

PUBLICATION

ADA Amendments Act of 2008: Summary and Current Status

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In the midst of the proposed economic legislation being negotiated in Washington, D.C., the *ADA Amendments Act of 2008* was enacted into law. The ADA Amendments Act will significantly expand the definition of "disability" under the ADA, limiting consideration of mitigating measures in determining whether a person is disabled under the ADA. This will result in ADA protection extending to a large number of employees who would not have been considered disabled under the prior construction of the ADA. The original bill, named the "ADA Restoration Act," would have entirely eliminated the "substantial limitation" language in the ADA. The original bill stalled in the Senate last year.

The ADA Amendments Act retains the "substantial limitation" requirement to establish a disability, but makes it easier to meet that standard. "Substantially limits" would mean "materially restricts." The ADA Amendments Act instructs that courts are to "construe broadly" the definition of a disability.

The determination of whether an impairment substantially limits a major life activity "shall be made without regard to ameliorative effects of mitigating measures" For example, the Act specifically states that "medication, prosthetics, hearing aids, assistive technology, learned behavior or adaptive neurological modifications" are not to be considered in determining whether there is an impairment that causes a substantial limitation on a major life activity. Only ordinary eyeglasses and contacts may be considered as a mitigating measure. The Act also prohibits a court from considering whether the manifestations of the disability are "episodic, in remission or latent" when determining if a person has an impairment that would qualify as a disability.

The Act specifically defines a "major life activity" to include, but is not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working." A major life activity also includes "major bodily functions," which includes "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

The Act will likely result in more individuals making claims under the Act. In addition, there is the distinct possibility that individuals whose claims were denied in the courts based upon the construction of the original ADA will attempt to bring their claims a second time under the new definitions established under the ADA Amendments Act.

The amendments result in a whole new segment of employees being classified as disabled under the ADA who did not meet the definition of having a disability under the prior ADA. This in turn may result in additional individuals to whom employers will need to offer reasonable accommodations at work. Employers and their legal counsel will have to address what types of accommodations are reasonable and must be extended to this new class of disabled individuals.