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The Americans with Disabilities Act (ADA): The Definition of Disability

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Summary

The threshold issue in any Americans with Disabilities Act (ADA) case is whether the individual alleging discrimination is an individual with a disability. The ADA definition is a functional one and does not list specific disabilities. It defines the term *disability* with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."

The Supreme Court in the landmark decision of *Sutton v. United Air Lines* examined the definition of disability used in the ADA and found that the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment. This holding and related ones in other Supreme Court decisions have spawned new issues regarding the definition of disability in recent lower court cases. This report will briefly discuss the Supreme Court's opinions and analyze how the lower courts are interpreting the Supreme Court's holdings. It will be updated as appropriate.

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The Americans with Disabilities Act (ADA): The Definition of Disability

Background

The Americans with Disabilities Act (ADA)[1] has often been described as the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964. It provides broad nondiscrimination protection in employment, public services, public accommodation, and services operated by private entities, transportation, and telecommunications for individuals with disabilities. As stated in the Act, its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2] The ADA defines the term *disability* with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."[3]

Several Supreme Court decisions have interpreted the definition of disability, generally limiting its application. Because the threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability, these cases have proved to be controversial, and the National Council on Disability (NCD) has suggested amendments to the ADA, including amendments to expand the definition from the Supreme Court's interpretations.[4]

Supreme Court Decisions

Bragdon v. Abbott

The first Supreme Court ADA case to address the definition issue was *Bragdon v. Abbott*, a case involving a dentist who refused to treat an HIV-infected individual

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[1] 42 U.S.C. §§12101 *et seq.* For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

[2] 42 U.S.C. §12101(b)(1).

[3] 42 U.S.C. §12102. The Equal Employment Opportunities Commission (EEOC) has promulgated regulations discussing the definition of disability. 29 C.F.R. §§1630 *et seq.*

[4] National Council on Disability, "Righting the ADA" (Dec. 1, 2004), [http://www.ncd.gov/newsroom/publications/2004/righting_ada.htm]. The National Council on Disability is an independent federal agency that makes recommendations to the President and Congress concerning Americans with disabilities.

outside of a hospital.[5] In *Bragdon*, the Court found that the plaintiff's asymptomatic HIV infection was a physical impairment affecting the major life activity of reproduction.

In 1994, Dr. Bragdon performed a dental examination on Ms. Abbott and discovered a cavity. Ms. Abbott had indicated in her registration form that she was HIV positive, but at that time she was asymptomatic. Dr. Bragdon told her that he would not fill her cavity in his office but would treat her only in a hospital setting. Ms. Abbott filed an ADA complaint and prevailed at the district court, the court of appeals, and the Supreme Court on the issue of whether she was an individual with a disability, but the case was remanded for further consideration regarding the issue of direct threat.

Justice Kennedy, writing for the Supreme Court's majority, first examined whether Ms. Abbott's HIV infection was a physical impairment. Noting the immediacy with which the HIV virus begins to damage an individual's white blood cells, the Court found that asymptomatic HIV infection was a physical impairment. Second, the Court examined whether this physical impairment affected a major life activity and concluded that the HIV infection placed a substantial limitation on her ability to reproduce and to bear children, and that reproduction was a major life activity. Finally, the Court examined whether the physical impairment was a substantial limitation on the major life activity of reproduction. After evaluating the medical evidence, the Court concluded that Ms. Abbott's ability to reproduce was substantially limited in two ways: (1) an attempt to conceive would impose a significant risk on Ms. Abbott's partner and (2) an HIV infected woman risks infecting her child during gestation and childbirth.[6]

Sutton v. United Airlines and *Murphy v. United Parcel Service*

Two other cases in which the Supreme Court decided on the definitional issue involved whether the effects of medication or assistive devices should be taken into consideration in determining whether an individual has a disability. The Court, in the landmark decision of *Sutton v. United Airlines*[7] and in *Murphy v. United Parcel Service, Inc.*,[8] held the "determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment...."[9] The

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[5] 524 U.S. 624 (1998). For a more detailed discussion of this decision, see CRS Report 98-599, *The Americans with Disabilities Act: HIV Infection is Covered Under the Act*, by Nancy Lee Jones.

