

RECENT AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT ("ADA")

Introduction

On September 25, 2008, President Bush signed the "ADA Amendments Act of 2008". The amendments will become effective on January 1, 2009. The ADA was amended because Congress found that several United States Supreme Court opinions narrowed the broad scope of protection intended to be afforded to the disabled by the ADA. In particular, Congress found that the holdings in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) and companion cases resulted in eliminating protection for many individuals whom Congress intended to protect. The amendments are intended to restore the protection eliminated by those opinions. They provide new or expanded definitions that must be reviewed in evaluating whether or not an individual is entitled to protection under the ADA.

Under the ADA an individual will be considered disabled if :

- 1) he has a physical or mental impairment that substantially limits one or more major life activities;
- 2) has a record of such an impairment; or
- 3) is regarded as having such an impairment.

The amendments which effect the definition of "major life activities", "substantially limited", and "regard as having such an impairment" are discussed below.

Major Life Activities

The term "major life activities," originally defined by the Equal Employment Opportunity Commission ("EEOC") in its regulations, includes caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, learning and working. The amendments create a new statutory definition of "major life activities" which adds to the EEOC's non-exclusive list. The new activities are included in bold letters.

". . . caring for oneself, performing manual tasks, seeing, hearing , **eating**, **sleeping**, walking, **standing**, **lifting**, **bending**, speaking, breathing, learning, **reading**, **concentrating**, **thinking**; **communicating**, and working"

and **major bodily functions**.

The term "major bodily functions" is defined to include, but not be limited to

". . . functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

Substantially Limits

The amendments revoke the holding of the United States Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) which allowed the consideration of an individual's ability to mitigate the effects of an impairment when considering whether the impairment was a substantial limitation on a major life activity. With one exception, the determination of whether an impairment substantially limits a major life activity must be made *without* regard to ameliorative effects of mitigation measures. A list of non-exclusive mitigating measures includes such measures as medication, prosthetics, hearing aids, mobility devices, learned behavioral or adaptive neurological modifications, reasonable accommodations, auxiliary aids or services, low-vision devices which magnify, enhance or otherwise augment vision, etc.

Ordinary Eyeglasses or Contact Lenses Exception

While low-vision devices that magnify, enhance or otherwise augment visual image are mitigating measures that cannot be considered in the determination of whether an impairment substantially limits a major life activity, ordinary eyeglasses or contact lenses are treated differently. Ordinary eyeglasses or contact lenses, which are intended to fully correct visual acuity or eliminate refractive error, may be considered in determining whether an impairment substantially limits a major life activity.

Regarded as Having Such An Impairment

The amendments add a definition of "regarded as having such an impairment" to include an individual that:

"...has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity."

Impairments that are transitory or minor are not included in the definition if the transitory impairment is expected to have an actual or expected duration of 6 months or less.

Conclusion

The amendments discussed above as well as additional amendments to the ADA are significant in the evaluation of whether or not an individual is entitled to protection under the ADA. You should contact your employment counsel if you are resolving workplace issues that may evoke the protections of the ADA.