

New law broadens the scope of coverage of the ADA

On September 25, 2008, President Bush signed the ADA Amendments Act of 2008 (the "Amendments"), which goes into effect on January 1, 2009 and expands protections for individuals with disabilities. Although backed by business groups, the Amendments are likely to increase the number of disability discrimination claims faced by employers and impair those employers' ability to dispose of claims brought under the ADA prior to trial. Specifically, the Amendments overturn two recent Supreme Court decisions which held that courts may take into account mitigating measures when determining whether an individual is disabled under the ADA and required strict interpretation of the ADA's definition of disability. Under the Amendments, millions of Americans who prior to the new law were not considered to have a disability may now claim to be disabled.

In the first decision, the Supreme Court held that mitigating devices, such as artificial limbs, hearing aids and medications, must be taken into account in determining whether a person could be considered disabled under the ADA. The Amendments overturn this decision by specifically providing that the determination of whether a person's impairment substantially limits a major life activity must be made without reference to any effects of any mitigating measures, with the exception of "ordinary eyeglasses or contact lenses" when deciding whether someone with imperfect vision is disabled under the ADA. For example, an employee with insulin-controlled diabetes will likely be considered "disabled" under the Amendments.

In the second decision, the Supreme Court held that a "demanding standard" had to be met before an individual would be considered substantially limited in a major life activity. The Amendments overturn the Supreme Court's decision and reject a regulation promulgated by the Equal Employment Opportunity Commission that holds that "substantially limited" means "significantly restricted." The Amendments broaden the definition of a "major life activity" to include caring for oneself, performing manual tasks, seeing, hearing, eating, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking communicating and working." Major life activities also include the "operation of a major bodily function," such as the "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions." The Amendments also provide that the term "substantially limits" must be interpreted in accordance with the Amendments, which specifically reference a need for broader coverage.

Besides overturning these two Supreme Court decision, the Amendments also provide that impairments that are episodic or in remission will still be considered a disability to the extent that they would substantially limit a major life activity when active. For example, an employee with cancer that is in remission will likely now be considered "disabled."

The Amendments were a compromise reached by business groups and disabilities rights groups. The National Association of Manufacturers, the Society of Human Resources Management and the U.S. Chamber of Commerce all supported the Amendments. Employers should consider providing updated training for those responsible for ADA administration. Please call with your questions on how this affects your situation.

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