

TABLE OF CONTENTS

CHAPTER ONE:	INTRODUCTION	1
I.	THE REHABILITATION ACT OF 1973.....	2
II.	THE AMERICANS WITH DISABILITIES ACT	3
A.	WHO IS PROTECTED BY THE ADA AND REHABILITATION ACT?.....	3
B.	CERTAIN PROVISIONS OF THE ADA APPLY TO EVERYONE.....	4
III.	THE AMERICANS WITH DISABILITIES AMENDMENTS ACT OF 2008.....	4
A.	EEO INVESTIGATIONS OF DISABILITY CLAIMS PRESENT UNIQUE REQUIREMENTS.....	7
IV.	THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008	8
V.	THE PREGNANT WORKERS FAIRNESS ACT	8
CHAPTER TWO:	WHO IS COVERED BY THE ADA?	9
I.	DEFINITION OF A DISABILITY	9
A.	"PHYSICAL OR MENTAL IMPAIRMENT"	11
1.	Physical Characteristics and Personality Traits Are Not Impairments Within the Meaning of ADA.....	11
B.	MAJOR LIFE ACTIVITIES	11
1.	Substantially Limited in Major Life Activities	12
2.	Substantially Limited After the ADAAA	12
3.	Predictable Assessment: Impairments so Likely to Be Substantially Limiting That Little or No Analysis Is Required	14
4.	Individualized Assessment: Considering the Condition, Manner or Duration of the Impact of the Impairment on Major Life Activities	14
5.	Mitigating Measures	15
C.	OTHERWISE "QUALIFIED INDIVIDUAL WITH A DISABILITY"	17
1.	Essential Functions	17
2.	Determination of Whether an Individual Has a Disability Is Made on a Case-By-Case Basis	18
3.	The ADAAA Reversed Previous Law and Provides That the Determination as to Whether an Individual Has a Disability Is Made Without Regard to the Ameliorative Effects of Mitigating Measures	19
CHAPTER THREE:	WHO IS NOT COVERED BY THE ADA?.....	21
I.	THE ADAAA AND ACCOMPANYING REGULATIONS FOCUS ON WHETHER THE ILLNESS SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY, NOT THE LENGTH OF THE ILLNESS.....	21
II.	APPLICATION OF THE ADA TO DRUG ADDICTION & ALCOHOLISM	22
A.	THE EEOC PREVIOUSLY REQUIRED FEDERAL EMPLOYERS TO OFFER EMPLOYEES A FIRM CHOICE BETWEEN DISCIPLINE AND TREATMENT FOR ALCOHOLISM	24
B.	CURRENT USERS OF ILLEGAL DRUGS ARE EXCLUDED FROM THE DEFINITION OF "QUALIFIED INDIVIDUAL WITH DISABILITY"	26
C.	EMPLOYERS MAY NOT DISCRIMINATE AGAINST EMPLOYEES WITH A HISTORY OF ADDICTION WHO ARE NO LONGER ENGAGING IN ILLEGAL USE OF DRUGS	27
III.	PREGNANCY IS NOT A DISABILITY BUT AN EMPLOYER MUST CONSIDER ACCOMMODATIONS UNDER THE PWFA	28
CHAPTER FOUR:	INDIVIDUALS WITH A DISABILITY	31
I.	WHEN IS AN INDIVIDUAL SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY?	32

