

New ADA Amendments Act Signed Into Law, Nullify U.S. Supreme Court Rulings

On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (“ADAAA”), amending the Americans with Disabilities Act of 1990. ADAAA will take effect January 1, 2009; the legislation does not address whether the amendments will be applied retroactively.

Congress passed the ADA Amendments Act in direct response to U.S. Supreme Court decisions that had narrowly interpreted the scope of the ADA’s coverage. The amendments revise certain key terms in the ADA, and they provide that the ADA shall be construed in favor of broad coverage.

Key Revisions in the Amendments

1. The ADA’s original definition of “disability,” which will continue to apply, is as follows:

- (A) a physical or mental impairment that substantially limits one or more major life activities of an individual; or
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

ADAAA clarifies the first paragraph of this definition of “disability” by adding an expanded statutory definition of “major life activities.” Major life activities will include, but are not limited to, the following activities and bodily functions: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. This expansive definition will make it easier for a person to prove he has a disability.

2. ADAAA also will make it easier for an individual to prove he is disabled pursuant to the definition’s third paragraph. Specifically, an individual will be “regarded as” disabled and protected by the ADA if the individual can establish that “he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment *whether or not the impairment limits*



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or is perceived to limit a major life activity.” Court cases previously had limited the ADA’s protection for individuals with only perceived disabilities to those who were perceived to have an impairment that limited a major life activity.

3. Not leaving anything to chance, ADA AAA specifies that the definition of “disability” shall be construed “in favor of broad coverage of individuals,” and “to the maximum extent permitted by the terms of the Act.” The amendments state that an individual who has impairment that substantially limits one major life activity is considered to have a “disability” under the ADA. Further, an episodic impairment or one that is in remission is a disability pursuant to ADA AAA if it would substantially limit a major life activity when active.

4. ADA AAA clarifies that the term “disability” does not apply to impairments that are transitory and minor. A transitory impairment is defined as “an impairment with an actual or expected duration of 6 months or less.” To nullify the Supreme Court’s ruling in Sutton v. United Air Lines (1999), ADA AAA states that mitigating measures generally shall not be considered in assessing whether an individual is disabled. So, an individual’s use of the following shall *not be considered*:

- (i) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- (ii) use of assistive technology;
- (iii) reasonable accommodations or auxiliary aids or services; or
- (iv) learned behavioral or adaptive neurological modifications.

The Act specifies that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an individual is disabled. The ADA’s requirements for vision related qualification standards also are amended by ADA AAA. The amendment prohibits employers from using qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria is shown to be job-related for the position in question and consistent with business necessity.

5. The amendments provide that the ADA does not create a cause of action for reverse discrimination. An individual without a disability has no cause of action under the ADA for a claim that the individual was subject to discrimination because of the individual’s lack of disability.

6. ADA AAA clarifies that an ADA covered entity need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability solely because the person is “regarded as having such an impairment.”

Recommended Employer Action

Well before January 1, 2009 employers should review their ADA policies and procedures to be sure the new definitions and standards are incorporated. Job descriptions should be updated to ensure they accurately describe the essential functions of each position.

Employers should review their approach to responding to requests for reasonable accommodation: more individuals are likely to qualify as disabled persons entitled to a reasonable accommodation and more requests for accommodation are likely to be received by employers. New



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tools and processes may be needed. Training for managers and supervisors on ADAAA's impact is likely to be helpful.

If you have any questions about the ADA Amendments Act or any other employment law issue, please contact

any member of the HDJN employment law team at 804-967-9604 or by e-mail: Kim Daniel, kdaniel@hdjn.com; Page Gravely, pgravely@hdjn.com; Stephanie Hiss, shiss@hdjn.com, or Joan Mielke, jmielke@hdjn.com.

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Richmond 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 O (804) 967-9604	Fairfax 3975 Fair Ridge Drive Suite 475 South Fairfax, VA 22033 O (703) 591-3440
Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 O (866) 967-9604	Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 O (757) 321-6555

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