



Management Alert

President Bush Signs Significant Expansion of Americans with Disabilities Act

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) moved through Congress swiftly and with strong bipartisan support. President Bush signed the new law on September 25, 2008, which will modify the ADA effective January 1, 2009. Once the Senate passed the bill by unanimous consent on September 11, 2008, enactment was only a matter of time.

The bill was supported by a broad coalition of civil rights groups, disability advocates, and employer organizations. Disability advocates and other civil rights groups sought to reverse U.S. Supreme Court decisions that had defined covered disabilities more narrowly than many of the ADA's original Congressional proponents had intended. Business groups, including the U.S. Chamber of Commerce and the Society for Human Resource Management, supported compromise bills in the House and Senate, recognizing that some new law was inevitable and working to craft the best deal possible for employers.

The ADAAA changes the way in which courts will evaluate whether an individual is disabled for ADA purposes in several significant ways:

Broad Construction

The new law specifically rejects several Supreme Court decisions that narrowly construed "disability" and ADA protections generally. Beginning in January 2009, for purposes of the ADA, "disability" is to be broadly construed and coverage will apply to the "maximum extent" permitted by the ADA and the ADAAA.

Substantially Limits

The House version of the ADAAA (H.R. 3195) would have further broadened the term "substantially limits" to cover any impairment that "materially restricts" a major life activity. However, the Senate version of the ADAAA (S.3406) — the version later approved by Congress and signed by the President — eliminated this change. Nonetheless, the new law squarely condemns previous, narrow judicial interpretations of "substantially limits." Under the new law, courts are to focus on whether entities "have complied with their obligations" under the ADA. Thus, according to Congress, whether an individual has a disability should not "demand extensive analysis." The ADAAA also instructs the Equal Employment Opportunity Commission to issue new regulations defining "substantially limits," so that the current definition ("significantly restricts") is changed to something yet to be determined that comports with the ADAAA's broader view.

Mitigating Measures

In a complete reversal of Supreme Court precedent, the ADAAA rejects decisions holding that “mitigating measures” (e.g., medications, prosthetics, corrective surgery, hearing aids, and mobility devices) are to be considered in assessing whether an individual is covered under the ADA. Going forward, impairments are to be evaluated in their unmitigated state when determining whether the individual is substantially limited in a major life activity, except that ordinary eyeglasses and contact lenses may be considered.

Expansion of Major Life Activities

The ADAAA adds several new activities to the non-exhaustive list of major life activities covered by the statute. Specifically added were “sleeping, ... concentrating, thinking, [and] communicating.” Also included as major life activities are “the operation of major bodily functions” such as the “immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

“Regarded As” Analysis

The ADAAA significantly expands “regarded as” protection by prohibiting discrimination based on the employer’s alleged perception of a mental or physical impairment, even if that impairment is not a perceived or actual disability under ADA. This means, for example, that a 10-pound lifting restriction that might not rise to the level of an actual disability (under the major life activity of working or otherwise) can nonetheless be the basis of a “regarded as” claim. Excluded from the “regarded as” prong of the definition of “disability,” however, are “minor and transitory impairments.” The ADAAA defines transitory impairments as those with an actual or expected duration of less than six months. It remains to be seen, however, whether an arguably major impairment with an expected or actual duration of less than six months or, conversely, a minor impairment lasting more than six months will suffice to protect individuals under “regarded as” analysis.

Additional Effects

The ADAAA also:

- Extends ADA protections to individuals with episodic impairments or conditions in remission if the impairment would substantially limit a major life activity in its active state
- Clarifies that there is no duty to provide reasonable accommodations to individuals who are ADA-protected under only the “regarded as” or “record of” prongs of the definition of disability
- Clarifies that impairments need only limit one major life activity in order to constitute a disability
- Clarifies that an individual without a disability cannot pursue a claim for reverse discrimination (on the basis of not having a disability)

Impact of ADAAA on Employers

The ADA's expanded scope will likely result in millions of individuals not previously covered under federal law now having protection as individuals with disabilities. Moving forward, case law and other guidelines that interpreted the definition of disability under the prior law will be largely useless in determining who is covered under the new law. As a result, employers will be hard-pressed to get charges dismissed or summary judgments granted on the ground that an individual is not disabled. Thus, many employers will need to change their approach to medical conditions in the workplace, recognizing that common illnesses and impairments not previously considered to be disabling will now be ADA-covered disabilities.

This vastly broader universe of covered individuals will, in turn, shift much of the focus to reasonable accommodation; more precisely, whether an individual with a physical or mental condition is otherwise qualified to perform essential job functions, with or without reasonable accommodation. That means employers must reevaluate their job descriptions, job qualification standards, and reasonable accommodation procedures to ensure that they are current and defensible. Seyfarth Shaw has developed a number of tools to assist employers in taking the necessary steps to help ensure compliance with the changing legal obligations created under the ADAAA.

Perhaps the most troubling aspect of the ADAAA for employers is the new "regarded as" disabled language. Previously, the "regarded as" prong protected those perceived to have a substantially limiting impairment. Suppose an employee has a 30-pound lifting restriction that precludes her from a narrow range of manufacturing jobs. Under the old ADA, absent evidence of a broader stereotypical conclusion by the employer, that employee was not ADA-protected — she was not regarded as substantially limited as to working or any other major life activity. Under the new ADA, if the employer takes action because of that restriction (for example, by assigning the employee to a lower-paying office job), the individual is ADA-covered, even though the employer formed no opinion regarding her ability to work generally. One upshot is new ADA protection for many employees with work-related injuries. Such situations, previously managed through workers' compensation schemes, may now be viable ADA cases, with attendant exposure to compensatory and punitive damages.

In light of the new law, employers may wish to review their various job qualification and reasonable accommodation standards in order to assure compliance.

Stay Tuned

Seyfarth Shaw LLP will soon be hosting a webinar on this significant federal law development. In the meantime, please contact the Seyfarth attorney with whom you work, or any Labor and Employment attorney listed on our website. (www.seyfarth.com/LaborandEmployment).



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