



# Employment Law ALERT

SEPTEMBER 26, 2008

## President Bush Signs ADA Amendments Act of 2008 into Law

On Thursday, September 25th, President George W. Bush signed into law the ADA Amendments Act of 2008. The measure had previously passed overwhelmingly by a vote 402-17 in the U.S. House of Representatives in June and by a unanimous voice vote in the U.S. Senate earlier this month.

The ADA covers all private employers, state and local governments, and educational institutions that employ 15 or more people. The law prohibits discrimination against disabled employees or job applicants and requires covered employers to make reasonable accommodations to allow a disabled individual to perform the essential job functions of his job.

The Act, which becomes effective January 1, 2009, is intended to restore the broad scope of protection available under the Americans with Disabilities Act of 1990, thereby reversing a trend of narrow interpretation which began with a string of U.S. Supreme Court decisions in 1999.

The Act specifically rejected the high court's 1999 decision in *Sutton v. United Air Lines, Inc.*, which limited the ADA's protection for individuals whose disabilities could be mitigated by measures such as medication, medical supplies, prosthetics and assistive devices, and the 2002 decision in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, which it stated created an inappropriately high level of limitation necessary to obtain coverage under the ADA. The Act stated that "as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities."

Key provisions of the ADAAA include:

- The definition of disability is to be construed in favor of broad coverage of individuals;
- The term "substantially limits" is to be defined as materially restricts, as opposed to severely restricts or prevents;
- Clarification that an impairment which substantially limits one major life activity does not have to limit any other major life activities in order to be considered a disability;
- Clarification that impairments that are episodic or in remission are disabilities if they would substantially limit a major life activity when active;

- The ameliorative effects of mitigating measures should not be considered when determining whether an individual has a disability. Such mitigating measures include, but are not limited to, medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids and cochlear implants, mobility devices and oxygen therapy equipment, as well as assistive technology, reasonable accommodations or auxiliary aids or services, and learned behavioral or adaptive neurological modifications.

The ADAAA also provides a specific list of those tasks that constitute "major life activities," including walking, standing, lifting, speaking, breathing, learning, reading, concentrating, thinking, communicating and working, as well as the operation of major bodily functions such as those pertaining to one's digestive, respiratory, circulatory, neurological, reproductive and immune systems.

So what will the new ADA Amendments Act mean for employers?

The broader definition of "disability" will most assuredly mean more employees and job applicants will be eligible for protection under the ADA. As a result, employers will be expected to make more workplace accommodations or face the possibility of increased litigation.

From a litigation standpoint, the broader interpretation of the ADAAA will also make it more difficult for employers to defend the position that an individual was not "substantially limited in a major life activity" and therefore not disabled under the ADA. Where once the courts' narrower interpretations of the law favored employers, the new law could mean a shift toward more plaintiff-friendly decisions.

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