

HOW THE COURTS **SHRUNK** COVERAGE UNDER THE ADA

The ADA prohibits employment discrimination against people with disabilities. “Disability” is defined as:

- (A) a physical or mental impairment that substantially limits one or more major life activities;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

The Supreme Court and lower courts have narrowed coverage under the ADA by interpreting *each component* of this definition in a strict and constrained fashion. Taken together, these interpretations have reduced coverage of people with disabilities dramatically.

MITIGATING MEASURES

The Supreme Court determined that individuals with impairments who function well due to their use of “mitigating measures” – such as medicine or devices – are not covered by the ADA, even if they’re discriminated against *because of* their (mitigated) impairment. According to the Supreme Court, a person’s impairment must substantially limit them *in the present moment*. If medication or a device takes away that limitation in the present moment, that person has been considered by the courts as no longer “disabled” under the ADA.

SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY

The Supreme Court concluded that the words “substantially limits” must be interpreted *strictly* to create a *demanding standard* for qualifying as disabled under the ADA. According to the Court, in order to show that an impairment “substantially limits” a major life activity, the impairment must *prevent or severely restrict* a person from performing the activity, and the impairment must be permanent or long term. Thus, if a person’s impairment is limiting – but not *sufficiently* limiting – the person has been considered by the courts as not covered by the ADA.

SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY

The Supreme Court concluded that the words “major life activities” must also be interpreted strictly under the ADA. To be considered a “major life activity,” the life activity must be *of central importance to most people’s daily lives*. Thus, if a person’s impairment substantially limits a life activity that isn’t sufficiently “major,” the person has been considered by the courts as not covered by the ADA.

“REGARDED AS” LIMITED IN A BROAD RANGE OF JOBS

The “regarded-as” prong of the definition was intended to be a catch-all category covering those whose ability to work was not *in fact* substantially limited by an impairment (such as a person with a minor cosmetic disfigurement), but who were nevertheless substantially limited by people’s negative views of their impairments. The Supreme Court narrowly interpreted this prong by concluding that an employer’s decision to exclude an employee from a particular job based on a perceived impairment is not sufficient to establish that the employer regarded the employee as disabled. Instead, the employee must show that the employer thought the employee was incapable of performing a *broad range of jobs* in order to be covered by the ADA.