

EMPLOYMENT LAW ALERT

ADA Amendments Act Signed into Law

On September 25, 2008, President Bush signed into law the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). This new law reverses several United States Supreme Court cases, which Congress believed improperly narrowed the scope of the ADA. It will become effective January 1, 2009.

How has the law changed?

1. **“Major Life Activity”**

The ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities. The ADA amendments specifically broaden the meaning of a “major life activity” by expanding the list of major life activities to include eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, and communicating. The new legislation further provides that a major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. In practice, this means that more medical conditions will be deemed disabilities under the Act, such as insomnia, attention deficit disorder, high blood pressure, or asthma. In addition, the new legislation explicitly clarifies that an impairment need only limit one major life activity in order to be considered a disability under the ADA.

2. **“Substantially Limits”**

In 2002, the Supreme Court held that to be substantially limited “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” The new legislation rejects the Supreme Court’s definition of “substantially limits,” concluding that it requires a greater degree of limitation than was intended by Congress. The amendments, however, do not define the meaning of “substantially limits.” Rather, the Equal Employment Opportunity Commission (“EEOC”) is directed to define the term in accordance with Congress’s intent for broad application.

3. **“Regarded As”**

The ADA has always protected employees who were “regarded as” disabled, even if they were not actually disabled. Prior to the amendments, if an employee wanted to pursue a “regarded as” claim, he



needed to demonstrate that an employer regarded him as having an impairment that substantially limited a major life activity. The new legislation lowers this burden for employees. Now, an employee need only show that the employer perceived the individual as impaired, whether or not the impairment limits or is perceived to limit a major life activity.

From an employer's perspective, the new legislation does contain two helpful provisions in the "regarded as" context. First, the Act will now exempt transitory (impairments with an actual or expected duration of 6 months or less) or minor impairments from coverage under the "regarded as" definition. Second, the new legislation clarifies that employers are not required to provide reasonable accommodations to employees who only meet the "regarded as" definition.

4. Mitigating Measures

The Supreme Court previously held that an individual is not disabled under the ADA if mitigating factors correct or improve the individual's condition to the extent that he is no longer substantially limited in any major life activity. The new legislation overturns this Supreme Court holding. The amendments explicitly provide that the determination of whether an impairment substantially limits a major life activity shall be made without regard to ameliorative effects or mitigating measures. Congress did, however, provide an exception in the amendments for ordinary eyeglasses and contact lenses.

5. Episodic Impairments/Remission

The amendments clarify that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Stated another way, even if an individual is not experiencing any symptoms or effects from an impairment, he may still be considered disabled under the law.

What is the significance for employers?

- Given the changes to the law, employers can expect that many more of their employees will be covered by and afforded the protections of the ADA.
- Employers can expect to have more requests for reasonable accommodations and as a result of the new legislation, they will be required to provide accommodations to more employees.
- Employers can expect a rise in "regarded as" claims. When the law becomes effective, mere knowledge of an employee's medical condition may lead to a claim that a particular employment decision was made because of the employee's medical condition, whether

the employer perceives of the condition as a disability or not.

What should employers do?

- Review and revise ADA policies and procedures as appropriate to conform to the new law.
- Review and revise any medical certification form that is used in connection with the reasonable accommodation process.
- Review and update job descriptions to accurately reflect the essential functions of the job.
- Train supervisors and human resources professionals on the new law, with particular emphasis on identifying disability issues and facilitating the reasonable accommodation process.

If you have any questions about the ADA amendments or need assistance in making sure your company is prepared for the change in the law, please contact an attorney in the employment law group of Dinse, Knapp & McAndrew, P.C. : Karen McAndrew, Robert McKearin, Jeff Nolan and Amy McLaughlin - (802) 864-5751.