

New Disability Discrimination Legislation

In 1990 Congress passed the Americans with Disabilities Act (ADA) to eliminate barriers to opportunity that existed in this country due to discriminatory attitudes towards individuals with disabilities. In the ADA provisions applicable to the workplace, discrimination was prohibited in a wide range of activities, including hiring, promotion, discharge, compensation, and other terms and conditions of employment. Compliance and enforcement responsibilities were given to the Equal Employment Opportunity Commission (EEOC). Since the original passage of the ADA, however, its broad purposes had been, in the minds of some observers, limited by court decisions and interpretations making it more difficult for those intended to be protected by the Act to obtain relief. In particular, the definition of who is considered to have a covered disability had become overly restrictive. In 2008 Congress responded by passing the ADA Amendments Act (ADAAA). The principal effect of the ADAAA is, by expanding the definition of a covered disability, to make it somewhat easier for an employee to qualify for protection.

The basic definition of disability under the ADA remains the same. An individual is disabled under the original Act if he/she has a physical or mental impairment that substantially limits one or more major life activities, or if the individual has a record of such an impairment, or if the individual is regarded as having an impairment. What has changed is the way some of the terms are to be interpreted:

- The definition of “major life activities” has been broadened. In the past it was generally understood that performing manual tasks, seeing, hearing, moving about, communicating, working, etc. were included in the category of a “major life activity.” However, questions were raised about whether individuals who were afflicted by an internal medical condition, such as cancer, gastrointestinal disorders, heart disease, etc. that did not necessarily manifest itself outwardly in a limiting way were covered. In the ADAAA, Congress resolved any doubts about the matter by identifying certain “major bodily functions,” such as “immune system . . . digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions” as major life activities. It also, for the first time, included a specific list of activities that are declared to be major life activities, though the list is said to be only illustrative. Finally, the ADAAA makes it clear that *only one* major life activity need be limited by an impairment, regardless of any effect on other major life activities.

- Congress has instructed the EEOC to revise its definition of “substantially limits” (as used in the phrase “an impairment that substantially limits one or more major life activities” indicating that its current definition - “significantly restricted” - is too difficult a standard for an employee to meet. The EEOC is said to be working on a new, more “employee-friendly” definition.

- In 1999 the Supreme Court decided an important ADA issue when it ruled that the determination of whether a person is disabled or not should be made by taking into account any mitigating measures. *Sutton v. United Air Lines Inc.*, 527 U.S. 471

(1999). Under this holding, an individual with an epilepsy or diabetes condition that is controlled by medication is not considered to be disabled. The effect of this interpretation has been that such a person, even if subjected to discrimination due to this condition, could not seek relief under the ADA because he/she was not a “disabled person” and therefore was not protected. This view was reiterated in two companion cases also decided by the Supreme Court in 1999. That view has now been “overruled” by Congress in the ADAAA. The limitations imposed by an employee’s impairment will henceforth be evaluated by looking solely at the impairment itself and ignoring the enabling effect of medication, therapy, etc. The only exception to this new rule is that the corrective effect of eyeglasses or contact lenses may still be considered in assessing whether an eye problem is substantially limiting. Mitigating measures may include medication, medical equipment, prosthetics, hearing aids, mobility devices, assistive technology, learned behavioral or adaptive neurological modifications, etc.

- In a more recent case, *Toyota v. Williams*, 534 U.S. 184 (2002), the Supreme Court held that, to be substantially limiting, an individual’s impairment must restrict him/her from an activity of central importance to daily life. The ADAAA rejects the “central importance to daily life” standard.

- The ADAAA deals with conditions that may not be continuous but manifest themselves only from time to time. In the past an individual could not, depending on how long such a condition remained active, be considered as having a disability. Now, under the Amendments, “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” An employee with periodic Crohn’s disease flare-ups necessitating hospitalization or an employee with infrequent epileptic seizures must now be evaluated in terms of the limitations imposed by their conditions during an active phase.

- The third prong of the definition of disability under the ADA focuses on how others view the individual employee (the “regarded as” prong). The ADAAA broadens this category of protected individuals by allowing an employee to simply show that the employer discriminated against him or her because of an impairment, either actual or perceived. It is no longer necessary to show that the employer also believed the impairment would substantially limit a major life activity. An exception has been recognized by the ADAAA, however, for impairments with an actual or expected duration of six months or less or that is both “transitory and minor.” And the ADAAA does make it clear that an employer’s duty to make “reasonable accommodations” for a qualified individual with a disability (that is, to adopt assistive measures or provide assistive devices to help such an individual perform his/her essential job functions) applies only to those employees who have an “actual disability” or a “record of a disability,” not those simply “regarded” as disabled.

The ADAAA took effect January 1, 2009. There is little doubt that many more employees will now find themselves eligible for protection under the ADA, and the number of disability discrimination claims and lawsuits is expected to increase. When sued, an employer will find it

more difficult to obtain a pre-trial dismissal on the ground that the plaintiff-employee was not disabled. The focus, in many cases, will now shift from a determination of whether or not a worker has a covered disability to the issue of whether the employer has provided a reasonable accommodation. The interactive process between the employer and the employee during which accommodation measures are discussed and considered is obviously now much more important. In this new legal environment, it will even more critical for UAHuntsville supervisors and administrators to contact the Office of Human Resources for guidance and help any time a question about a worker's possible disability arises.