[6] Another major issue addressed in *Bragdon* involved the interpretation of the ADA's direct-threat exemption. For a discussion of this issu,e see CRS Report RS22219, *The Americans with Disabilities Act (ADA) Coverage of Contagious Diseases,* by Nancy Lee Jones.

[7] 527 U.S. 471 (1999).

[8] 527 U.S. 516 (1999).

[9] *Sutton v. United Airlines*, *supra*. See also *Murphy v. United Parcel Service*, *supra*, where the Court held that the determination of whether the petitioner's high blood pressure

(continued...)

Sutton Court stated: "a disability' exists only where an impairment 'substantially limits' a major life activity, not where it 'might,' 'could,' or 'would' be substantially limiting if mitigating measures were not taken." To be substantially limited in the major life activity of working was seen by the majority as being precluded from more than one type of job. The Court also emphasized that the statement of findings in the ADA that some 43,000,000 Americans have one or more physical or mental disability "requires the conclusion that Congress did not intend to bring under the statute's protection all those whose uncorrected conditions amount to disabilities." The proper analysis was described as examining, in an individualized manner, whether an individual has a disability. Thus, individuals who use prosthetic limbs or a wheelchair "may be mobile and capable of functioning in society but still be disabled because of a substantial limitation on their ability to walk or run."

Although the Court's decision in *Sutton* did not turn on the third prong of the definition of disability (being "regarded as having such an impairment"), the Court did address the interpretation of this part of the definition. There are two ways, the Court stated, that an individual can fall within the "regarded as" prong: (1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities or (2) a covered entity mistakenly believes that an actual impairment substantially limits one or more major life activities. The Court found that, on its own, the allegation that an entity has a vision requirement in place does not establish a claim that the entity regards an individual as substantially impaired in the major life activity of working. The term "substantially limits" was regarded as significant. It requires "at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." The Court emphasized that it was "assuming without deciding" that working is a major life activity and that the U.S. Equal Employment Opportunity Commission (EEOC) regulations interpreting "substantially limits" are reasonable.[10] The Court then found that, even using the EEOC interpretation, the plaintiffs in *Sutton* failed to allege adequately that their vision is regarded as an impairment that substantially limits them in a major life activity. Being precluded from the job of a global airline pilot was not sufficient since they could obtain other, although less lucrative, jobs as regional pilots or pilot instructors.

The "regarded as" prong was directly at issue in *Murphy*. In *Murphy*, the Court held that the fact that an individual with high blood pressure was unable to meet the Department of Transportation (DOT) safety standards was not sufficient to create an issue of fact regarding whether an individual is regarded as unable to utilize a class of jobs. The Court in *Murphy* found that an employee is regarded as having a disability if the covered entity mistakenly believes that the employee's actual,

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[9] (...continued)
substantially limits one or more major life activities must be made considering the mitigating measures he employs, and *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555 (1999), where the Court held unanimously that the ADA requires proof that the limitation on a major life activity by the impairment is substantial.

[10] The Court noted that the ADA did not specifically give any agency the authority to interpret the term *disability* but that because both parties to *Sutton* accepted the regulation as valid "we have no occasion to consider what deference they are due, if any."

nonlimiting impairment substantially limits one or more major life activities. Like *Sutton*, the holding in *Murphy* emphasized the numerous other jobs available to the plaintiff.

Justices Stevens and Breyer dissented from the majority's opinions in *Sutton* and *Murphy*, arguing that "in order to be faithful to the remedial purpose of the Act, we should give it a generous, rather than a miserly, construction." The dissenters found that the statutory scheme was best interpreted by looking only to the existence of an impairment that substantially limits an individual either currently or in the past since "this reading avoids the counterintuitive conclusion that the ADA's safeguards vanish when individuals make themselves more employable by ascertaining ways to overcome their physical or mental limitations."

Albertsons, Inc. v. Kirkingburg

Albertsons[11] involved a truck driver with monocular vision who alleged a violation of the ADA based on the refusal of his employer to retain him pursuant to the use of a waiver. The truck driver did not meet the general vision standards set by DOT for drivers of commercial vehicles, although he did qualify for a waiver. The Supreme Court, in a unanimous decision, held that an employer does not have to participate in an experimental waiver program.

