

The Americans with Disabilities Amendment Act— Are you ready for the changes?

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On January 1, 2009, the Americans with Disabilities Act Amendment Act (Act), the most comprehensive change to the American with Disabilities Act (ADA) within the last decade, will take effect. The Act will require both large and small employers to completely overhaul their approach to reasonable accommodation requests from employees under the ADA.

What is Behind the Changes?

Congress enacted the ADA in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. Shortly after this, a number of federal courts began to reject the majority of ADA claims brought before them. These decisions led to a series of US Supreme Court rulings that narrowed the range of coverage for individuals with serious impairments. The Equal Employment Opportunity Commission (EEOC) also put into place an ADA regulation instructing employers to determine if an employee was considered disabled without considering mitigating measures (eg, medications, prosthetics, hearing aids), which further limited the protections initially provided by the ADA.

Disability advocates and members of Congress disagreed with the US Supreme Court rulings and EEOC rule. As a result, advocates pushed for change to provide the broad coverage originally envisioned by Congress. The Act was intended to rectify the impact of the court rulings and EEOC rule that, in the word of the Act, “have created an inappropriately high level of limitation necessary to obtain coverage under the ADA,” which resulted in decisions holding that “people with a range of substantially limiting impairments are not people with disabilities.”

What Changes Does the Act make?

While the Act makes numerous changes to the ADA, the most significant changes are noted below.

- *Definition of “substantially limits” enhanced.* While the Act essentially retains the definition of disability, it did expand the interpretation of certain words in the definition, thereby commanding a broad reading of the term “disability.” The Act specifically overruled the EEOC and the US Supreme Court’s interpretation of the meaning of “substantially limits.” It discarded the “unable to perform/severely restricted” standard and ordered the EEOC to revise the agency’s regulations. While the term “substantially limits” does

not change in the ADA itself, the Act clarifies that the new standard will be less stringent, and will no longer require an impairment to be as serious as under prior interpretations of the ADA.

- *Definition of “major life activities” expanded.* Until now, the ADA was silent on what constituted a “major life activity.” A major life activity is an area of an individual’s life that needs to be adversely affected in order for the individual to claim a disability.

The Act contains a very broad list of conditions that should be considered major life activities. The list sets forth a number of items (eg, caring for oneself, lifting, bending, breathing, learning, eating, reading, sleeping), but notes that while the list sets forth examples, it is non-exhaustive. The Act clarifies that an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability, and that a person can be considered disabled under the ADA if he or she has an impairment that substantially limits the major life activity of working. The Act further expanded the definition of “major life activities” to include “major bodily functions” (eg, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respira-

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tory, circulatory, endocrine, and reproductive functions).

- *Mitigating measures almost completely eliminated from consideration.* The Act requires that a disability be determined without considering mitigating measures, such as medications, prosthetics, hearing aids, mobility devices, and learned adaptation. The only exception to this rule is that “ordinary eyeglasses or contact lenses” should not be considered when assessing whether an individual has a disability.
- *Impairment requirements clarified.* The Act clarifies that an impairment that is episodic or in remission can still be considered a disability if it would substantially limit a major life activity when active.
- *“Regarded as” prong refined.* The Act expands “regarded as” protections by prohibiting discrimination based on an employer’s perception of a mental or physical impairment, whether or not the individual can establish that the impairment actually limits, or is perceived to substantially limit, a major life activity. The Act clarifies that the “regarded as” prong will not be used when an impairment has an actual or expected duration of 6 months or less and is minor. Furthermore, the Act provides that individuals covered only under the “regarded as” prong are not entitled to reasonable accommodation.

What this Means to Employers

Employers should:

- Review their policies and practices governing the ADA’s interactive process and revisit the essential functions of positions at their company to ascertain what functions are the core responsibilities that may require accommodation.

- Proceed with caution when responding to accommodation requests from employees. Employers can no longer use the now-defunct Supreme Court standards for making disability determinations.
- Be prepared to offer accommodations to a wider percentage of their workforce.
- Keep in mind that if the disability is obvious, a duty to accommodate may exist even if the employee has not requested an accommodation.
- Maintain records of accommodations requests made and accommodations provided or denied, along with documentation of the reasons for such decisions.

Does the ADA Apply to You?

The ADA applies to those workplaces with 15 or more employees. This number includes part-

time and temporary employees, and applies if an employer had 15 or more employees for at least 20 weeks during the current or preceding calendar year.

Summary

Significant change is coming quickly, and employers need to be prepared. The Act will move the focus from a “disability” inquiry to an individualized interactive process, and will likely increase the number of individuals protected under the ADA. The defenses and employer modes of responding to disability claims will be narrowed while the range of ADA coverage will expand considerably. Additional information on the ADA and the recent amendments can be obtained by calling the Department of Justice’s ADA Information Line (800.514.0301), the EEOC (800.669.4000), or by visiting the DOJ’s ADA Web site (<http://www.ada.gov/>).

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