

September 30, 2008

PRESIDENT BUSH SIGNS THE ADA AMENDMENTS ACT

On September 26, 2008, President Bush signed the ADA Amendments Act (the “Act”) (S. 3406) into law. Although the Act is not effective until January 1, 2009, the amendments introduce significant changes that will require you to act now.

The Act overturns four U.S. Supreme Court decisions that critics claim too narrowly interpreted the scope of the ADA’s coverage. The Supreme Court cases include *Sutton v. United Air Lines*, 527 U.S. 184 (1999), *Murphy v. United Parcel Services*, 527 U.S. 516 (1999), and *Albertson’s Inc. v. Kirkingburg*, 527 U.S. 555 (1999). These decisions allowed the employer and the courts to consider mitigating circumstances when determining whether an individual is entitled to ADA protection. For example, under the Supreme Court’s analysis, an individual who successfully uses medication or adaptive devices to cope with an illness or a missing limb does not have a disability under the ADA, while by contrast, an individual with the same condition who does not take these mitigating steps is considered disabled under the ADA. The Act rejects the Supreme Court’s interpretation and makes clear that Congress intended the ADA to apply to any person with a disability, without regard to mitigating circumstances such as taking medication or using an assistive device. This means that more individuals will receive ADA protection because neither the employer nor the courts

will be authorized to exclude those individuals who have successfully utilized mitigating measures.

The Act also overturns *Toyota Motor Mfg. v. Williams*, 534 U.S. 184 (2002). In *Williams*, the Supreme Court restricted the reach of the ADA by interpreting “substantially limit” and “major life activity” – terms used to assess whether an employee is entitled to a disability finding under the ADA – to mean more than an employee being unable to perform the tasks associated with a specific job. The Act mandates employers and the courts to use a much broader definition by adding several new components to the disability inquiry. For example, the Act clarifies that an impairment that substantially limits a major life activity need not limit other major life activities to be considered a disability. In addition, an impairment that is episodic or in remission is considered a disability if it would substantially limit a major life activity when active.

Finally, the Act also provides that the “regarded as” disabled provision will not apply to an individual with a minor condition or a condition expected to last six months or less.

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