II.	SPECIFIC MAJOR LIFE ACTIVITIES	36
A.	DRIVING A MOTOR VEHICLE IS NOT A MAJOR LIFE ACTIVITY	37
B.	LEARNING	38
C.	LIFTING	38
D.	WORKING	45
III.	MITIGATING MEASURES AND ASSISTIVE DEVICES	48
A.	THE ADAAA SPECIFICALLY STATES THAT THE DETERMINATION AS TO WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITS AN EMPLOYEE SHOULD BE MADE WITHOUT CONSIDERATION OF MITIGATING MEASURES	48
B.	PRIOR TO THE EFFECTIVE DATE OF THE ADAAA, MITIGATING MEASURES WERE CONSIDERED IN DETERMINING WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITED AN EMPLOYEE	49
CHAPTER FIVE: “QUALIFIED INDIVIDUAL WITH A DISABILITY”		51
I.	DETERMINING THE ESSENTIAL FUNCTIONS OF THE JOB	71
A.	FACTORS TO BE CONSIDERED IN DETERMINING THE ESSENTIAL FUNCTIONS OF THE JOB	76
B.	AN EMPLOYER DOES NOT HAVE TO REASSIGN ESSENTIAL FUNCTIONS OF THE JOB	76
C.	WHERE MARGINAL FUNCTIONS ARE ASSIGNED TO OTHER EMPLOYEES AS PART OF JOB RESTRUCTURING, OTHER MARGINAL FUNCTIONS MAY BE ASSIGNED INSTEAD	77
D.	THE EEOC DOES NOT CONSIDER ATTENDANCE TO BE AN ESSENTIAL FUNCTION OF THE JOB	77
CHAPTER SIX: A RECORD OF SUCH AN IMPAIRMENT		81
CHAPTER SEVEN: REGARDED AS HAVING A DISABILITY		91
I.	POST-ADAAA CASES APPLYING REGARDED AS STANDARD	94
CHAPTER EIGHT: SPECIFIC IMPAIRMENTS		99
I.	MITIGATING MEASURES AND ASSISTIVE DEVICES	100
A.	TO BE SUBSTANTIALLY LIMITED MEANS SIGNIFICANTLY RESTRICTED AS COMPARED TO THE AVERAGE PERSON IN THE GENERAL POPULATION	101
1.	Focus Should Be on the Manner of Performing or Duration That the Major Life Activity Can Be Done	101
2.	Under Pre-ADAAA Analysis, the Impact on Major Life Activities Had to Be Long-Term or Potentially Long-Term	101
II.	SPECIFIC IMPAIRMENTS CONSIDERED IN EEOC DECISIONS	102
A.	ALCOHOLISM	102
B.	ALLERGIES	104
1.	Latex	107
C.	ANKLE INJURY	108
D.	ANXIETY	108
1.	Anxiety Attacks	108
2.	Anxiety Disorders	109
E.	ARTHRITIS	111
F.	ASPERGER’S SYNDROME	113
G.	ASTHMA	113
H.	ATTENTION DEFICIT DISORDER (ADD)	115
I.	BACK IMPAIRMENTS AND INJURIES	119
J.	BROKEN BONES (FRACTURES)	122
K.	CANCER	124
1.	Breast Cancer	124
2.	Lung Cancer	125
L.	CARDIOVASCULAR IMPAIRMENTS	127

M.	CARPAL TUNNEL SYNDROME.....	128
N.	CHEMICAL SENSITIVITY	130
O.	COLORBLINDNESS	131
P.	COVID-19 AND LONG COVID	131
Q.	CROHN'S DISEASE.....	132
R.	DEGENERATIVE DISC DISEASE	132
S.	DELUSIONAL DISORDER.....	133
T.	DERMATITIS	133
U.	DIABETES	133
V.	DRUG ADDICTION.....	139
W.	DYSLEXIA	141
X.	EPILEPSY	141
Y.	FATIGUE	142
Z.	FIBROMYALGIA	142
AA.	FLAT FEET.....	144
BB.	HEARING IMPAIRMENTS	144
CC.	HEEL SPURS	151
DD.	HEPATITIS.....	151
EE.	HIP REPLACEMENT.....	152
FF.	HIV (HUMAN IMMUNODEFICIENCY VIRUS)	152
GG.	HYPERTENSION	152
HH.	INFERTILITY.....	153
II.	INSOMNIA.....	153
JJ.	INTELLECTUAL DISABILITIES	154
KK.	KNEE INJURIES.....	154
LL.	MEDICATION—SIDE EFFECTS OF	157
MM.	MENIERE'S DISEASE.....	157
NN.	MENTAL IMPAIRMENTS	157
	1. Bipolar Disorder	157
	2. Depression.....	158
	3. Obsessive Compulsive Disorder	161
OO.	MIGRAINE HEADACHES	162
PP.	MULTIPLE SCLEROSIS	163
QQ.	NARCOLEPSY.....	164
RR.	OBESITY.....	164
SS.	POST-TRAUMATIC STRESS DISORDER (PTSD).....	165
TT.	PREGNANCY	166
UU.	PSYCHOTIC IMPAIRMENTS.....	167
VV.	PULMONARY EMBOLI.....	168
WW.	ROTATOR CUFF INJURIES.....	168
XX.	SEIZURE DISORDER	168
YY.	SINUSITIS	169
ZZ.	SLEEP APNEA	169
AAA.	SPINE AND MUSCLE IMPAIRMENTS.....	170
BBB.	STRESS	172
CCC.	TEMPORARY OR TRANSITORY IMPAIRMENTS.....	175
DDD.	TENDONITIS.....	177
EEE.	THROMBOPHLEBITIS.....	177
FFF.	UTERINE FIBROID TUMORS	178
GGG.	VISION IMPAIRMENTS.....	178
	1. Monocular Vision.....	181
HHH.	WASTE ELIMINATION	183

