

Legally Speaking

How the ADA Amendments Act of 2008 Affects Your Clubhouse; Ballpark Liability Update

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ADA and Liability Update

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ADA and Liability Update (cont.)

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I. Americans with Disabilities Act Amendments Act of 2008 (ADAAA)—Employment Aspects

- ADAAA signed Sept. 28, 2008, by Pres. Bush; effective Jan. 1, 2009.
- Directly affects employment practices; may affect facilities regulations.
- More people will qualify for protection.

I. ADAAA (cont.)

A. Definitions

1. ADA is a civil rights law that prohibits discrimination on the basis of disability.

I. ADAAA (cont.)

2. An individual with a disability is a person who has a physical or mental impairment that *substantially limits* one or more *major life activities*, who has a history of such an impairment or who is regarded as having such an impairment.

I. ADAAA (cont.)

- Why will more people qualify?
 - a. Broadens definition of “substantially limits”;
 - b. Expands list of “major life activities”;
 - c. Requires employers to look differently at treatment of the condition.

I. ADAAA (cont.)

3. Broader definition of *substantially limits*—now means *materially restricts* rather than *prevents or severely restricts*.
4. *Major life activities* now include a list of specific life activities, such as caring for oneself, eating, sleeping, breathing, learning, reading, concentrating, thinking, communicating and working.

I. ADAAA (cont.)

5. Major life activities also include major bodily functions such as the immune system, normal cell growth, digestion, bowel, bladder, neurological, brain, respiratory and others.

6. Being regarded as having such an impairment means being perceived to have an impairment, even if there is none.

I. ADAAA (cont.)

7. Being regarded as category shall not apply to impairments that are transitory (actual or expected duration of 6 months or less) and minor.

I. ADAAA (cont.)

- B. Interpretation—The definition of disability “shall be construed broadly.” Overrides U.S. Supreme Court rulings.

I. ADAAA (cont.)

C. Mitigating Measures - Impairment shall be determined without regard to mitigating measures such as medication, medical supplies, equipment, appliances, low vision devices (not including ordinary eyeglasses or contact lenses), prosthetics, hearing aids and implants, mobility devices, oxygen equipment; assistive technology devices; learned behavioral or adaptive neurological modifications.

I. ADAAA (cont.)

D. Employment Procedures

1. Hiring process—Application and interview process may not take into account a disability. Hiring may be contingent upon post-offer physical exam for ability to perform the essential functions of the job.
2. Job description—Best to be careful and show detailed job functions.

I. ADAAA (cont.)

3. Make reasonable accommodations for disabled persons.

II. ADA—Facilities Access and Operations

A. Skaff v. Speedway Motorsports Inc.

1. Complaint in U.S. District Court, Northern District of California—demands injunctive relief, damages and attorney fee award.
2. Alleges violation of both California and federal ADA.

II. ADA-Facilities (cont.)

3. Infineon Raceway—several major expansions since 1994 without updating per ADA standards.

II. ADA—Facilities (cont.)

4. Specific complaints:

- Ticket windows.
- Parking designation and access.
- Shuttle delays and access.
- Seating choices.
- Concession access.
- Paths of travel.
- Restrooms.
- Ticketmaster discrimination.

II. ADA—Facilities (cont.)

B. Pending Accessibility Guidelines

1. Watch for proposed regulations for facilities and operations, for example:

- Offer more companion seating.

II. ADA-Facilities (cont.)

- Offer accessible seating with all ticketing, including presales, promotions, lotteries, waitlists, season and choice packages.
- Allow transfer of accessible tickets to non-disabled spectators (portable seat?).

II. ADA—Facilities (cont.)

2. These are pending proposals from the U.S. Dept. of Justice; public comment closed in Aug. 2008. Not yet required.
3. New accessibility standards generally apply to new construction; existing facilities are grandfathered, but . . .

II. ADA-Facilities (cont.)

4. Operations aspects may be required at existing facilities.
5. Will DOJ reconsider in light of ADAAA?

III. Liability Update

A. Baseball Rule

1. Negligence analysis—elements to prove:

- Owner owes a duty of care to the patron (but no duty if patron assumes the risk).
- Owner fails to perform the duty of care (negligence).

III. Liability Update (cont.)

- Patron suffers an injury.
- Injury is proximately caused by the failure to perform the duty of care.

III. Liability Update (cont.)

2. Defenses:

- Assumption of the risk—A patron assumes the risk and may not recover for injuries that result from common hazards inherent in and incident to a game or sport.
- “Open and obvious” dangers.

III. Liability Update (cont.)

3. The Baseball Rule: Owner has no duty to the patron because the patron assumes the risk, except that the owner must protect the most dangerous sections with screening and provide enough screened seats to reasonably fulfill requests from spectators on ordinary occasions.

III. Liability Update (cont.)

4. Open to interpretation by the courts—
What dangers are inherent to the game? Most dangerous sections? Adequate screening? Industry standard? Open and obvious risks?
5. No legal duty to warn of the dangers inherent to the game, but good practice to warn.

III. Liability Update (cont.)

6. Baseball Rule applies in most jurisdictions, but it is a state-by-state issue. Check your state law.

III. Liability Update (cont.)

B. Preventing a Problem

1. Print warnings on tickets and post warnings throughout the ballpark.
2. Make public address announcements before and during the game and log the announcement.

III. Liability Update (cont.)

3. Keep all screening in excellent condition and perform periodic inspections; log and document the inspections.
4. Promptly respond to injured spectators and provide medical assistance.

III. Liability Update (cont.)

5. Check with insurance carrier regarding on-field participants, amateur players, any promotions during warm-ups or between innings.
6. Control the things you can control.

III. Liability Update (cont.)

7. Use participant release of liability to protect against negligence.
8. Require adult to sign for a minor.

III. Liability Update (cont.)

Why take these precautions?

- Gives actual knowledge to the patrons.
- Defense against alleged negligence.
- Court sees that owner did everything possible.

III. Liability Update (cont.)

C. Recent Cases

1. *Turner v. Mandalay Sports*—Nevada Supreme Court upheld the baseball rule. The risk of injury by a foul ball into the concession area was not an unduly high risk that required screening.

III. Liability Update (cont.)

FOUL BALL INJURY

Cashman Field

Beer garden

On May 4, 2002, Las Vegas 51s left-handed batter Bill Mueller hit a foul ball 257 feet to the Beer Garden overlooking the stands

The foul ball struck 54-year-old Kathleen Turner between the eyes while she was eating in the Beer Garden, knocking her backwards and breaking her nose

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III. Liability Update (cont.)

- Roberts v. Boys and Girls Republic Inc.*
—New York appellate court held that the injured spectator assumed the risk of being struck by a swung bat when she walked too close to the on-deck circle. Appreciation of the risk of a swung bat does not require a thorough knowledge of the sport.

III. Liability Update (cont.)

3. *Harting v. Dayton Dragons*—Spectator assumed the risk of foul ball injury even when a mascot was distracting her attention during the game.
4. *Cohen v. Sterling Mets LP*—Vendor was injured when a fan dove for a launched t-shirt. Court held that the vendor assumed the risk.

III. Liability Update (cont.)

5. *Demelio v. Playmakers Inc.*—An issue of fact existed as to whether the design of a batting cage facility created a unique and dangerous condition when a batted ball ricocheted off a post and struck the boy in the eye.



See you
at the
ballpark!