Although the Court did not need to address definitional issues in *Albertsons*, it did so to "correct three missteps the Ninth Circuit made in its discussion of the matter." The Supreme Court found there was no question regarding the fact that the plaintiff had a physical impairment; the issue was whether his monocular vision "substantially limits" his vision. The ninth circuit had answered this question in the affirmative, but the Supreme Court disagreed. First, it found that to be substantially limiting, a condition must impose a "significant restriction" on a major life activity, not a "difference" as determined by the ninth circuit. Second, in determining whether there is a disability, the individual's ability to compensate for the impairment must be taken into consideration. Third, the existence of a disability must be determined on a case-by-case basis.

Toyota Motor Manufacturing v. Williams

The Supreme Court in *Toyota Motor Manufacturing v. Williams*[12] examined whether the plaintiff was an individual with a disability under the first prong of the definition of "individual with a disability"; that is, whether she had a physical or mental impairment that substantially limits a major life activity. There was no dispute regarding the fact that the plaintiff's carpal tunnel syndrome and tendinitis were physical impairments. The difference of opinion involved whether these impairments *substantially* limited the plaintiff in the major life activity of performing manual tasks. To resolve this issue, Justice O'Connor, writing for the unanimous Court, determined that the word *substantial* "clearly precluded impairments that interfere

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[11] 527 U.S. 555 (1999).

[12] 534 U.S. 184 (2002).

in only a minor way with the performance of manual tasks." Similarly, the Court found that the term "major life activity" "refers to those activities that are of central importance to daily life." Finding that these terms are to be "interpreted strictly,"[13] the Court held that "to be substantially limited in performing manual tasks, 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." Significantly, the Court also stated that "[t]he impairment's impact must also be permanent or long-term." The Supreme Court's opinion emphasized the need for an individualized assessment of the effect of the impairment. Justice O'Connor found it insufficient to merely submit evidence of a medical diagnosis of an impairment; rather, the individual must offer evidence that the extent of the impairment in their own situation is substantial.[14]

Lower Court Decisions

Introduction

The Supreme Court's decisions on the definition of disability have spawned numerous lower court cases generally limiting the situations where an individual is determined to be an individual with a disability. A publication by the National Council on Disability (NCD) concluded that "the Supreme Court's ADA decisions have dramatically undermined the ability of individuals with disabilities to enforce their right to be free from discrimination."[15] On the other hand, groups representing employers have lauded the decisions as "good news for management."[16] Selected lower court decisions will be briefly examined.

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[13] Confirmation of the need for strict interpretation was found by the Court in the ADA's statement of findings and purposes, in which Congress stated that "some 43,000,000 Americans have one or more physical or mental disabilities." [42 U.S.C. §12101(a)(1)] Justice O'Connor observed that "if Congress had intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher."

[14] For a more detailed discussion of this decision, see CRS Report RS21105, *The Americans with Disabilities Act: Toyota Motor Manufacturing v. Williams*, by Nancy Lee Jones.

[15] National Council on Disability, "The Impact of the Supreme Court's ADA Decisions on the Rights of Persons with Disabilities" (Feb. 25, 2003), No. 7 of the Americans with Disabilities Act Policy Brief Series: Righting the ADA, [http://www.ncd.gov/newsroom/publications/2003/decisionsimpact.htm].

[16] Kenneth S. Knuckey, Esq., "More Good News for Management: The Supreme Court Further Limits the Scope and Application of the Americans with Disabilities Act," [http://www.semmes.com/publications_archive/labor_employment/labor2.htm].

Mitigating Measures

In *Sutton* and *Murphy*, the Supreme Court held that measures that mitigate an individual's impairment must be taken into consideration when determining whether an individual is an individual with a disability. Lower courts have applied this holding in various factual situations. For example, in *Orr v. Wal-Mart Stores, Inc.*,[17] the eighth circuit found that a pharmacist with diabetes who takes insulin and eats a special diet was not an individual with a disability because, with the medication and diet, the diabetes did not substantially affect a major life activity. Similarly, in *Cotter v. Ajilon Services, Inc.*,[18] the sixth circuit emphasized the individualized nature of an inquiry into whether an individual is disabled and found that, in the case presented, colitis did not substantially limit a major life activity, despite the fact that the plaintiff's doctor had ordered frequent breaks and the avoidance of prolonged overtime.[19]

Not all courts have rejected the arguments of plaintiffs regarding their disability. For example, in *Belk v. Southwestern Bell Telephone Co.*,[20] the court found that the plaintiff was disabled in the major life activity of walking because he has to wear a leg brace as a result of polio. The employer had argued that since he could walk and engage in many physical activities, such as hunting and fishing, he was not disabled. The eighth circuit observed that "unlike the petitioners in *Sutton*, Belk's brace does not allow him to function the same as someone who never had polio. Therefore, he is clearly 'disabled' as defined by the ADA."

