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
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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.

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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.
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.
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.”
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.

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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.

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**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.”
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.
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.
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:

- 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.

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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.

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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.
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.
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.
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.
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.
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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