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AMERICANS WITH DISABILITIES ACT AMENDMENTS

On September 25, 2008, President George W. Bush signed the Americans with Disabilities Act Amendments Act of 2008 (“Act” or “ADAAA”), effectively overturning several United States Supreme Court decisions interpreting, and restricting the coverage of, the original Americans with Disabilities Act (ADA). In addition, the Act rejects certain Equal Employment Opportunity Commission (EEOC) regulations pertaining to the ADA. While the definition of “disability” remains the same as that set forth in the ADA, the ADAAA incorporates new rules of construction which result in the expansion of the definition.

Pursuant to the ADA, the definition of “disability” is: “a physical or mental impairment that substantially limits one or more major life activities,” “a record of such an impairment,” or “being regarded as having such an impairment.” ADAAA, § 4(1). The Act’s changes to the various terms of this definition are set forth more fully below.

Substantially Limits

Under the ADAAA, courts must interpret the phrase “substantially limits” in accordance with the Act, as opposed to the Supreme Court’s reasoning in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002). In *Toyota Motor*, the Court held that in order for a litigant to be substantially limited in a major life activity, he or she must have an “impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” ADAAA, §2(b)(4). Congress expressly states in the Act that this interpretation inappropriately narrows the scope of protection that the ADA was meant to provide, clarifying that an impairment that is episodic or is in remission constitutes a disability if it would substantially limit a major life activity when active.

Major Life Activity

In addition to clarifying the term “substantially limits,” the ADAAA clarifies the definition of “major life activities” by providing two non-exhaustive lists. The first list includes the following activities: “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” ADAAA § 4(a). While the EEOC has recognized a number of these activities, this list clearly includes many activities which have not previously been recognized by the EEOC or various federal courts. The second list addresses major bodily functions, such as “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” *Id.*

In addition to the inclusion of such lists, of extreme importance is the fact that the ADAAA expressly states that an impairment that “substantially limits one major life activity need not limit other major life activities in order to be considered a disability.”

Mitigating Measures

In *Sutton v. United Airlines*, 527 U.S. 471 (1999), the United States Supreme Court held that courts must consider the effects of mitigating measures in determining whether individuals are disabled under the ADA. Pursuant to the ADAAA, however, this holding has effectively been overruled. The ADAAA instructs courts to determine whether an individual has a disability without any reference to the effects of mitigating measures. The Act further provides a non-exhaustive list of mitigating measures, including medication, medical supplies, equipment, appliances, low-vision devices, prosthetics (including limbs and devices), hearing aids, cochlear implants, mobility devices, oxygen therapy equipment and supplies, use of assistive technology, and reasonable accommodations. It is important to note that the Act specifically states that ordinary eyeglasses and contact lenses are excluded from this list, meaning that a court can consider these two mitigating measures in considering whether an individual falls within the definition of disabled.

Regarded as Disabled

The ADAAA clarifies the law with regard to individuals who claim that they are not disabled but have nevertheless been regarded as such. Specifically, the Act provides that an individual is protected by the ADA if it can be established that he or she “has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment.” ADAAA § 4(a). It is irrelevant whether or not the impairment limits or is perceived to limit a major life activity. Essentially, the ADAAA provides that an individual is not required to establish that they are substantially limited in a major life activity to fall within the definition of disabled. Further, the Act addresses an issue that has split federal courts for some time, specifically the issue of whether someone who is regarded as disabled is entitled to a reasonable accommodation. According to the ADAAA, an individual who is not truly disabled (i.e. no substantial limitation of a major life activity), yet claims he or she has been regarded as disabled, is not entitled to a reasonable accommodation.

Conclusion

The amendments to the ADA, which take effect January 1, 2009, will likely have the effect of increasing the number of employees who are covered by the ADA. In the near future, employers are advised to review their current policies regarding the ADA and prepare for the upcoming changes.