Another issue that has been raised regarding mitigating measures is whether an individual with a disability is required to take medication to alleviate his or her condition.[21] In a case involving an individual with asthma, the Maryland district court denied the ADA claim and stated: "Since plaintiff's asthma is correctable by medication and since she voluntarily refused the recommended medication, her asthma did not substantially limit her in any major life activity. A plaintiff who does not avail herself of proper treatment is not a 'qualified individual' under the ADA."[22] Similarly, in *Spradley v. Custom Campers, Inc.*,[23] the plaintiff worked at the company's manufacturing plant and was terminated for safety reasons after he had

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[17] 297 F.3d 720 (8th Cir. 2002), *cert.* denied, 571 U.S. 1070 (2004).

[18] 287 F.3d 593 (6th Cir. 2002).

[19] For a discussion and listing of other cases that have not found ADA coverage, see National Council on Disability, "The Impact of the Supreme Court's ADA Decisions on the Rights of Persons with Disabilities" (Feb. 25, 2003), No. 7 of the Americans with Disabilities Act Policy Brief Series: Righting the ADA, [http://www.ncd.gov/newsroom/publications/2003/decisionsimpact.htm].

[20] 194 F.3d 946 (8th Cir.1999).

[21] For a more detailed discussion of this issue, see Jill Elaine Hasday, "Mitigation and the Americans with Disabilities Act," 103 Mich. L. Rev. 217 (2004).

[22] *Tangires v. The Johns Hopkins Hospital,* 79 F.Supp.2d 587 (D. Md. 2000), aff'd 230 F.3d 1354 (2000).

[23] 68 F. Supp.2d 1225 (D. Kansas 1999).

seizures at work. On both occasions, when the plaintiff had seizures at work, he was not taking medication to control his seizures. The district court, finding in favor of the company, noted that the Supreme Court had held that conditions controlled by corrective measures do not substantially limit a major life activity — implying, but not directly stating, that the plaintiff had some responsibility to take his medication.

However, in *Finical v. Collections Unlimited, Inc.*,[24] a hearing-impaired individual alleged that she was fired when she requested a telephone with an amplifying headset. The employer argued that she should be evaluated with a hearing aid, but the plaintiff had not used a hearing aid because she had found that it picked up too much background noise. The court rejected the employer's argument, finding that *Sutton's* individualized inquiry does not permit an employer to consider the use of corrective devices that are not actually used. In *Rodriguez v. Conagra Grocery Products Co.*,[25] the court rejected an argument that the plaintiff did not control his diabetes by finding that the employer had failed to follow the ADA requirement for an individualized assessment. "Without such an individualized assessment," the court observed, the employer "had no way of knowing whether Rodriguez's presumed failure to control his diabetes would actually prevent him from performing the requirements of the position."

Major Life Activity of Working

As was suggested by the recent Supreme Court decisions, it has been difficult for plaintiffs to prove that they are limited in the major life activity of working. For example, in *Broussard v. University of California*,[26] an employee with carpal tunnel syndrome was not found to be substantially limited in the major life activity of working because she was able to be employed in a wide range of jobs. Using the same rationale, a Utah nurse with multiple sclerosis was not found to be disabled since she was limited in performing one nursing position rather than a broad range of positions.[27] And in *Webb v. Clyde L. Choate Mental Health and Development Center*,[28] the court found that a psychologist who suffered from severe asthma, osteoporosis, and a weakened immune system was not impaired in the major life activity of working because he was not precluded from employment in other settings.

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[24] 65 F.Supp.2d 1032 (D.Ariz. 1999).

[25] 2006 U.S. App. LEXIS 565 (5th Cir. January 10, 2006).

[26] 192 F.3d 1252 (9th Cir. 1999).

