

EMPLOYMENT LAW PRACTICE GROUP **Alert**

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Synopsis of ADA Amendments Act of 2008

Eighteen years after the Americans with Disabilities Act of 1990 (the ADA) was enacted to eliminate discrimination against individuals with disabilities, President Bush signed the ADA Amendments Act of 2008 (the Act) “to restore the intent and protections of the ADA.” The Act, Public Law No. 110-325, passed both houses of Congress by unanimous consent and became effective January 1, 2009.

The Act amends Title I of the ADA, the employment title, which prohibits disability-based discrimination in the workplace. Under the ADA, covered employers must avoid singling out workers with disabilities because of their impairments or adhering to standard practices that adversely affect workers with disabilities. Covered employers must also provide reasonable accommodations to account for the disabilities of employees.

To date, the predominant issue in Title I cases has been whether an individual’s impairment is a disability, as that term is defined in the ADA. The Act retains the ADA’s three-pronged definition of “disability” as (i) having a physical or mental impairment that substantially limits one or more major life activities, (ii) having a record of such an impairment, or (iii) being regarded as having such an impairment.¹ However, since the Act requires that the definition of disability be construed in favor of broad coverage of individuals under the ADA², it is more likely now that an individual’s impairment will be considered a disability.

I. Mitigating Measures No Longer to be Used in Determining Disability. In Sutton v. United Airlines Inc. and its companion cases, the Supreme Court has held that corrective and mitigating measures, such as medication and assistive technology, must be considered in determining whether an individual is disabled under the ADA.³ The Act explicitly overrules these cases and mandates that the determination of whether an impairment substantially limits a major life activity be made without regard to the ameliorative effects of mitigating measures, with the exception of eyeglasses and contact lenses.⁴

¹ 42 U.S.C. § 12102(1).

² 42 U.S.C. § 12102(4)(A).

³ Sutton v. United Airlines Inc., 527 U.S. 471 (1999); Murphy v. United Parcel Service, 527 U.S. 516 (1999); Albertsons Inc. v. Kirkingburg, 527 U.S. 555 (1999).

⁴ 42 U.S.C. § 12102(4)(E)(i).

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- II. Perception of Impairment Now Sufficient Whether or Not Impairment Limits a Major Life Activity. Prior to the Act, under the third prong of the ADA's definition of disability, an individual was required to show that he was perceived as having an impairment that substantially limits a major life activity. Under the Act, an individual will now meet the definition of disabled if he is simply perceived as having an impairment, without regard to whether the impairment limits or is perceived to limit a major life activity.⁵
- III. The Act Provides a List of "Major Life Activities". Under the ADA, an impairment substantially limits a major life activity if it prevents a person from performing a function that the "average person in the general population" can perform⁶. The Act sets forth a non-exhaustive definition of "major life activities" that builds on the Equal Employment Opportunity Commission's (EEOC's) definition and other activities that have been added by court decisions, such as eating and major bodily functions.⁷ Under the Act, "major life activities" includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and major bodily functions.⁸
- IV. Less is Needed to Prove that One is "Substantially Limited" in a Major Life Activity. Under the Supreme Court's ruling in Toyota Motor Mfg. Ky. Inc. v. Williams and the EEOC regulations,¹⁰ in order to be considered "substantially limited" in a major life activity, an individual was required to prove that he was unable to perform or "significantly restricted" from performing such activity.¹¹ The Act denounces the strict standard for "substantially limits" set forth in Toyota and the EEOC regulations as having created an inappropriately high level of limitation necessary to obtain coverage under the ADA and mandates that the term be interpreted less strictly.¹² The Act also expresses Congress' expectation that the EEOC will revise its regulations to define "substantially limits" to be consistent with findings of the Act.

⁵ 42 U.S.C. § 12102(3)(A).

⁶ 29 C.F.R. 1630.2(j)(1)(i).

⁷ 29 C.F.R. 1630.2(i); Lawson v. CSX Transp. Inc., 245 F.3d 916 (7th Cir. 2001) (holding that eating is a major life activity); Fiscus v. Wal-Mart Stores Inc., 385 F.3d 378 (3d Cir. 2004) (holding that eliminating waste from the blood is a major life activity).

⁸ 42 U.S.C. § 12102(2).

⁹ Toyota Motor Mfg. Ky. Inc. v. Williams, 534 U.S. 184 (2002).

¹⁰ 29 C.F.R. 1630.2(j).

¹¹ Toyota, 534 U.S. at 198. 29 C.F.R. § 1630.2(j)(1).

¹² 42 U.S.C. § 12102 (4)(B). ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b)(4), 2008 Stat. 3406, 3553-3554 (2008).

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V. Other Rules of Construction and Amended Findings. The Act sets forth other rules of construction to broaden coverage under the ADA. Under the Act, an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.¹³ Furthermore, an impairment that is episodic or in remission is considered to be a disability if it would substantially limit a major life activity when active.¹⁴ The Act also amends two findings in the ADA that the Supreme Court has considered to impose limitations on its interpretation of the ADA: the findings that “some 43,000,000 Americans have one or more physical or mental disabilities” and that “individuals with disabilities are a discrete and insular minority.”¹⁵

Two of the Act’s key accomplishments are to broaden the definition of disability and lessen the “substantially limits” standard. As a result, it should be easier for a plaintiff to prove that he is disabled, which should result in more ADA claims going to trial than before.

For more information, contact Jennifer Becker, Esq., 804-771-9512 or jbecker@hf-law.com

¹³ 42 U.S.C. § 12102(4)(C).

¹⁴ 42 U.S.C. § 12102(4)(D).

¹⁵ 42 U.S.C. §§ 12101(a)(1) and (7), prior to being amended by the Act.

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