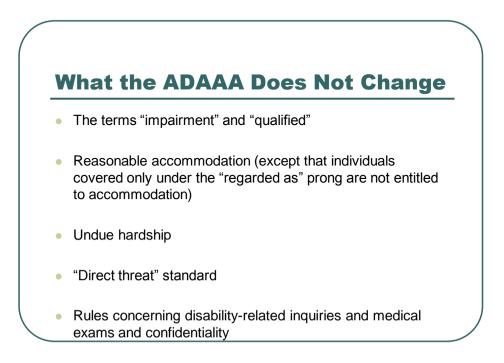
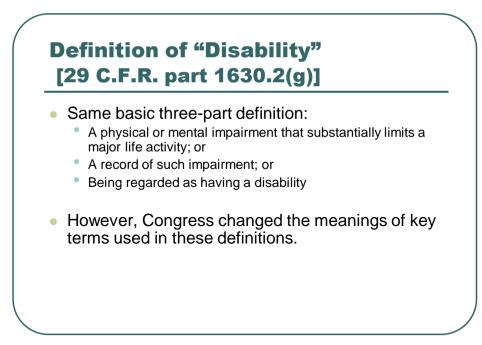
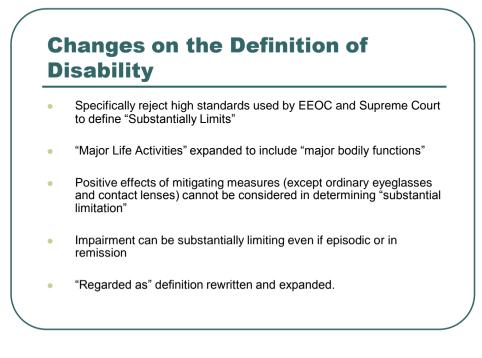




- Congress intended the ADA definition of disability to be construed broadly but courts were finding too many people outside the ADA's protection
- Congress waned to make it much easier for persons with a wide range of impairments to establish disability without much analysis

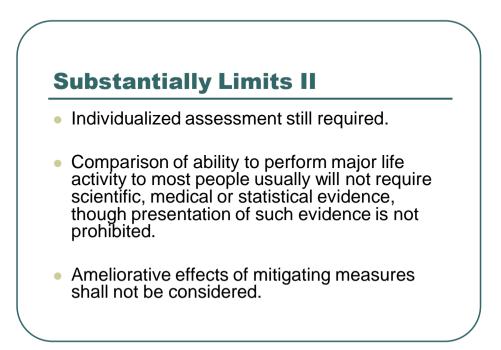








- Substantial limitation shall be construed broadly in favor of expansive coverage.
- Impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. Nonetheless, not every impairment will be a disability.
- Extensive analysis not required: Primary focus should be on a person's qualification for a job, need for reasonable accommodation, or whether discrimination occurred.



Substantially Limits III

- Impairments that are episodic or in remission can be prong one disabilities if the individual is substantially limiting when the condition is active.
- Individual need only be substantially limited in one major life activity (either list) to have a prong one disability.
- No minimum duration requirement; impairment lasting six months or less may be substantially limiting.

Major Life Activities "[29 C.F.R. part 1630.2(i)]

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.
- Functions of the immune system, special sense organs and skin, normal cell growth; digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.
- Also includes operations of an individual organ within a body system, such as the operation of kidney, liver, or pancreas.

Mitigating Measures

[29 C.F.R. part 1630.2(j)(5)]

- Medication (e.g. insulin, anti-depressants, anti-seizure medications, etc.);
- medical supplies, equipment, or appliances, low-vision devices, prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies;
- use of assistive technology (e.g. telephone audio device, computer screen reading program, etc.);
- reasonable accommodations or auxiliary aids or services; and

learned behavioral or adaptive neurological modifications

Ordinary Eyeglasses or Contact Lenses [29 C.F.R. Part 1630.2(j)(6)]

- Lenses that are "intended to fully correct visual acuity or eliminate refractive error" are considered when determining whether someone has a disability.
- Distinguished from low vision devices, which are devices that "magnify, enhance, or otherwise augment a visual image"

Episodic or In Remission

- An impairment that is episodic or in remission is a disability if it would be substantially limiting when active.
- Impairments that may not affect a person 24/7 but which periodically flare up: multiple sclerosis, epilepsy, bipolar disorder and cancer.