[27] *Sorensen v. University of Utah Hospital*, 194 F.3d 1084 (10th Cir. Oct. 14, 1999). See also, *Sinkler v. Midwest Property Management LTD. Partnership*, 209 F.3d 678 (7th Cir. 2000), where an employee with a phobia about driving in unfamiliar locations was found not to be substantially limited in the major life activity of working, and *Guzman-Rosario v. United Parcel Service, Inc.,* 397 F.3d 6 (1st Cir. 2005), where the court found that the occasional need to sit down and the occasional inability to come to work because of dizziness and pain did not create a substantial limitation in the major life activity of working.

[28] 230 F.3d 991 (7th Cir. 2000).

In the recent case of *Nuzum v. Ozark Automotive Distributors, Inc.*,[29] a restriction on the amount of weight the plaintiff could lift was not sufficient to establish a limitation on working. The eighth circuit noted that the major life activity of working was to be evaluated with regard to the individual's expertise, background, and job expectations, and that this made it possible that a limitation on lifting would affect the life activity of working. However, the case presented no evidence on this point, and the fact that the plaintiff obtained another similar job was found to negate the argument regarding having a disability. The court observed that the "ability to do another job of the same general class is inconsistent with a substantial limitation on the major life activity of working."[30]

However, in *Fjellestad v. Pizza Hut of America*,[31] the eighth circuit examined what it meant to be substantially limited in the major life activity of working and found that a unit manager who suffered a permanent 30% impairment of her upper right extremity was a person with a disability. The court observed that the ADA was concerned with preventing a significant reduction in a person's real work opportunities and phrased the issue as "whether the particular impairment constitutes for the particular person a significant barrier to employment." It was not necessary to show that no employment opportunities existed; statistics showing a 91% reduction in employability and a 95% reduction in labor market access were sufficient.

"History of" an Impairment

The second prong of the definition of disability under the ADA is having a history of a disability. Recent lower court decisions have not found ADA coverage under the "history of a disability." For example, in *Doebele v. Sprint/United Management Co.*,[32] the tenth circuit rejected the employee's argument for coverage, finding that although her mental impairments were severe, the periods of actual impairment were of limited duration and thus did not meet the requirement for having a record of a disability. The employee had been diagnosed with bipolar disorder, attention deficit disorder, and hypothroidism.

Being "Regarded as" Having an Impairment

The being "regarded as" prong of the definition of disability has as its purpose the protection of individuals from stereotypical assumptions that do not reflect the individual's ability.[33] In *Doebele v. Sprint/United Management Co.*, *supra*, the tenth circuit interpreted *Sutton* to require proving that the employer regarded the employee as unable to perform a broad category of jobs, not just one specific job, to be

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[29] 432 F.3d 839 (8th Cir. 2005).

[30] See also *Knutson v. Ag Processing. Inc.,* 394 F.3d 1047 (8th Cir. 2005).

[31] 188 F.3d 944 (8th Cir. 1999), rehearing en banc and rehearing denied, 1999 U.S. App. LEXIS 25675 (Oct. 13, 1999).

[32] 342 F.3d 1117 (10th Cir. 2003).

[33] *Sutton v. United Airlines,* 527 U.S. 471, 489 (1999).

regarded as limited in the major life activity of working.[34] Other courts have held that there must be medical evidence in order to be regarded as having a disability. For example, in *Brunke v. Goodyear Tire and Rubber Co.*,[35] the eighth circuit held that the employer did not regard the employee as having a disability, even though the employee had been disciplined for confrontations and told to seek anger control assistance because there was no medical evidence of mental or psychological disorder. Similarly, the seventh circuit in *Tockes v. Air-Land Transport Services*,[36] found that a truck driver who had been awarded a 20% disability from the Army due to an injured hand, and who was fired after he was observed using only one hand in fastening a load to the bed of the truck, was not regarded as having a disability. The court accepted the plaintiff's contentions that the defendant told him he was being fired because of his disability but found no ADA violation, stating: "What defeats Tockes' suit is that there is no evidence that his employer harbored the erroneous belief that he was disabled *within the meaning of the Act*... It is true that if Tockes is believed, the defendant called him 'crippled' and 'disabled' and 'handicapped,' but all are words with a range of meanings and do not without more connote a belief that the individuals is under the protection of the ADA."[37]