CHAPTER NINE: REASONABLE ACCOMMODATION185

I.	WHAT IS REASONABLE ACCOMMODATION?	185
II.	REASONABLE ACCOMMODATION DEFINED	186
III.	REQUESTING REASONABLE ACCOMMODATION.....	187

IV.	REASONABLE ACCOMMODATION MUST BE REQUESTED BY (OR ON BEHALF OF) THE EMPLOYEE.....	188
V.	THE NEED FOR REASONABLE ACCOMMODATION MUST BE RELATED TO A DISABILITY	191
VI.	A REASONABLE ACCOMMODATION MUST BE AN EFFECTIVE ACCOMMODATION.....	193
VII.	AN EMPLOYER IS NOT OBLIGATED TO MODIFY OR REMOVE ESSENTIAL JOB DUTIES	197
	A. TEMPORARILY REMOVING AN ESSENTIAL FUNCTION OF THE JOB DOES NOT SUBJECT THE EMPLOYER TO LIABILITY FOR NOT CONTINUING TO EXCUSE THE JOB TASK AS AN ACCOMMODATION	197
VIII.	EMPLOYEE IS NOT NECESSARILY ENTITLED TO ACCOMMODATION OF HIS OR HER CHOICE.....	202
IX.	EMPLOYEE IS NOT ENTITLED TO REASSIGNMENT TO A DIFFERENT SUPERVISOR AS A REASONABLE ACCOMMODATION.....	207
X.	REGULAR ATTENDANCE IS NOT AN ESSENTIAL FUNCTION OF ANY POSITION	207
XI.	AN EMPLOYER IS NOT REQUIRED TO CREATE A POSITION AS A MEANS OF REASONABLE ACCOMMODATION.....	207
XII.	THE INTERACTIVE PROCESS	210
	A. THE INTERACTIVE PROCESS REQUIRES AN EMPLOYER TO SEEK REASONABLE ACCOMMODATION IN GOOD FAITH.....	211
	B. THE FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IS NOT, IN ITSELF, A VIOLATION	212
XIII.	AN EMPLOYER IS ENTITLED TO REASONABLE DOCUMENTATION TO DEMONSTRATE THE INDIVIDUAL HAS A DISABILITY AND TO EVIDENCE THE NEED FOR ACCOMMODATION	217
XIV.	A REQUEST FOR REASONABLE ACCOMMODATION DOES NOT REQUIRE AN EMPLOYER TO EXCUSE PAST MISCONDUCT	219
XV.	PRIOR TO THE PASSAGE OF THE ADA AMENDMENTS ACT OF 2008 THERE WAS A DISPUTE AMONG THE COURTS OF APPEALS AS TO WHETHER AN EMPLOYEE REGARDED AS HAVING A DISABILITY WAS ENTITLED TO REASONABLE ACCOMMODATION	220
XVI.	REASONABLE ACCOMMODATION AND THE FMLA	224
XVII.	AN UNREASONABLE DELAY IN PROVIDING REASONABLE ACCOMMODATION IS TANTAMOUNT TO A DENIAL OF ACCOMMODATION..	224
CHAPTER TEN: SPECIFIC ACCOMMODATION.....		235
I.	TYPES OF REASONABLE ACCOMMODATION	235
	A. ADDITIONAL TIME.....	235
	B. ERGONOMIC STUDIES	236
	C. FLEXIBLE WORK SCHEDULE	236
	D. FURNITURE.....	237
	E. HANDRAIL	238
	F. INTERPRETERS	239
	G. LEAVE (PERMITTING USE OF LEAVE FOR REASONS RELATED TO A DISABILITY)	240
	H. LIMITED OR LIGHT DUTY.....	243
	I. MAKING EXISTING FACILITIES ACCESSIBLE	245
	J. NOTE TAKERS.....	247
	K. PARKING SPACE	248
	L. RAMPS.....	249
	M. REMOVING MARGINAL FUNCTIONS OF THE JOB.....	249
	N. SCHEDULE CHANGES; MODIFIED WORK SCHEDULES	249
	O. SICK LEAVE	253
	P. TELEWORK.....	253

