



Amendments to the Americans with Disabilities Act Take Effect on January 1, 2009

On September 25, 2008, President Bush signed into law the Americans with Disabilities Act Amendments Act of 2008, significantly expanding the class of individuals who are considered disabled and entitled to protection under federal law. Its provisions will take effect on January 1, 2009.

Background

The [Americans with Disabilities Act of 1990](#) (ADA), signed into law by President George H. W. Bush, is a wide-ranging civil rights law largely aimed at eliminating employment discrimination against individuals with disabilities. The [Americans with Disabilities Act Amendments Act of 2008](#) (ADAAA), recently signed into law by President George W. Bush, substantially broadens the application of the ADA, effectively overturns a series of U.S. Supreme Court decisions which narrowly interpreted the ADA definition of disability, and directs the Equal Opportunity Employment Commission (EEOC) to issue regulations that apply a less restrictive disability standard.

The Americans with Disabilities Act Amendments Act

The ADA defines an individual with a disability as one who has, has a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. The ADAAA retains the same definition, but requires it to be construed broadly in favor of covering these individuals. In so doing, the ADAAA effectively reverses a number of Supreme Court decisions that had narrowed the protections offered by the ADA and restores the broader protections against disability discrimination intended by Congress. Under the ADAAA, the determination of whether any particular condition is considered a disability will continue to be made on a case-by-case basis.

What Constitutes a Major Life Activity. The ADAAA expands the definition of major life activity and provides a non-exhaustive list of those activities – including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Further, major life activities include the operation of major bodily functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Defining Substantially Limits. Neither the ADA nor the ADAAA defines the term “substantially limits.” However, a line of Supreme Court decisions (including [Toyota Motor Manufacturing, Kentucky, Inc. v. Williams](#) and [Sutton](#)

v. United Air Lines, Inc.) held that the terms “substantially” and “major” were to be narrowly interpreted in determining whether a covered disability exists, and EEOC regulations defined substantially limits to mean significantly restricted. The ADAAA has lowered the disability bar, adopting a far broader test that focuses the inquiry less on whether the employee’s impairment is technically a disability and more on whether the employer has met its obligations under the new law. Importantly, an impairment that is in remission or episodic (e.g., diabetes, epilepsy, post-traumatic stress disorder) will now be considered a disability if it would substantially limit a major life activity when active. Further, an impairment that substantially limits only one major life activity – without limiting other major life activities – qualifies as a disability under the ADAAA, so that an individual no longer must be unable to perform a broad class of jobs to be considered substantially limited.

BUCK COMMENT. *Although the EEOC is expected to issue revised regulations that redefine substantially limits in connection with a major life activity, those regulations are not likely to be in place when the ADA amendments take effect next month. Pending further guidance, employers should prepare to take an expansive view of what impairments may constitute a disability and carefully consider all accommodation requests.*

Regarded as Disabled. The ADAAA clarifies that an individual will meet the ADA’s “regarded as having a disability” test if the individual establishes that he or she has been subjected to an adverse employment action because of an actual or perceived physical or mental impairment – regardless of whether the impairment limits or is perceived to limit a major life activity. Minor and transitory impairments (i.e., impairments with an actual or expected duration of six months or less) are not protected under the “regarded as” test. Although an employer cannot discriminate against an individual because of a perceived impairment, it need not provide reasonable accommodation or modify its policies, practices or procedures for individuals who are only regarded as impaired.

Most Mitigating Measures No Longer Considered. The ADAAA requires that the ameliorative effects of mitigating or corrective measures – with the exception of ordinary eyeglasses or contact lenses – should not be considered in determining whether an impairment substantially limits a major life activity. Among the mitigating measures that may no longer be considered to determine whether an individual is protected by the ADA are medication, prosthetics, hearing aids, assistive technology, and employers’ accommodations. Going forward, whether an otherwise substantially limiting impairment can be corrected or its effects reduced or controlled by medication or other means is no longer relevant to the disability determination.

BUCK COMMENT. *Largely as a result of these changes, employees and job applicants who were not previously considered to have a disability will now be protected by the ADA. Thus, employers could face increased requests for leaves of absence and other accommodations next year.*

Effective Date

The law will take effect on January 1, 2009.

Conclusion

Employers should review their employment policies and practices, particularly their disability-related policies, in anticipation of the new law's broader requirements. Buck's consultants would be pleased to assist you in reviewing your policies, and updating your compliance training.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.