However, there have been cases where plaintiffs were successful in alleging that they were regarded as having a disability. For example, in *Rodriguez v. Conagra Grocery Products Co.*,[38] the fifth circuit held that an individual with diabetes who was denied a job because the company's physician believed that he was not controlling his diabetes was regarded as having a disability. The plaintiff had proved that his diabetes was not substantially limiting and that the employer had regarded him as precluded from a wide range of jobs. Similarly, in *Quiles-Quiles v. United State Postal Service*,[39] the first circuit examined the "regarded as" aspect of the definition and found that numerous statements by the plaintiff's supervisors concerning the plaintiff's psychiatric treatment indicated that they regarded him as potentially violent because of his mental impairment. These remarks were found to suggest a shared belief that the plaintiff was substantially limited in the major life activity of working, and the evidence was deemed sufficient to allow the jury to determine that the supervisors regarded the plaintiff as having a disability and unable to perform a broad class of jobs.

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[34] See also *Knutson v. Ag Processing, Inc.*, 394 F.3d 1047 (8th Cir. 2005), where the court emphasized that to be regarded as having a disability, an individuals must be regarded as being unable to perform a broad class of jobs.

[35] 344 F.3d 819 (8th Cir. 2003).

[36] 343 F.3d 895 (7th Cir. 2003), *cert. denied* 540 U.S. 1179 (2004).

[37] At 896. For other similar cases, see National Council on Disability, "The Impact of the Supreme Court's ADA Decisions on the Rights of Persons with Disabilities" (Feb. 25, 2003), No. 7 of the Americans with Disabilities Act Policy Brief Series: Righting the ADA, [http://www.ncd.gov/newsroom/publications/2003/decisionsimpact.htm].

[38] 2006 U.S. App. LEXIS 565 (5th Cir. Jan. 10, 2006).

[39] 2006 U.S. App. LEXIS 4047 (1st Cir. Feb 21, 2006). Although *Quiles-Quiles* was brought under section 504 of the Rehabilitation Act, 29 U.S.C. §794, the definition and analysis are the same as that under the ADA.

Once an individual has been successful in alleging that he or she was regarded as having a disability, the issue has arisen of whether reasonable accommodation is required. The third circuit has indicated that reasonable accommodation may be required in these situations,[40] whereas other circuits have rejected the application of reasonable accommodation.[41]

State Statutes

Since the Supreme Court's interpretation of the ADA's definition of disability in *Sutton* and subsequent decisions, several states have either enacted state statutes providing for a broader definition or had state judicial interpretations of the state's statutes providing a broader interpretation.[42] California's statute, for example, states:

> Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.[43]

A recent study examined the disability claim filing statistics and the judicial decisions in California and Massachusetts to determine whether there was an increase in claims due to the changes in the state law. The study concluded that the number

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[40] See, e.g., *Williams v. Philadelphia Housing Authority Police Department,*380 F.3d 751 (3d Cir. 2004), *cert.* denied, 545 U.S__ (2005), 124 S.Ct. 1725 (2005), 161 L.Ed.2d 602 (2005).

[41] See, e.g., *Weber v. Strippit, Inc.,* 186 F.3d 907 (8th Cir. 1999), *cert.* denied, 528 U.S. 1078 (2000). For a detailed examination of this issue see Cynthia A. Crain, "The Struggle for Reasonable Accommodation for 'Regarded As' Disabled Individuals," 74 U. Cinn. L. Rev. 167 (Fall 2005).

[42] See Cal. Gov't Code §12926.1(c)(discussed by Michael L. Murphy, Comment, *Assembly Bill 2222: California Pushes and Breaks the Disability Law Envelope,* 51 Cath. U. L.Rev. 495 (2002); Mass. Gen. Laws ch. 151B, §1(17); R.I. Gen Laws §42-87-1(1); N.Y. Exec. Law §292(21).

[43] Cal. Gov't Code §12926.1(c).

of filings decreased in Massachusetts, whereas the increase in California appeared to be part of a larger trend caused by population growth.[44]

[44] Katherine Hsu Hagmann-Borenstein, Note, *Much Ado About Nothing: Has the U.S. Supreme Court's Sutton Decision Thwarted a Flood of Frivolous Litigation?* 37 Conn. L.Rev. 1121 (Summer 2005).