
Changes to the Americans with Disabilities Act

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Employers should be aware of new employee-friendly rules in disability discrimination law, and renew their efforts to prevent workplace discrimination against employees with disabilities. But just who are those "employees with disabilities"? The central provision of the new law, known as the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), expands the application of the law by establishing a broad definition of "disability" under the Americans with Disabilities Act of 1990 (ADA).

The ADAAA became effective on January 1, 2009. The purpose of the ADAAA is to restore the intent of the ADA, and to make explicit the intent of Congress to provide broad protection to individuals with disabilities against employment discrimination. The ADA had been interpreted through two Supreme Court decisions - *Sutton v. United Air Lines, Inc.* (1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) - which restricted application of the ADA by narrowing the interpretation of "disability." The new law is drafted specifically to counter the rulings of these cases, and defines an individual with a disability as one who (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Listed in the category of "major life activities" are motor functions such as breathing and walking, along with more advanced activities such as learning, concentrating, and thinking, as well as lower biological functions such as digestion and reproduction. Whether an impairment "substantially limits" a major life activity will be interpreted through regulations to be issued by the EEOC. Further, in determining whether an impairment rises to the level of a disability, the ADAAA requires the impairment to be analyzed without regard to mitigating measures such as medication or prostheses: for instance, a worker who controls his high blood pressure with medication may not have been considered disabled by high blood pressure before, but may fall under the definition now.

Many commentators expect a large increase in the number of lawsuits under the ADA because of the increase in the number of individuals who are technically disabled, and anticipate a shift in the key issue of ADA litigation from "Does the employee's impairment meet the definition of a disability?" to "Did the employer actually discriminate against the employee?" Employers should know their obligations under the ADA, and should also prepare for the effects of the new law by reviewing their employment policies and procedures with an eye toward minimizing discrimination claims.

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This paper is not intended to be exhaustive on the subject matter nor to provide legal advice to the reader.