



Americans With Disabilities Act: 2008 Amendments Clarify Standards and Scope

October 2008

On September 25, President Bush signed into law the ADA Amendments Act of 2008 (“Act”), which amends the Americans with Disabilities Act of 1990 (“ADA”).

Effective January 1, 2009, the Act will change a number of provisions in the ADA. Many of these changes were made in response to a series of Supreme Court decisions over the last few years that had narrowed the scope of protection Congress intended in originally enacting the ADA. The stated purpose of the Act is to carry out the ADA’s objectives of providing clear, strong, consistent, enforceable standards addressing discrimination by reinstating a broad scope of protection available under the ADA. The changes outlined below reflect that intent to clarify standards and broaden the scope of the ADA’s protections.

Since 1990, the ADA has prohibited discrimination against any qualified individual with a disability. A person has a disability under the ADA if he or she:

- (1) has a physical or mental impairment that substantially limits one or more of the individual’s major life activities,
- (2) has a history of such an impairment, or
- (3) is regarded as having such an impairment.

The Act clarifies many of the terms that are used in those three categories.

- **“Substantially Limits”**— The Act defines “substantially limits” in the negative. It clarifies that an impairment that substantially limits one major life activity does not have to limit other major life activities. This is in response to court decisions that have required a person to be limited in more than one major life activity. The Act also says that “substantially limits” does not mean “significantly restricts” or “severely restricts.” It deems those two definitions as “too high a standard” for the intended broad scope of ADA protection.
- **“Major Life Activity”**— The definition of this term is expanded in the Act to include not only the functional categories of the ADA (i.e., walking, eating, sleeping, lifting, bending, taking care of oneself, etc.), but also major bodily functions. The major bodily functions that are now considered “major life activities” for the ADA include: immune, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive systems.
- **“Regarded As”**— The Act for the first time defines “regarded as having an impairment.” Under the Act, a person is protected by the ADA against discrimination “because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” The Act also clarifies that a “regarded as” impairment cannot be transitory (with an actual or expected duration or six months of less) or minor. The Act further clarifies that an individual who is merely “regarded as” having an impairment is not entitled to reasonable accommodations.

The Act also addresses other questions that have arisen in cases interpreting the ADA.

- **Prohibition on consideration of mitigating measures**— The Act states that the determination of whether an impairment “substantially limits” a major life activity must be made without regard to the “ameliorative effects of mitigating measures.” What this means is that a court can’t consider whether medication, prosthetics, mobility devices, reasonable accommodations already provided by the employer, or any other measures alleviate the effects of the impairment. If the person meets the definition of disability without those measures, it does not matter whether the “mitigating measures” make the person better able to function. He or she is still disabled under the ADA.

The only exception to this new rule is ordinary eyeglasses and contact lenses. The effects of those aids may be considered in determining whether a person is disabled. A person whose vision is correctable with ordinary glasses or contact lenses will not be considered “disabled” due to a vision impairment. But the Act also provides that an employer is prohibited from using qualification tests based on a person’s uncorrected vision unless such a standard is shown to be job-related and consistent with business necessity.

- **Episodic Impairments**— The Act clarifies that an impairment that is episodic or dormant still qualifies as a disability if it substantially limits a major life activity when active. This will bring more sufferers of chronic conditions within the protection of the ADA. In this way, many conditions that qualify for intermittent leave under the Family and Medical Leave Act may also qualify for reasonable accommodations under the ADA.

Finally, the Act specifies that the definition of “disability” under the ADA must be construed in favor of broad coverage. This change was made to underline the concern of Congress that courts have construed the ADA too narrowly.

Because of these changes, more individuals are likely to meet the definition of disabled under the ADA. As always, when an employee makes a workers’ compensation claim, requests family or medical leave, or is absent from work due to a disability, employers should analyze whether the employee is also subject to the ADA’s protections.