CONCEPTS UNDERLYING THE ADA

When dealing with the Americans with Disabilities Act (ADA), it is important to understand the concepts behind it and why the law was enacted. One reason it was enacted was the extreme cost to the federal government of supporting people with disabilities who could be productive members of the work force, especially where employers without undue burden or undue hardship can bear the cost of reasonable accommodations.¹

It is important to discuss the fundamental premise behind the ADA in order to prevent confusion when it comes to applying the law. The ADA is not an affirmative action statute. Instead, its purpose is to enable people with disabilities to be placed at the same “starting line” as those who are nondisabled. The Equal Opportunity Employment Commission’s (EEOC’s) phrase is “equal opportunity to attain the same level of performance as his/her colleagues.”² In the workplace, it is then up to the employee to demonstrate what he or she can do. In the context of using governmental programs and places of public accommodations, getting the person with a disability to the
same starting line gives him or her the opportunity to take advantage of the same services, activities, and businesses everyone else uses.

The starting-line analogy is useful in other respects as well. Plaintiff advocates should find it very helpful, since it appeals to Americans’ sense of fair play. This concept also works very well in educating employees about accommodating a person with a disability. It is quite common for a person without a disability to believe that a person with a disability who is being accommodated is obtaining some sort of advantage. A true reasonable accommodation does no such thing. It simply gives the person with a disability an equal chance.

Finally, the reader needs to keep in mind that the ADA is an extremely broad law. It affects almost all areas of the legal universe in some way. The ADA applies to private employers of 15 or more employees, nonfederal governmental entities of any size, and places of public accommodations. There are also provisions applying to transportation, relay systems for the deaf, and certain miscellaneous provisions, such as those pertaining to retaliation claims.

KEY DEFINITIONS

Because the ADA deals with discrimination against persons with disabilities, perhaps the key definition is the word disability. When people think of disabilities, they generally think of persons in wheelchairs or with severe vision impairments. However, the definition of disability under the ADA is far broader. A person has a disability under the ADA if he or she:

- has a physical or mental impairment that substantially limits one or more of life’s major activities;
- has a record of such an impairment regardless of whether he or she currently is substantially limited in a major life activity; or
- is regarded as having such an impairment.3

Before the American with Disabilities Act Amendments Act (ADAAA), which became effective January 1, 2009, there was tremendous litigation over whether a person was substantially limited in a major life activity. According to an EEOC regulation, “substantial limitation” referred to an individual who was unable to perform, or was significantly limited in the ability to perform, an activity an average person in
the general population can perform. Under this theory, a person who is deaf does not have the ability to hear compared to an average person, so the person who cannot hear has a disability. However, as mentioned in the last edition of this book, the U.S. Supreme Court’s decision in Toyota Motor Mfg., Kentucky, Inc. v. Williams superseded the EEOC regulations on this issue when it held that to be substantially limited in performing manual tasks meant that the person had to have to have an impairment that prevented or severely restricted the individual from performing such tasks.

The Supreme Court reached that conclusion by relying on a standard dictionary in combination with the principle that the ADA as originally written did not give regulatory bodies the right to implement definitional terms of the ADA. With some exceptions, the courts extended the Toyota Motor definition to all disabilities. The ADAAA overruled the EEOC regulation and Toyota Motor’s holding as to what it meant to be substantially limited in the major life activity. More specifically, the ADAAA specifically states that the EEOC standard, which was far higher than the Toyota Motor standard, was still too high. The ADAAA also states that it specifically rejects the standard Toyota Motor set with respect to what it meant to be substantially limited in a major life activity. Finally, as mentioned above, the ADAAA said that regulatory bodies have the authority to implement definitional terms, and the EEOC took advantage of that authority in its final regulations implementing the ADA Amendments Act of 2008. In its final regulations, the EEOC defined “substantially limits” as being a matter of whether the person is substantially limited in a major life activity as compared to most people in the general population. While a person no longer needs to be “severely restricted” or “prevented” or even “significantly restricted” to be substantially limited in a major life activity, the plain language of the term suggests something more than de minimus.

With respect to substantial limitation, the ADAAA also has a couple of other things to say. First, the ADAAA says that to show a substantial limitation, a person does not need to show that an impairment impacts more than one major life activity. Second, an impairment that is episodic or in remission is still considered a disability if it would substantially limit a major life activity when active. This “episodic” language is very significant for people with certain kinds of disabilities. For ex-