

Changes to the Americans with Disabilities Act

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Changes have been made to the Americans with Disabilities Act (“ADA”) through passage of the ADA Amendments Act (“ADAAA”), which becomes effective January 1, 2009. The ADAAA will broaden who qualifies as “disabled” through a significant change in the statutory definition of a “major life activities” and the anticipated changes in the definition of “substantially limits” in new EEOC regulations to come at Congress’ direction. These changes overturn, rather than implement, existing case law.

“Major Life Activities”

The ADAAA’s new definition section dramatically expands what is a disability through its additions to the definition of “major life activities.” Currently, “major life activities” are defined in the EEOC regulations as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 29 C.F.R. §1630.2(h)(2)(i). When the ADAAA becomes effective, Congress will have expanded the statute itself to define “major life activities” in two parts:

- First, “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” 42 U.S.C. §12102(2)(A).
- Second, a “major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” 42 U.S.C. §12102(2)(B)

“Substantially Limits”

In addition, the ADAAA makes several changes to the assessment of whether or not the impairment “substantially limits” a “major life activity” and, therefore, the person qualifies as a disabled individual.

First, the ADAAA prohibits consideration of mitigating measures, other than eyeglasses and contacts, in determining whether an individual has a disability.

- This amendment expressly overrules Supreme Court precedent in Sutton v. United Airlines, 527 U.S. 471 (1999), which held that judging people in their uncorrected or unmitigated state was inconsistent with an individualized assessment of the impairment.
- Now, under the ADAAA, medications should not be considered in determining whether a major life activity is substantially limited, even where a medication can fully and completely control a condition.

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- Similarly, “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” 42 U.S.C. §12102(4)(D).

Second, the ADAAA reverses court decisions which narrowly defined “substantially limits” to an exacting and high standard.

- The U.S. Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term “substantially limits” strictly and required a showing that the claimant was “significantly restricted” in a major life activity. In Toyota, the Court held that the claimant must show that she was unable to perform a variety of manual tasks central to daily life due to her carpal tunnel syndrome, not just manual tasks associated with her particular job. The Court did not rule as to whether or not the claimant’s carpal tunnel syndrome condition amounted to a disability, only that she needed to establish greater limitations than just a particular job.
- Through the ADAAA, Congress states that the Supreme Court’s “significantly restricted” interpretation is more limiting than Congress intended and instructs the EEOC to revise its regulations to amend the definition of “substantially limits” to make it consistent with Congressional intent.

Summary

The full impact the ADAAA will have upon employers will not be known until revised regulations are issued by the EEOC and the courts have an opportunity to interpret the amendments and the revised regulations. However, there is no dispute that: 1) more employees will qualify as disabled, and 2) there will be a period of uncertainty for employers. Certainly, the broadened definition of “major life activity” will have a significant impact. For example, an employee with diabetes, epilepsy, or cancer is more likely to qualify as disabled because these conditions or diseases impact “major bodily functions.” Prior to the amendments, an employee with diabetes, for example, would be required to establish the impact upon his daily life, not just his bodily system. Also, employers must now face the uncertainty of complying with the new law while waiting upon the EEOC and the courts to provide new guidance as to what constitutes a “substantial limitation” upon a major life activity. Unfortunately, the uncertainty will likely cause employers either to go too far with unnecessary compliance and accommodation or open themselves up to liability because their compliance efforts are insufficient.

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