



Labor & Employment Update: ADA Amendments Act of 2008 Signed Into Law

On September 25, 2008, President George W. Bush signed into law the ADA Amendments Act of 2008 (H.R. Bill 3195) (the “Act”). The Act expands the interpretation of the Americans with Disabilities Act of 1990 (the “ADA”), which prohibits discrimination against disabled employees or job applicants.

The Act expands the interpretation of the ADA’s coverage, which has been narrowly construed by case law since a string of U.S. Supreme Court cases starting in 1999. Specifically, the Act targets and essentially overturns two of these cases, the 1999 decision in *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139, 144 L.Ed. 2d 450 (1999), which limited the ADA’s protection for employees and job applicants whose disabilities could be “mitigated” by measures such as medications, treatment, or assistive devices; and the 2002 decision of *Toyota Motor Mfg. Ky. v. Williams*, 534 U.S. 184, 197, 122 S.Ct. 681, 151 L. Ed. 2d 615 (2002), which created a higher standard for individuals to be considered “substantially limited” by their disability.

Under the ADA, workers must satisfy a three-part test before they are entitled to its benefits and protections. First, the employee must demonstrate that he or she has a physical or mental impairment that substantially limits one or more of the employee’s major life activities. The employee may also satisfy the first requirement by establishing that he or she has a record of having an impairment, or that the employer regarded the employee as having an impairment.

Second, the employee must establish that his or her impairment substantially limits a “major life activity”. Third, the employee must establish that even with the disability, he or she can perform the essential functions of the position in question, with or without reasonable accommodation.

Prior to the ADA Amendments Act of 2008, the United States Supreme Court had held repeatedly that the ADA must be interpreted to create a demanding standard for qualifying as disabled, and that conditions that could be corrected with mitigating measures did not constitute disabilities (see, among others, *Sutton v. United Airlines, Inc.*, and *Toyota Motor Mfg. Ky. v. Williams*).

However, the ADA Amendments Act of 2008 finds that the holdings of the US Supreme Court have “narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom the Congress intended to protect...”. Consequently, the Act specifically rejects the holdings in *Sutton* and *Toyota*, and instead sets forth that the term “substantially limits” shall mean “materially restricts”, a definition which the Act states is consistent with the “findings and purposes” of the ADA. In addition, the Act also clarifies that the ADA is to be construed “in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”.

The Act includes other changes to the ADA, such as:

- Expansion of the definition of “major life activity”;
- Noting that an impairment that substantially limits one major life activity doesn’t have to limit other major life activities in order to be considered a disability;
- Clarifying that impairments that are episodic or in remission are considered a disability if they limit a major life activity when active;
- Overturning the Sutton standard by specifying that the determination of whether an impairment substantially limits a major life activity must be made without taking into consideration the ameliorative effects of mitigating measures; and
- Providing that an individual doesn’t have to establish that his impairment limits or is perceived to limit a major life activity in order to be “regarded as disabled”.

The Act will become **effective on January 1, 2009**.

Please contact the following attorneys if you have any further questions regarding the new ADA Amendments Act of 2008:

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