Q.	TRANSFER OF WORK STATION	265
R.	UNPAID LEAVE (USE OF)	266
S.	VOICE RECOGNITION SOFTWARE	267
II.	REASSIGNMENT: THE ACCOMMODATION OF LAST RESORT	268
CHAPTER ELEVEN: THE UNDUE HARDSHIP DEFENSE		279
CHAPTER TWELVE: THE DIRECT THREAT DEFENSE		293
I.	EMPLOYERS ARE NOT REQUIRED TO HIRE OR RETAIN INDIVIDUALS WHO CANNOT SAFELY PERFORM THE JOB	293
II.	DIRECT THREAT DEFINED	293
A.	INDIVIDUALIZED ASSESSMENT—DOES THE INDIVIDUAL POSE A SIGNIFICANT RISK TO THE HEALTH OR SAFETY OF OTHERS BECAUSE OF A DISABILITY?	293
B.	CAN THE SIGNIFICANT RISK BE ELIMINATED BY REASONABLE ACCOMMODATION?	295
CHAPTER THIRTEEN: THE GOOD FAITH DEFENSE TO A CLAIM FOR COMPENSATORY DAMAGES		329
I.	COMMISSION CASES WHERE EMPLOYER PREVAILED ON GOOD FAITH DEFENSE	330
II.	COMMISSION CASES WHERE EMPLOYER COULD NOT ESTABLISH GOOD FAITH DEFENSE	334
CHAPTER FOURTEEN: DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS		343
I.	DISABILITY INQUIRIES BEFORE AN OFFER OF EMPLOYMENT IS MADE	344
II.	DISABILITY INQUIRIES AFTER AN OFFER OF EMPLOYMENT IS MADE	347
III.	DISABILITY INQUIRIES AFTER THE BEGINNING OF EMPLOYMENT	350
IV.	PROHIBITIONS AGAINST IMPROPER DISCLOSURE OF CONFIDENTIAL MEDICAL INFORMATION	366
CHAPTER FIFTEEN: OTHER THEORIES OF DISABILITY DISCRIMINATION		377
I.	DISPARATE TREATMENT CLAIMS	377
II.	HARASSMENT ON THE BASIS OF DISABILITY	382
III.	CLASS ACTIONS	386
IV.	ASSOCIATION WITH AN INDIVIDUAL WITH A KNOWN DISABILITY	387
V.	RETALIATION FOR REQUESTING REASONABLE ACCOMMODATION	392
VI.	RETALIATION FOR FILING A WORKERS' COMPENSATION CLAIM	392
VII.	HOLDING EMPLOYEES TO STANDARDS OF PERFORMANCE AND CONDUCT ...	393
TABLE OF CASES		397
INDEX		409

REFERENCE MATERIALS

(DOWNLOAD AT WWW.DEWEYPUB.COM/REFDDLD)

REFERENCE MATERIALS A: THE REHABILITATION ACT OF 1973: SECTIONS 501 AND 505	1
REFERENCE MATERIALS B: THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA), TITLES I AND V	7
REFERENCE MATERIALS C: GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008	27

**REFERENCE MATERIALS D: ADA AMENDMENTS ACT OF 2008
PL 110-325 (S 3406) SEPTEMBER 25, 2008 43**

**REFERENCE MATERIALS E: PRE-ADAAA REGULATIONS:
REGULATIONS TO IMPLEMENT THE EQUAL
EMPLOYMENT PROVISIONS OF THE AMERICANS
WITH DISABILITIES ACT, 29 CFR 163049**

**REFERENCE MATERIALS F: POST-ADAAA REGULATIONS:
REGULATIONS TO IMPLEMENT THE EQUAL
EMPLOYMENT PROVISIONS OF THE AMERICANS
WITH DISABILITIES ACT, 29 CFR 163091**

**REFERENCE MATERIALS G: REGULATIONS TO IMPLEMENT THE GENETIC
INFORMATION NONDISCRIMINATION ACT
OF 2008—29 CFR 1635.....163**

