

CLIENT ALERT

ADA Amendments Act Rejects Supreme Court Decisions Limiting Scope of ADA

Sep.24.2008

The ADA Amendments Act, passed by the Senate on September 11, 2008 and by the House of Representatives on September 17, 2008, is expected to be signed into law by President Bush. It will become effective January 1, 2009. If signed, the law will expand protections offered by the Americans with Disabilities Act ("ADA") by overruling two Supreme Court decisions that some believe have restricted the protections of the ADA to a more narrow group of individuals than Congress intended. The major features of the Amendments Act, which embody compromises negotiated among the U.S. Chamber of Commerce, other business groups, and the disability community, are summarized below.

First, the Amendments Act provides that the use of mitigating measures such as medication or hearing aids, which could provide relief from or control of a disability, should not be considered when determining whether a person is disabled. The Amendments Act includes only one exception to this prohibition, allowing the consideration of normal eyeglasses and contacts in determining whether an individual has a disability. This aspect of the bill overrules *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), which, along with its companion cases, created a requirement that the ameliorative effects of mitigating measures must be taken into account in determining whether a disability has limited a major life activity. Under *Sutton*, an otherwise qualified disability might not trigger protection if its impact is reduced, such as by medication that controls the condition or an artificial limb that aids in walking.

Second, specifying that the definition of "disability" should be interpreted broadly, the Amendments Act expressly brings under the protections of the ADA impairments that are intermittent or in remission but, when active, would limit a major life activity, such as epilepsy, diabetes, or cancer. The bill rejects the standard set in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) that the definition of "disability" must "be interpreted strictly to create a demanding standard for qualifying as disabled" and that, to be substantially limited in performing a major life activity under the ADA, 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."

Third, the Amendments Act codifies a list of activities that would be considered "major life activities," including: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Previously, courts had been left to determine what activities might or might not be major life activities, due to the absence of definitive guidance in the ADA.

Finally, in a more technical change, the Amendments Act alters language prohibiting discrimination, substituting the phrase "no covered entity shall discriminate against a qualified individual on the basis of disability" for the current "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual . . ." It is not yet clear what impact the new language may have, if any.

The changes to the ADA are likely to bring many more employees under the protections of the Act, as well as increase the amount and success rate of ADA-based litigation. All employers with 15 or more employees should carefully review these

sweeping amendments and train their HR and management staff appropriately to ensure they are adequately prepared when the bill becomes effective on January 1, 2009.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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