Impairments that Usually Will Not Be Disabilities

 Temporary, non-chronic impairments of short duration with little or no residual effects are usually not disabilities.

• Examples:

the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely.

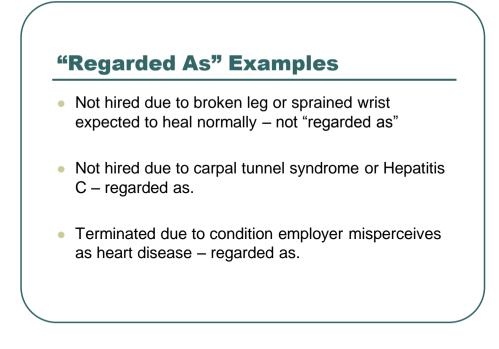


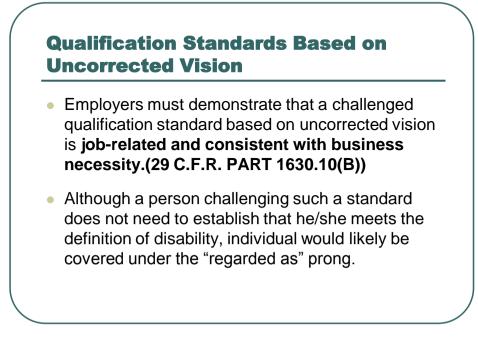
• Not changed under Amendments Act.

- Protects an individual who may have had a physical or mental impairment that substantially limited a major life activity in the past but no longer does.
- EEOC's long-held position is that accommodation is available for "record of" if still needed.

"Regarded As"

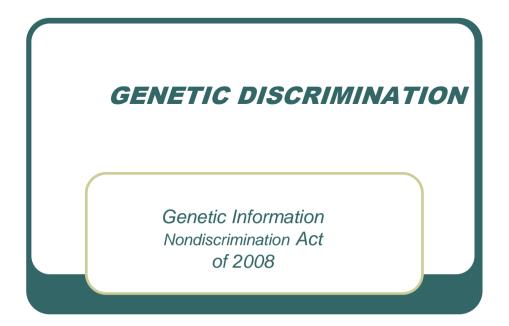
- <u>No longer requires</u> a showing that employer <u>perceived</u> the individual <u>to be substantially limited</u> in a major life activity.
- Covers anyone subjected to an action prohibited by the ADA based on an actual or perceived impairment that is not transitory (lasting or expected to last six months or less) and minor.
- No accommodation if only regarded as.





Other Provisions

- The phrase "discriminate on the basis of a disability" replaces "discriminate against a qualified individual with a disability because of the disability of such individual."
- Individual may not bring an ADA claim based on lack of disability.

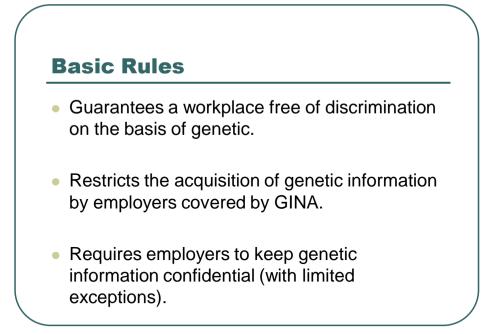




- Rehab Act prohibits discrimination on the basis of manifested conditions that meet the definition of disability.
- GINA prohibits discrimination based on genetic information and not on the basis of a manifested condition.



- Enacted in response to:
 - Developments in the field of genetics and advances in genomic medicine.
 - Concerns that people were not taking advantage of genetic tests that could provide beneficial information because of concerns about discrimination by insurers or employers.





Genetic Information Part I

- Genetic Information Is:
 - Information about an individual's genetic tests.
 - Genetic test of family members.
 - The manifestation of a disease or disorder in family members (family medical history).

