

ADA Protections Greatly Expanded

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President Bush recently signed the ADA Amendments Act of 2008, which will significantly expand the definition of employee “disability” effective January 1, 2009. The Act rolls back a number of Supreme Court decisions that had narrowed the definition, and now makes it easier for more employees to qualify for protection under the law.

While a person claiming coverage must still show their disability substantially limits a “major life activity,” that term is now broadly defined as including: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of major bodily functions, such as the immune system, cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Congress also made clear that impairments that are episodic or in remission are covered disabilities if they would substantially limit a major life activity when active. The Act also states that an impairment that substantially limits one major life activity need not limit others. This suggests that employees no longer need to prove they are limited in performing a wide range of jobs to claim coverage under the Act.

Further, those whose disabilities are ameliorated through mitigating measures, except ordinary eyeglasses or contact lenses, will now be considered disabled if but for the mitigating measures they would meet the disability definition. In addition, employers may not use qualification standards, employment tests, or other selection criteria based on an individual’s

uncorrected vision unless the standard, test or other selection criteria is job related and consistent with business necessity.

The Amendments also clarify that employees need not prove an employer believed any perceived disability significantly limited a major life activity. However, individuals who are perceived to have impairments that are transitory and minor, six months or less in duration, will not be covered by the Act. In addition, those who are perceived to be, but are not actually disabled, may no longer file claims based on a failure to provide reasonable accommodation.

Because employees will now have a much easier task of proving “disability” employers are encouraged to educate their supervisors on responding to requests for reasonable accommodation. Organizations should also review their policies and handbooks to ensure they comply with the new law’s more liberal requirements.

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