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## Honigman's Labor and Employment Department

*Presents*

## The ADA Amendments Act of 2008—Important New Changes to the Federal Disability Law That Employers Need to Know

*Thursday, November 6, 2008 10 a.m. -11 a.m. EST*

*Presenters*

**Stanley H. Pitts**  
**Trisha M. Benson**

# The Americans with Disabilities Act of 1990 (ADA)

- Enacted “to establish a clear and comprehensive prohibition of discrimination on the basis of disability”
- Effective on July 26, 1992  
[25 or more employees].
- Effective on July 26, 1994  
[15 or more employees].

# ADA Congressional Findings

- 43,000,000 Americans have one or more physical or mental disabilities;
- Individuals with disabilities are a discrete and insular minority;
- Discrimination denies people with disabilities the opportunity to compete on an equal basis.

# ADA Amendments Act of 2008

- The ADA Amendments Act was signed into Law by President Bush on September 25, 2008.



- The ADA Amendments Act goes into effect on January 1, 2009.

# Purpose of the ADA Amendments Act

## 1. The Act Clarifies the Intention and Enhances the Protections of the ADA

- Provides clarification on the definition of disability.
- Overturns Supreme Court decisions that narrowly interpreted the scope of the ADA.
- Shifts the focus away from whether an individual's impairment qualifies as a disability under the ADA. Instead, the new focus is on an employer's compliance with its ADA obligations.

# Purpose of the ADA Amendments Act

## **2. The Act Deletes the ADA findings that the Supreme Court used to limit coverage.**

- That “some 43,000,000 Americans have one or more physical or mental disabilities;” and
- That “individuals with disabilities are a discrete and insular minority.”

# ADA Amendments Act - Summary of Changes

1. Definition of Disability
2. Substantial Limitation
3. Major Life Activity
4. Mitigating Measures
5. Regarded As

# Definition of Disability

**DISABILITY** – The term ‘disability’ means, with respect to an individual –

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such impairment; or
- (C) being regarded as having such an impairment.



# The New Definition of Disability

- The Act retains the terms “substantially limits” and “major life activity” from the original ADA definition.
- The Act rejects the demanding standard set forth by the US Supreme Court in Toyota Motor Manufacturing v Williams.
- The Act affirmatively provides that the definition of disability be construed in favor of broad coverage.

# The Overturned Supreme Court Definition

Toyota Motor Manufacturing, Kentucky, Inc. v Williams,  
534 US 184 (2002).

## Facts:

Plaintiff performed assembler duties and was diagnosed with carpal tunnel syndrome. Plaintiff was terminated when unable to perform full duties of position.

## Issue:

Did Plaintiff have a physical impairment which substantially limited her in the major life activity of performing manual tasks

# The Holding in Toyota

Under the ADA, Plaintiff was not disabled.

## 1. There was no substantial limitation:

- To be substantially limited in performing manual tasks, an individual must have an impairment that ***prevents*** or ***severely restricts*** the individual from doing activities.

## 2. No major life activity was impaired:

- The impairment must affect activities of ***central importance to most people's daily lives***.
- The impairment's impact must also be permanent or long-term.

# The Supreme Court's Reasoning

- Supreme Court Relied On:
  - Congress' finding that only 43 million Americans had physical or mental disabilities;
  - EEOC regulations defining “substantially limited” and “major life activity.”

# Impact of ADA Amendments Act

The Act specifically rejects the Toyota analysis that the terms “substantially limits” and “major life activity” must be interpreted strictly to create a demanding standard for qualifying as disabled.



# Substantially Limits

The Act retains the term “substantially limits” from the original ADA definition, but makes clear that this requirement is intended to be a less demanding standard than that enunciated in the Toyota decision.

# Major Life Activities

- An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

# Major Life Activities

- The Act provides new instruction on what may constitute a “major life activity.”
- The Act provides a non-exhaustive list of major life activities within the meaning of the ADA.
- While non-exhaustive, the listed activities have increased to 18.
- The Act expands the category of major life activities to include operation of major bodily functions.



# Mitigating Measures

- The Act prohibits the consideration of mitigating measures such as medication, assistive technology, accommodations, or modifications when determining whether an impairment constitutes a disability.
- The Act expressly rejects the Supreme Court's holding in Sutton v United Air Lines, 527 US 471 (1999), and its companion cases, which held that mitigating measures must be considered when determining if an individual is disabled.

# Facts/Issue in Sutton

## Facts:

- Plaintiffs each applied for employment as airline pilots
- Each of the Plaintiffs was severely myopic and had uncorrected visual acuity of 20/200 or worse.
- However, the visual acuity of each was correctable to 20/20 or better with eyeglasses or contact lenses.
- Plaintiffs were denied employment and sued under the ADA.