Genetic Information Part II

- Genetic Information also includes:
 - Request for or receipt of genetic services by an individual family member (such as genetic tests, counseling and education).
 - Genetic information of a fetus carried by an individual or family member or embryo legally held by the individual or family member using assistive reproductive technology.

Genetic Information Does NOT Include

- Information about an individual's or family member's age or gender.
- The fact that an individual currently has a condition (this would be covered by Rehabilitation Act).



- 1. Employer is protected if it unwittingly receive prohibited genetic information.
- 2. Permissible to acquire genetic information through employer-sponsored health services.
- 3. Permissible to acquire family medical history under FMLA.

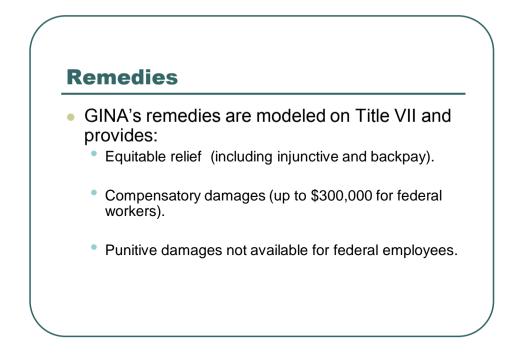
Acquisition of Genetic Information Prohibited

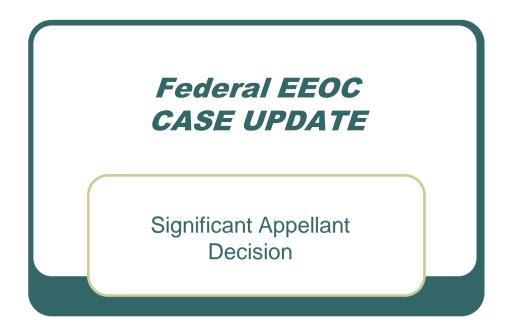
But There are Six Exceptions

- 4. Through commercially and publicly available documents.
- 5. Through genetic monitoring but stringent requirements must be met.
- 6. Through DNA testing for law enforcement purposes in forensic laboratories or human remains identification.

Confidentiality

- Beginning on November 21, 2009, genetic information must be kept in confidential and separate medical file (such as Rehabilitation Act files).
- Limited disclosure, some similar to ADA rules, others unique to GINA.





Significant cases:

- Wiggins v. USPS, EEOC Appeal No. 0720100022 (January 13, 2011), the Commission affirmed an AJ's decision finding race and color discrimination when complainant was not selected for a promotion.
- <u>Bennett v. USPS</u>, EEOC Appeal No. 0120073097 (January 11, 2011), the Commission held that the Agency's release of Complainant's confidential medical information constituted a violation of the

Rehabilitation Act.

Bustamante v. USPS, EEOC Appeal No 0120080104 (December 10, 2010), the Commission found that the Agency discriminated against Complainant on the bases of his national origin (Hispanic) and sex when it terminated him during his probationary period.

Significant Cases:

- <u>Robledo v. DHS</u>, EEOC Appeal No. 0120073884 (November 18, 2010), the Commission found that the Agency failed to provide Complainant with a reasonable accommodation for his religious beliefs..
- <u>Chastain v. Navy</u>, EEOC Appeal No. 0120102409 (November 17, 2010), Req. for Reconsideration Denied No. 0520110240 (March 31, 2011), an AJ found that Complainant was forced to resign *in lieu* of a termination based upon reprisal discrimination.
- <u>Padilla v. USPS</u>, EEOC Appeal No. 0120090062 (September 21, 2010), the Commission found that Complainant was entitled to the requested award of \$165,000 in light of the emotional distress suffered.
- Mercedes v. DOJ, EEOC Appeal No. 0120102127 (September 17, 2010),Req. for Reconsideration Denied No. 0520110053 (December 15, 2010), the Commission found the Agency failed to take prompt and corrective action on a claim of co-worker harassment.

Virginia Andreu

Attorney Advisor Agency Oversight Division Equal Employment Opportunity Commission Tel (202) 663-4575 virginia.andreu-rosario@eeoc.gov