

THE AMERICANS WITH DISABILITIES AMENDMENTS ACT of 2008 (ADAAA)

On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments of 2008 (ADAAA). Employers with 15 or more employees must comply with the federal ADA law and state law in regard to the new amendments, and must apply the standard most beneficial to the employee.

The ADA Amendments Act is effective on January 1, 2009.

The Act makes important changes to the definition of the term “disability” by rejecting several Supreme Court decisions and portions of the EEOC’s ADA regulations. The Amendments Act expands the protections of the original ADA to include more individuals with less severe impairments, and many expect this will result in more discrimination claims filed under the ADA.

The Act retains the ADA’s basic definition of a disability as:

Having a physical or mental impairment that substantially limits one or more major life activities;

Having a record of such an impairment; or

Being regarded as having such an impairment.

However, the ADAAA has expanded the definition of “**major life activities**” to include:

Caring for oneself

Performing manual tasks

Seeing

Hearing

Eating

Sleeping

Walking

Standing

Lifting

Bending

Speaking

Breathing

Learning

Reading

Concentrating

Thinking

Communicating

Working

The ADAAA also adds a new major life activity category – “**major bodily functions**”, which includes, but is not limited to:

Functions of the immune system
Cell growth
Digestive, bladder, and bowel functions
Neurological and brain functions
Respiratory and circulatory functions
Endocrine functions
Reproductive functions

OTHER SIGNIFICANT ELEMENTS of the ADAAA:

The determination of whether an impairment substantially limits a major life activity must be made without regard to the use of mitigating measures such as medication, medical equipment, prosthetics, hearing aids, mobility devices, oxygen equipment, and so on. Simply put, if an employee’s condition would qualify without such aids, consider the person to have a protected disability.

There is one exception, however, for ordinary eyeglasses and contact lenses.

An impairment that is “episodic or in remission” is a disability even when inactive “if it would substantially limit a major activity when active.” Examples may include cancer, epilepsy, and post traumatic stress disorder.

An individual subjected to an action prohibited by the ADA (for example, failure to hire) because of an actual or perceived impairment will meet the “regarded as” definition of disability, **unless** the impairment is minor and “transitory” (actual or expected duration of the impairment is 6 months or less.)

Employees without disabilities cannot sue for “reverse discrimination” under ADA.

BROAD COVERAGE

The ADAAA states that “the definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted under the terms of the Act.” In other words, it is clear that the changes in this Act will benefit employees by making it more likely that they will now qualify for reasonable accommodations and the ADA’s protections.

Additionally, the ADAAA states that the intent of these changes is that employers stop engaging in “extensive analysis” to determine what constitutes a disability under the law, and focus instead on complying with their obligation not to discriminate and to provide reasonable accommodations to individuals who are otherwise qualified to do a job.

While many of the changes in the new Act will change how we interpret the law going forward, good common-sense practices such as promoting a respectful workplace and being open-minded and thoughtful when employees request reasonable accommodations will continue to help employers comply with the law and avoid liability.

It is also important to remember that a key organizational goal is to recruit and hire the best employees possible. The ADAAA does not require employers to hire unqualified candidates, but it requires all employers to do what most good employers do already: level the playing field.

If there are any questions or comments, please make an appointment to meet with Dr. Alan Comedy, Disability Compliance Officer, in the Office of Affirmative Action/Equal Opportunity/Disability Compliance in 206 Boyden Hall at 508-531-1241.