**REFERENCE MATERIALS H: PRE-ADAAA GUIDANCE: ENFORCEMENT
GUIDANCE— REASONABLE ACCOMMODATION
AND UNDUE HARDSHIP UNDER
THE AMERICANS WITH DISABILITIES ACT179**

**REFERENCE MATERIALS I: PRE-ADAAA GUIDANCE: ENFORCEMENT
GUIDANCE—DISABILITY-RELATED INQUIRIES
AND MEDICAL EXAMINATIONS OF EMPLOYEES
UNDER THE AMERICANS WITH DISABILITIES
ACT (ADA).....221**

**REFERENCE MATERIALS J: PRE-ADAAA GUIDANCE: Q & A—ENFORCEMENT
GUIDANCE ON DISABILITY-RELATED INQUIRIES
AND MEDICAL EXAMINATIONS OF EMPLOYEES
UNDER THE AMERICANS WITH DISABILITIES
ACT (ADA).....243**

**REFERENCE MATERIALS K: PRE-ADAAA GUIDANCE: ENFORCEMENT
GUIDANCE—THE AMERICANS WITH
DISABILITIES ACT AND PSYCHIATRIC
DISABILITIES249**

**REFERENCE MATERIALS L: PRE-ADAAA GUIDANCE: ENFORCEMENT
GUIDANCE—WORKERS’ COMPENSATION
AND THE ADA271**

**REFERENCE MATERIALS M: PRE-ADAAA GUIDANCE: ENFORCEMENT
GUIDANCE—PREEMPLOYMENT
DISABILITY-RELATED QUESTIONS
AND MEDICAL EXAMINATIONS287**

**REFERENCE MATERIALS N: PRE-ADAAA GUIDANCE: POLICY GUIDANCE
ON EXECUTIVE ORDER 13164—ESTABLISHING
PROCEDURES TO FACILITATE THE PROVISION
OF REASONABLE ACCOMMODATION301**

**REFERENCE MATERIALS O: PRE-ADAAA GUIDANCE: FACT SHEET—
THE FAMILY AND MEDICAL LEAVE ACT, THE
AMERICANS WITH DISABILITIES ACT, AND
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964319**

REFERENCE MATERIALS P: PRE-ADAAA GUIDANCE: REASONABLE ACCOMMODATIONS FOR ATTORNEYS WITH DISABILITIES.....329

REFERENCE MATERIALS Q: POST-ADAAA GUIDANCE: QUESTIONS AND ANSWERS ABOUT HEARING DISABILITIES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT347

REFERENCE MATERIALS R: POST-ADAAA GUIDANCE: VETERANS AND THE AMERICANS WITH DISABILITIES ACT—A GUIDE FOR EMPLOYERS365

REFERENCE MATERIALS S: POST-ADAAA GUIDANCE: QUESTIONS AND ANSWERS ABOUT DIABETES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT (ADA)373

REFERENCE MATERIALS T: POST-ADAAA GUIDANCE: QUESTIONS & ANSWERS ABOUT PERSONS WITH INTELLECTUAL DISABILITIES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT387

REFERENCE MATERIALS U: POST-ADAAA GUIDANCE: QUESTIONS AND ANSWERS ON THE FINAL RULE IMPLEMENTING THE ADA AMENDMENTS ACT OF 2008401

REFERENCE MATERIALS V: POST-ADAAA GUIDANCE: MENTAL HEALTH CONDITIONS: RESOURCES FOR JOB SEEKERS, EMPLOYEES, AND EMPLOYERS.....411

REFERENCE MATERIALS W: POST ADAAA GUIDANCE: QUESTIONS & ANSWERS ABOUT CANCER IN THE WORKPLACE AND THE ADA415

REFERENCE MATERIALS X: POST-ADAAA GUIDANCE: QUESTIONS & ANSWERS ABOUT EPILEPSY IN THE WORKPLACE AND THE ADA427

REFERENCE MATERIALS Y: POST-ADAAA GUIDANCE: VISUAL DISABILITIES IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT441

REFERENCE MATERIALS Z: POST-ADAAA GUIDANCE: ENFORCEMENT GUIDANCE—PREGNANCY DISCRIMINATION AND RELATED ISSUES465

REFERENCE MATERIALS AA: POST-ADAAA GUIDANCE: EEOC PUBLICATION—EMPLOYER-PROVIDED LEAVE AND THE AMERICANS WITH DISABILITIES ACT509