

The 2008 Amendments to the Americans with Disabilities Act

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INTRODUCTION

On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendment Act of 2008 (“ADAAA”). The effect of this act was to reverse and/or address several United States Supreme Court decisions and portions of the EEOC’s regulations. The effective date of the ADAAA was January 1, 2009. The EEOC has stated that it will be evaluating the impact of the changes on its enforcement guidances and other publications. Therefore, the effect of the ADAAA may take some time to evolve as employers and employees adjust to the new provisions.

OVERVIEW OF CHANGES

- A. The basic framework of who is considered “disabled” remains the same. The term “disability” continues to mean: (1) a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. The ADAAA expands the scope of covered individuals in a variety of ways, however.
- B. Rejection of EEOC’s guidance regarding the term “substantially limits”
 - 1. The ADAAA retains the “substantially limits” language, but the EEOC’s interpretation of this term to mean “significantly

restricted” is rejected as “inconsistent with congressional intent” because it sets “too high a standard” for protection under the law.

- 2. Congress specifically instructs the EEOC to revise its definition of “substantially limits” to make it less stringent and therefore expand the class of people to be deemed disabled under the law.
 - 3. This likely will mean more disabled employees, which may lead to more disability discrimination claims.
- C. Employee can be disabled even if the impairment is controlled
- 1. The determination of whether an individual’s physical or mental impairment substantially limits a major life activity shall be made “without regard to ameliorative effects of mitigating measures.”
 - 2. The ADAAA defines “mitigating measures” to include: medication, medical supplies, equipment or appliances, low vision devices that magnify a visual image, prosthetics, hearing aids and devices, mobility devices, oxygen therapy equipment and supplies, assistive technology, reasonable accommodations or auxiliary aids or services, and learned behavioral or adaptive neurological modifications.
 - 3. Although “mitigating measures” do not include ordinary eyeglasses or contact lenses, under the ADAAA an individual’s visual acuity resulting from eyeglasses or contact lenses may be considered when determining

whether sight impairment is substantially limiting

D. An episodic impairment can qualify as a disability

1. The ADAAA specifies that an impairment need only limit one major life activity to be deemed “substantially limiting.”
2. Impairments that are episodic or in remission are to be considered disabilities if they would substantially limit a major life activity when active.

E. Expansion of category of employees “regarded as” being disabled

1. For an employee to succeed on a claim that he is “regarded as having such an impairment,” the employee currently has to show that the employer knew or perceived that the individual had a physical or mental impairment and that his or her impairment substantially limits a major life activity. Under the ADAAA, an individual will be “regarded as having such an impairment” if the individual “establishes that he or she has been

subjected to an action prohibited under this Act because of an actual or perceived physical impairment *whether or not the impairment limits or is perceived to limit a major life activity.*” (emphasis added.)

F. Clarification of what constitutes a “major life activity”

1. The bill provides specific examples of major life activities, such as: standing, learning, thinking, communicating and working. The bill also specifies that the term includes the operation of major bodily functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions
2. The effect of these changes is that employees will likely be considered disabled if they have, for example, insomnia, dyslexia, stuttering, and attention deficit disorder. It is significant that the major life activity need not have a direct effect on working.