F.R. 1630.2(i)
4. Appendix to 29 C.F.R. 1630.2(i)
5. EEOC Compliance Manual 902.3(b) at p.15
6. EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities – see <http://www.eeoc.gov/policy/docs/psych.html>
7. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 479 (1999)
8. Section 2(a)(4) of the ADA Amendments Act of 2008, Pub.L. No. 110-325, 122 Stat. 3557 (Sept. 25, 2008) (the “Amendments Act”)
9. Section 2(b)(5) of the Amendments Act
10. Section 4(a) of the Amendments Act
11. Although the ADA provides numerous examples of major life activities, Congress also gave the EEOC, Department of Justice and Department of Transportation the authority to issue regulations interpreting the definition of disability, including the term major life activity and thus overruling the Supreme Court’s finding in *Sutton* that no federal agency was authorized to interpret the definition of disability.
12. Section 4(a) of the Amendments Act
13. *Id.*
14. Section 2(6) of the Amendments Act
15. See *Parkinson v. Anne Arundel Medical Center, Inc.*, 214 F. Supp. 2d 511 (D. Md. 2002)
16. Section 4(a) of the Amendments Act
17. See *Head v. Glacier Northwest, Inc.*, 413 F.3d 1053 (9<sup>th</sup> Cir. 2005); *Shaffer v. Spherion Corp.*, 2007 WL 4557778 (D. Col. Dec. 20, 2007); but see *Szmaj v. AT&T*, 291 F.3d 955 (7<sup>th</sup> Cir. 2002)(finding that reading all day is not a major life activity)
18. See 29 C.F.R. 1630.2(i); Appendix to 29 C.F.R. 1630.2(i); EEOC Compliance Manual 902.3(b) at p.15
19. Section 4(a) of the Amendments Act
20. 29 C.F.R. 1630.2(i)
21. See *Sevigny v. Maine Education Association*, 1999 WL 1995208 (D. Me. June 14, 1999)
22. Section 4(a) of the Amendments Act
23. See *Emerson v. Northern States Power Co.*, 256 F.3d 506 (7<sup>th</sup> Cir. 2001) (holding, “we will adopt the district court’s approach and treat memory, concentration, and interacting with others as activities that feed into the major life activities of learning and working”); *Pack v. Kmart Corp.* 166 F.3d 1300 (10<sup>th</sup> Cir. 1999) (finding, “concentration is not itself a major life activity [but] may be a significant and necessary component of a major life activity, such as working, learning, or speaking, but it is not an ‘activity’ itself”); *Linder v. Potter (USPS)*, 2007 WL 626365 (E.D. Wash. Feb. 23, 2007); but see *Battle v. United Parcel Service*, 438 F.3d 856 (8<sup>th</sup> Cir. 2006), (holding that concentrating is a major life activity under the ADA).
24. Section 4(a) of the Amendments Act
25. See *Jacoby v. Arkema Inc.*, 2007 WL 2955593 (E.D. Pa. Oct. 9, 2007) finding that lifting is a major life activity, but see *Lehman v. United Parcel Service, Inc.*, WL 603085 (W.D. Mo. Feb. 22, 2007) and *Maples v. American Greetings Corp.*, 2007 WL 1089701 (E.D. Ark. Apr. 10, 2007), finding that lifting is not a major life activity.
26. Section 4(a) of the Amendments Act
27. See 29 C.F.R. 1630.2(i)

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## Notes:

