



Congress Amends the ADA, Broadening the Scope of Disabilities and Increasing Employers' Risks of Disability Discrimination Lawsuits

Congress has amended the Americans with Disabilities Act of 1990 (ADA) to make it easier for employees to meet the ADA's definition of disabled. The amendments undo several Supreme Court decisions. Each had narrowly interpreted the ADA's meaning of a "disability." Those narrow interpretations had caused the dismissal of the employees' lawsuits before the Court, specifically, and the vast majority of disability discrimination lawsuits, generally. The ADA originally defined "disability" as a physical or mental impairment that substantially limits a major life activity.

After a unanimous approval vote in the Senate on September 11, 2008, the House approved the American with Disabilities Act Amendments Act of 2008 (ADAAA) on September 16, 2008. President Bush signed the legislation into law on September 25, 2008. It will take effect on January 1, 2009.

The ADAAA specifically rejects the Supreme Court's interpretations of the meaning of a "disability" to exclude mental or physical impairments if the employee neutralized the impairment by any one or more of medications, assistive devices (such as hearing aids but not eyeglasses or contact lens), or adaptive behaviors (such as the brain's automatically compensating for near blindness in one eye enabling the employee to see with depth perception despite his monocular vision). Similarly, the amendments include impairments that neither prevent nor significantly restrict an employee from performing major life activities, such as walking, breathing, performing manual tasks, or working (for example, carpal tunnel syndrome), within the scope of a disability. They also require courts to construe the meaning of "disability" broadly.

The ADAAA adds a list of examples of major life activities. It borrows many of the major life activities listed from the regulations interpreting the ADA issued by the Equal Employment Opportunity Commission ("Commission"): caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, learning, and working. The amendments also include others taken from case law on this list: eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. They further expand major life activities by adding major bodily functions to them. The amendments also list the following non-exhaustive examples of major bodily functions: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The ADAAA keeps the original ADA's definition of a disability—a physical or mental impairment that substantially limits a major life activity. It, however, requires the Commission to define the meaning of "substantially limits" in regulations consistent with the ADAAA's provisions rejecting prior Supreme Court decisions defining that concept narrowly. Effectively, the ADAAA adds millions of people with treatable medical conditions (such as high blood pressure or asthma) into the status of persons with a disability. Thus, employers will face non-discrimination and reasonable accommodation obligations with persons that they have previously treated as non-disabled. They should also expect more disability discrimination charges and lawsuits because of the ADAAA.

Employers should review their policies regarding disability discrimination and reasonable accommodations in view of the ADAAA and revise them, if necessary. They should also train their human resources and supervisory staff regarding the ADAAA's expanded definition of "disability." It will translate

into a broader range of applicants and employees eligible for accommodations than in the past. Employers have a duty to conduct an interactive process to determine whether an individual needs an accommodation and, if so, whether any reasonable accommodations exist. The ADAAA has lowered the threshold of disability status for applicants and employees. Thus, employers must conduct the interactive process with persons that they previously excluded from that process. Employers should err on the side of caution. Generally, they should treat all employees and applicants with identifiable physical or mental impairments with expected duration of more than six months as persons with a disability.

If you have any questions about the ADAAA, please contact Gerry Richardson at (314) 552-4053 or grrichardson@evans-dixon.com.

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