



Updates

Employment & Discrimination Law

ADA Amended to Expand Coverage to Millions More Disabled Americans

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In a surprising bipartisan effort, the **Americans with Disabilities Act ("ADA" or "Act")** has been amended to greatly expand the class of disabled people who will be protected by the law. The new law was signed by President Bush on September 25, 2008, and became effective January 1, 2009.

The Americans with Disabilities Act was originally enacted in 1990, but over the last few decades has been narrowly interpreted by the United States Supreme Court and other courts to restrict the Act's protections to a limited group of severely disabled individuals.

It has been suggested that the bipartisan effort to restore balance to the ADA gained acceptance in 2008 because conservative and business groups feared the possibility that a democratically controlled Congress in 2009 might enact legislation that would make virtually every individual with a medical condition "disabled." In the new amendment, Congress explicitly stated that certain United States Supreme Court decisions had improperly eliminated many protections for disabled people that Congress had intended to protect under the original Act. The amendment outlines the clear legislative intent behind the original Act and specifically defined critical language that will undoubtedly provide coverage under the Act to millions of more Americans.

Highlighted below are a few of the most significant changes brought about by the Act:

- While the Act maintains the basic definition of "disability" as a condition that substantially limits one or more major life activities, it mandates that courts may no longer consider the ameliorative effects of mitigating measures. For example, an individual who is diabetic or epileptic can typically control their condition with medication. The U.S. Supreme Court and lower courts had previously determined that mitigating measures could be considered in determining whether someone was protected as "disabled" under the Act. Thus, when conditions such as diabetes and epilepsy were controlled by medication, such individuals were determined not to be "disabled" and were therefore not protected by the ADA. The amendment clarifies that this may no longer occur and that most mitigating measures cannot be considered when determining whether someone is "disabled."

- The definition of "major life activity" is specifically addressed by the amendment so that courts could no longer narrowly interpret its definition. The term "major life activity" now includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Previously, courts had

narrowly interpreted when major life activities were affected so as to substantially minimize those protected as disabled under the Act.

- The amendment specifically states that the conditions that are protected should not be "transitory and minor." No clear definition of these terms were provided in the original Act, and Courts were increasingly determining that short term illnesses might not qualify an individual for protection. The amendment states that to be transitory, the impairment must have an "actual or expected duration of six months or less."

- The amendment explicitly directs that Equal Employment Opportunity Commission to revise its regulations and directs that courts construe the Act in favor of broad coverage of individuals to the maximum extent possible permitted by the Act itself.

Employers should stay tuned for new regulations to be issued by the EEOC.

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