## Issue:

Do Plaintiffs have a physical impairment that substantially limits them in a major life activity where, with the assistance of corrective lenses, they are able to perform identically to people without similar impairment?

# The Holding in Sutton



The Supreme Court held that the determination of whether an individual is disabled should be made with reference to mitigating measures.

# The Supreme Court's Reasoning

- In Sutton, the Supreme Court reasoned that an impairment could not substantially limit a major life activity if it could be fully corrected.
- If the impairment was fully corrected, the individual with the impairment could function identically to other people and, therefore, had no disability.

# The ADA Amendments Act Rejects Sutton v United Air Lines

- The legislature called the consideration of mitigating measures a “supreme absurdity.”
- Examples: prosthetics, medications, hearing devices, and subconscious measures.
- The Act eliminates the situation where impairments that are mitigated do not constitute disabilities but still serve the basis for discrimination.

# The Effect of the Act on the Consideration of Mitigating Measures

- Provides a non-comprehensive list of mitigating measures that should not be considered when determining if an individual is disabled.
- Ordinary eyeglasses or contact lenses are still considered.



# “Regarded As” Under Sutton

Disabled under the “regarded as” prong means:

- a) an individual must be “regarded as having a physical or mental impairment;
- b) that substantially limits one or more major life activities of such individual.



# “Regarded As” Under the ADA Amendments Act

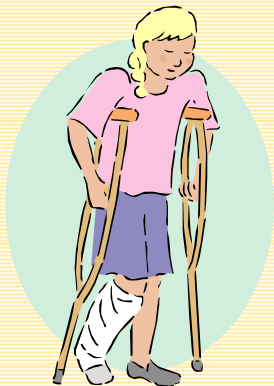
- The Act rejects the Sutton definition of “regarded as.”
- The Act expands coverage under this prong of “disability.”
- The Act removes the requirement that an individual demonstrate that he or she has, or is perceived to have, an impairment that substantially limits a major life activity.



# “Regarded As” Under the ADA Amendments Act

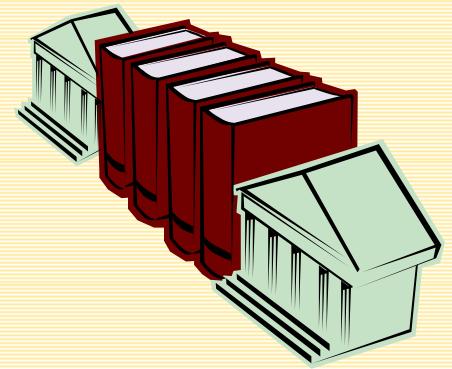
## New Limits on Coverage and Accommodation

- No accommodation required for individuals “regarded as” being disabled.
- New “regarded as” definition does not apply to impairments that are transitory and minor—such impairment will not meet ADA definition of disability.
- A transitory impairment is an impairment with an actual or expected duration of 6 months or less.



# Regulatory Authority to the EEOC

The ADA Amendments Act also gives specific regulatory authority to the EEOC to establish guidance on the definition of disability.



# The Practical Impact of the Act

- 1. Focus shifts from whether an individual is disabled to the level of accommodation provided.**
  - The Act is intended to make it easier for people with disabilities to be covered by the ADA.
  - Congress has strong belief that accommodating individuals with disabilities is a key goal of the ADA.
  - Reasonable accommodation is a critical component of the ADA's assurance of nondiscrimination.

# The Practical Impact of the Act

## 2. EEOC Administrative Charges

- May mean more scrutiny by the EEOC of the employer's accommodation efforts. New focus likely to be on:
  - Job restructuring (redistribution of marginal functions)
  - Modifying work schedules
  - Reassignment to a vacant position
  - Acquiring or modifying equipment or devices
  - Providing qualified readers or interpreters

# The Practical Impact of the Act

- 3. May result in an increase in disputes involving:**
- Whether accommodation requests were made;
  - Availability of accommodations;
  - The reasonableness of accommodations; and
  - Whether the interactive process was initiated or why it failed.

# The Practical Impact of the Act

## 4. Limited Employer Defenses

- Defenses to disability status reduced under the Act's broadened view of disability.
- Likely to be more scrutiny of employers' claim of undue hardship when denying accommodation requests.



# What You Need To Do

- Change mindset – be more flexible
- Provide in-house training
- Work harder to find reasonable accommodations
- Put forward more effort; examine more closely
- Engage your legal counsel early in the process to determine the existence of a disability or determine a reasonable accommodation

# Honigman Can Help You

- Provide training;
- Review employee handbooks, manuals or policies;
- Evaluate individual circumstances on a case by case basis; and
- Assist in evaluating accommodation requests and options for alternate accommodations.



# Questions

We encourage you to submit questions.

Please click on ***Questions*** Link at the top right of your screen to ask a question of our presenters.

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