28. See EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities, which can be found at <http://www.eeoc.gov/policy/docs/psych.html>
29. *Desmond v. Mukasey*, 530 F.3d 944 (D.C.Cir.2008)
30. Section 4(a) of the Amendments Act
31. *Brown v. Principi*, 2007 WL 959375 (S.D.N.Y. Mar. 29, 2007)
32. *DeJesse v. First Judicial District of Pennsylvania*, 2007 WL 4336225 (E.D. Pa. Dec. 12, 2007)
33. *Boerst v. General Mills Operations Inc.*, 2002 WL 59637 (6<sup>th</sup> Cir. Jan. 15, 2002)
34. 29 C.F.R. 1630.2(i)
35. See EEOC Instructions for Field Offices: Analyzing ADA Charges After Supreme Court Decisions Addressing “Disability” and “Qualified” located at <http://www.eeoc.gov/policy/docs/field-ada.html>
36. See *Lawson v. CSX Transportation, Inc.*, 245 F.3d 916 (7<sup>th</sup> Cir. 2001); *Fraser V. Goodale*, 342 F.3d 1032 (9<sup>th</sup> Cir. 2003); *Miller v. Verizon Communications*, 2007 WL 542146 (D. Mass. Feb. 7, 2007)
37. Section 4(2) of the Amendments Act
38. *Bragdon v. Abbott*, 524 U.S. 624 (1998) Interestingly, unlike the decision in *Sutton*, here the Supreme Court was willing to give deference to the Department of Justice’s interpretation of the definition of disability and what constitutes a major life activity.
39. See, *Lederer v. BP Prods. N. Am*, 2006 WL 3486787 (S.D. N.Y. Nov. 20, 2006); see also, *Yindee v. CCH, Inc.*, 458 F.3d 599 (7<sup>th</sup> Cir. Aug. 11, 2006) (woman whose cancer left her infertile was deemed to be substantially limited in the major life activity of reproduction.)
40. See, *Adams v. Rice*, 2008 WL 2777903 (D.C. Cir. 2008); *Norden v. Samper*, 2007 WL 2219312 (D.D.C. Aug. 3, 2007); *DeJesse v. First Judicial District of Pennsylvania*, 2007 WL 4336225 (E.D. Pa. Dec. 12, 2007).
41. See, *Ware v. Jewel Food Stores, Inc.*, 2007 WL 551571 (N.D. Ill. 2007)
42. 29 C.F.R. 1630.2(i)
43. Section 4(a) of the Amendments Act; but see the U.S. House of Representatives Committee on Education and Labor Committee Report stating that it believes there are other major life activities including sexual relations. H. Rep. No. 110-730, 110<sup>th</sup> Cong., 2d Sess. (2008)
44. See *Eshelman v. Agere Systems, Inc.*, 554 F.3d 426 (3<sup>rd</sup> Cir. 2009) (driving is not a major life activity for person with cancer); *Robinson v. Lockheed Martin Corp.*, 212 Fed.Appx. 121 (3<sup>rd</sup> Cir. Jan. 8, 2008), (driving is not a major life activity for person with a seizure disorder); Courts are also split on whether traveling is a major life activity. See, *Coons v. U.S. Dept. of Treasury*, 383 F.3d 879 (9<sup>th</sup> Cir. 2004) (rejecting driving as a major life activity) and *Kralik v. Durbin*, 130 F.3d 1997(suggesting that traveling is a major life activity.)
45. See, *Roush v. Weastec, Inc.*, 96 F.3d 640 (6<sup>th</sup> Cir. 1996)
46. See, *Heiko v. Colombo Savings Bank*, 434 F.3d 249 (4<sup>th</sup> Cir. 2006) (court reversed summary judgment for an employer who allegedly failed to promote an employee with end-stage renal disease, holding that the elimination of bodily waste is a major life activity.)
47. See, *Taylor v. Nimock’s Oil Company*, 214 F.3d 957 (8<sup>th</sup> Cir. 2000)
48. See, *Snyder v. Norfolk Southern Railway Corp.*, 463 F.Supp.2d 528 (E.D. Pa. Nov. 15, 2006)(Court ruled that pumping and circulating of blood is a major life activity for person with heart disease – the court based its decision primarily on an analogy to an earlier decision finding the kidney’s processing and eliminating waste to be a major life activity.)
49. Section 4(a) of the Amendments Act
50. 29 C.F.R. 1630.2(i)
51. *Toyota*, 534 U.S. at 198.
52. See, *Carr v. Publix Super Markets, Inc.*, 2006 WL 267133 (11<sup>th</sup> Cir. Feb. 6, 2006)
53. Section 2(b)(5) of the Amendments Act
54. Appendix to 29 C.F.R. 1630.2(i)

**Court Interpretations of Major Life Activities Under the ADA:  
What Will Change After the ADA Amendments Act?**

# The Interplay of the ADA and FMLA

## Notes:

55. See *McAlindon v. County of San Diego*, 192 F.3d 1226 (9<sup>th</sup> Cir. 1999) (“because interacting with others is an essential, regular function, like walking and breathing, it easily falls within the definition of ‘major life activity’); and *Soileau v. Guilford of Maine, Inc.* 105 F.3d 12 (1<sup>st</sup> Cir. 1997) (finding that interacting with others is different than major life activities like breathing and walking)
56. Section 4(a) of the Amendments Act; but see the U.S. House of Representatives Committee on Education and Labor Committee Report stating that it believes there are other major life activities including interacting with others. H. Rep. No. 110-730, 110<sup>th</sup> Cong., 2d Sess. (2008)
57. 29 C.F.R. 1630.2(i)
58. See, *Rodriguez v. Conagra Grocery Products Co.*, 436 F.3d 468 (5<sup>th</sup> Cir. 2006)
59. 29 C.F.R. 1630.2(j)(3)(i)
60. See, *Squibb v. Memorial Medical Center*, 497 F.3d 775 (7<sup>th</sup> Cir. 2007); *Zwygart v. Board of Commissioners of Jefferson Co.*, 483 F.3d 1086 (10<sup>th</sup> Cir. 2007); but see, *Williams v. Philadelphia Housing Authority Police Dept.*, 380 F.3d 751 (3<sup>rd</sup> Cir. 2004)
61. 29 C.F.R. 1630, App. 1630.2(j)
62. See, *Pryor v. Trane Co.*, 138 F.3d 1024 (5<sup>th</sup> Cir. 1998) (“If an individual is substantially limited in any other major life activity, no determination should be made as to whether the individual is substantially limited in working”)
63. Section 4(a) of the Amendments Act
64. Section 8 of the Amendments Act
65. See *Landgraf v. USI Film Products*, 511 U.S. 244 (1994)
66. See *EEOC v. Agro Distribution*, 555 F.3d 462 (5<sup>th</sup> Cir. 2009); *King v. City of Madison*, 550 F.3d 598 (7<sup>th</sup> Cir. 2008)
67. See *Rivers v. Roadway Express, Inc.*, 511 U.S. 298 (1994)
68. See, *Rohr v. Salt River Project Agricultural Improvement and Power Dist.*, 2009 WL 349798 (9<sup>th</sup> Cir. Feb. 13, 2009) (however court ended up not applying the ADAAA retroactively because it found that the employer had violated the original provisions of the ADA)
69. *Landgraf*, 511 U.S. at 237

**Court Interpretations of Major Life Activities Under the ADA:  
What Will Change After the ADA Amendments Act?**