

LABOR AND EMPLOYMENT NOTES

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NEW "ADA AMENDMENTS ACT" BECOMES EFFECTIVE IN 2009

On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 ("ADAAA"), amending the Americans with Disabilities Act ("ADA"). Effective January 1, 2009, the ADAAA specifically rejects several major Supreme Court decisions interpreting the ADA, expands the meaning of "disability" in key ways, and increases the number of persons protected by the Act. Some of the changes made by the ADAAA are:

- To adopt a specific, expansive rule of construction for determining whether a person has a "disability" under the ADA. Under the amended ADA, the definition of disability "shall be construed in favor of broad coverage of individuals under the Act, to the maximum extent permitted by the terms of this Act."
- To reject the restrictive interpretation of "substantially limiting" as enunciated in *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002) and in EEOC regulations. The ADAAA says that "significantly restricted" is "too high a standard." The EEOC is required to issue a new definition consistent with the ADAAA.
- To provide a broad statutory definition of "major life activity" that includes "bending . . . reading, concentrating, thinking, communicating, and working," as well as the "operation of a major bodily function" (such as "normal cell growth" or "reproductive functions").
- To provide that, except for ordinary eyeglasses or contact lenses, "ameliorative effects of mitigating measures" (such as, for example, medicine, prosthetics, low-vision devices, assistive technology) are not considered when determining whether a person has a "disability."
- To provide that an impairment that is "episodic or in remission" is still a disability if it would substantially limit a major life activity "when active."
- To broaden and clarify the "regarded as" protections. Those who are "regarded as" having an impairment are protected from discrimination without regard to whether the impairment is perceived as limiting a major life activity. However, "minor" or "transitory" (less than 6 months) impairments are excluded from "regarded as" protection. The ADAAA also clarifies that no reasonable accommodation is required when the only alleged "disability" is under the "regarded as" category.

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