

## Service

## Labor &amp; Employment

## Bush Signs ADA Amendments Act of 2008 Into Law

On Thursday, September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (ADAA), which had recently passed both the House and Senate by overwhelming majorities.

The ADAA broadens the protections of the ADA in a number of ways:

(1) The ADAA specifically requires courts to interpret the definition of disability broadly. Additionally, the Equal Employment Opportunity Commission will be drafting regulations incorporating this broad view as it defines the meaning of "substantially limits a major life activity." This aspect of the ADAA overturns the Supreme Court decision in *Toyota Motor Mfg, Kentucky, Inc. v. Williams*. In *Williams*, the Court held the ADA should be interpreted strictly to create a demanding standard, and concluded that "substantially limits" means a limit "to a large degree."

(2) The ADAA clarifies that, in assessing whether someone is disabled, an employer can no longer consider the effect of mitigating measures (except that, notably, eyeglasses and corrective lenses may still be considered). This aspect of the ADAA overturns the Supreme Court decision in *Sutton v. United Airlines, Inc.* In *Sutton*, the Court held the determination of whether an impairment is "substantially limiting" must account for the "corrective measures" a person takes to ameliorate his/her disability.

(3) The ADAA provides numerous examples of "major life activities," including bodily functions (including, for example, the functions of the immune system, the circulatory system, and the digestive system), eating, thinking, concentrating, reading, learning, communicating, caring for oneself, and working.

(4) The ADAA clarifies that an "impairment that is episodic or in remission" may qualify as a disability, if the impairment substantially limits a major life activity when in its active state.

(5) The ADAA expands the definition of who may be "regarded as" disabled. Courts have been interpreting this phrase to mean the employer must regard the individual as having a "disability" within the meaning of the ADA. Now, under the ADAA, a person may be regarded as disabled simply if he or she has a physical or mental impairment.

### Effects on Employers

The new legislation takes effect January 1, 2009. At that time, a larger portion of the workforce will qualify as disabled, additional reasonable accommodations may be required, and employees will be more successful in the court system. As employers gear up for the effective date of the ADAA, they should reassess their reasonable accommodation procedures, and educate HR professionals and managers about what may qualify as a disability to ensure compliance with the new law. Employers should also watch carefully how the new "regarded as" definition is used by employees in the workplace and in the court system. Of all the ADAA provisions, the new definition of "regarded as" may prove to be the most difficult for employers.

**Questions?** Please contact one of our Labor & Employment attorneys.

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