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Everything employers need to know about the Americans with Disabilities Amendments Act of 2008

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On September 25, 2008, President Bush signed the Americans with Disabilities Amendments Act of 2008 (the "ADAA"). The ADAA overturns a series of seminal United States Supreme Court decisions which narrowly construed the Americans with Disabilities Act's (the "ADA") definition of "disability." These cases, including *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), and *Toyota Motor Manufacturing Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), reduced the number of employees covered by the ADA. As a result of the ADAA, many more employees will fall within the definition of "disabled" and be entitled to the protections of the ADA.

Notably, the ADAA retains the original definition of "disability" to include: (1) an impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. The Act, however, takes a number of steps to ensure that this definition is expanded and interpreted more broadly in favor of coverage.

First, the ADAA rejects the Supreme Court's strict interpretation of the ADA in *Toyota Motor Manufacturing Kentucky, Inc. v. Williams*. *Williams* held that to be substantially limited in a major life activity, an individual 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." *Williams*, 534 U.S. at 198. The ADAA finds this standard too restrictive and directs the EEOC to revise its regulatory definition to be consistent with the Act's goal of broadening the class of persons covered by the ADA.

Second, the ADAA clarifies the definition of "major life activity" by adding a lengthy list of examples, such as: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. "Major life activities" now also expressly include "the operation of major bodily functions" such as functions of the bowel system; normal cell growth; and digestive, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Further, the ADAA makes it clear that episodic impairments or medical conditions in remission are disabilities if they would substantially limit a major life activity when active.

Third, the ADAA reverses the Supreme Court's holding in *Sutton* which required courts to consider the effects of mitigating measures in determining whether an individual is disabled. Now, courts may not consider mitigating measures when determining whether an impairment substantially limits a major life activity. Rather, the individual must be evaluated as if untreated. An exception is made for ordinary glasses and contact lenses.

Finally, the ADAA broadens what it means to be "regarded as" having an impairment. An individual can be regarded as disabled even if the employer does not perceive the impairment as limiting a major life activity. Previously, the Supreme Court held that the perceived impairment, like any actual impairment, must substantially limit a major life activity. Impairments that are transitory (with a duration of six months or less) and minor are excluded from the "regarded as" definition of disability. Moreover, employers are not required to reasonably accommodate individuals who are regarded as being disabled.

With the ADAA's January 1, 2009 effective date right around the corner, employers should take immediate steps to prepare for the changes. At a minimum, employers should review their policies to ensure compliance with the

requirements of the ADAA, review their interactive accommodation process and retrain managers and human resources personnel who are involved in the interactive process or in making decisions regarding accommodations.

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