

Americans With Disabilities Act Protections Expanded by The ADA Amendments Act Of 2008

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On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"), eighteen years and two months after his father signed the original ADA. The ADA Amendments Act becomes effective January 1, 2009.

The ADA Amendments Act of 2008 expands the protections of the ADA by overturning several recent U.S. Supreme Court decisions that effectively limited the applicability of, and eligibility for, those protections. Specifically, the Act makes important changes to the definition of the term "disability" by rejecting the holdings in several U.S. Supreme Court decisions and portions of the EEOC's ADA regulations. The U.S. Supreme Court decisions had narrowed the definition of "disability" under the ADA, effectively denying the applicability of the ADA in many instances. The ADA Amendments Act of 2008 emphasizes that the definition of "disability" should be interpreted broadly because Congress intended the ADA's coverage to be broad. As stated, the ADA was intended to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

As to the term "disabled," the new legislation clarifies the current requirement that an impairment must substantially limit a major life activity in order to be considered a disability. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, the Act changes the way that these statutory terms must be interpreted so as to more broadly encompass those impairments.

Most significantly, the Act directs the EEOC to revise the portion of its regulations defining the term "substantially limits." While the Act retains the "substantial limitation" requirement to establish a disability, the Act requires that the term "substantially limits" be interpreted to mean "materially restricts." That requirement will make it easier for employees to meet the standard.

In addition, the Act expands the definition of the "major life activities" that may be "substantially limited" by including two non-exhaustive lists:

- § the first list includes many activities that the EEOC has recognized (e.g., walking), as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating); and
- § the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions").

The Act also prohibits consideration of mitigating measures in the determination of whether an individual has a disability. The past court decisions had held that individuals with impairments who function well due to their use of “mitigating measures” – such as medication, hearing aids, and prosthetics, etc., – are not covered by the ADA, even if the employees are discriminated against because of the underlying impairment. The ADA Amendments Act of 2008 categorically states that the determination of whether an impairment substantially limits a major life activity "shall be made without regard to ameliorative effects of mitigating measures" For example, the Act specifically states that medication, prosthetics, hearing aids, assistive technology, learned behavior and adaptive neurological modifications are not to be considered in determining whether there is an impairment that causes a substantial limitation on a major life activity. Under the Act, only “ordinary eyeglasses and contact lenses” may be considered as a mitigating measure.

The Act also prohibits a court from considering whether the manifestations of the disability are "episodic, in remission or latent" when determining if a person has an impairment that would qualify as a disability. The Act clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

In addition, the prior court decisions had placed a higher burden of proof on employees by requiring individuals who allege that their employer regarded them as disabled to show that their employer believed them incapable of performing a broad range of jobs, not just the job they were denied. The Act provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor. However, the Act provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.

In a nutshell, the ADA Amendments Act of 2008 intends to broaden the scope and applicability of the ADA by expanding the scope of who may be considered “disabled” under the ADA, while at the same time limiting what may be considered a mitigating measure. This will result in a entirely new segment of employees being classified as “disabled” under the ADA who clearly do not meet that definition under the ADA as enacted in 1990 or in the court decisions that followed. This, in turn, will result in more individuals asserting such rights and additional individuals to whom employers will need to offer reasonable accommodations at work. This also likely will result in more individuals making or restating claims under the ADA in the coming years, which, in turn, will result in additional lawsuits.

This anticipated new class of “disabled” individuals makes it more critical than ever that employers carefully and properly assess the disability status of their employees when presented with such requests or claims and when addressing whether and to what extent requested accommodations are reasonable.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.