

## ADA UPDATE: COMPLIANCE WITH THE ADA IS CRUCIAL AS RECENT PASSAGE OF THE ADA AMENDMENTS ACT BROADENS THE SCOPE OF DISABILITY COVERAGE

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On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 ("Act"). The Act, which will take effect on January 1, 2009, broadens the scope of disability coverage under the Americans With Disabilities Act of 1990 ("ADA") by making it easier for plaintiffs to demonstrate that they have a disability. By passing the Act with an overwhelming margin in the House of Representatives and unanimously in the Senate, Congress confirmed its intent to eliminate narrow interpretations of the ADA.

The Act rejects a trend of narrow interpretation by the United States Supreme Court. Specifically, in *Sutton v. United Air Lines, Inc.*, the Supreme Court eliminated the ADA's protection for individuals whose disabilities can be "mitigated" by such things as medications and assistive devices. Specifically, in *Sutton*, the Supreme Court found that if an individual's disability is improved by things such as medications, that person is not "disabled" under the ADA. Under the Act, however, courts can no longer look at whether mitigating measures improve an individual's "disability." The one narrow exception to this rule is that the Act allows courts to consider "ordinary eyeglasses or contact lenses" in evaluating whether an individual has a vision impairment significant enough to trigger the ADA.

The Act also rejects the United State Supreme Court's decision in *Toyota Motor Mfg. Ky. Inc. v. Williams*. In *Toyota*, the Supreme Court made it



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more difficult for plaintiffs to prove that they are "substantially limited" in "major life activities", which is an essential element of an ADA claim. Although the Act retains the ADA's definition of "disability", courts must interpret the definition to the broadest extent possible. In other words, more people will now qualify for protections under the ADA.

The Act includes numerous changes concerning the determination of whether an individual is disabled. Among those changes are amendments to the definitions of the terms "substantially limits" and "major life activities". For example, the term "substantially limits" is now defined as materially restricts, rather than severely restricts. The Act also provides a list of "major life activities", which can trigger ADA coverage if they are impaired. Those activities include "performing manual tasks, seeing, hearing, eating, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of major bodily functions." An impairment limiting only one of these major life activities is sufficient to qualify as a disability under the ADA.

What does all of this mean for a business owner or operator? Simply, compliance with the ADA is crucial. The broader definition of "disability" will likely mean that more employees and job applicants will be eligible for protections under the ADA. As a result, business owners and operators will be faced with more requests for accommodations and potentially more litigation. Further, the broader definition of "disability" makes it more difficult for employers to defend ADA lawsuits based on a plaintiff not being "substantially limited" in "major life activities". Many of these lawsuits may now turn on whether the business owner or operator complied with the ADA, rather than whether plaintiff has a "disability".

Compliance with the ADA has always been necessary and important, but the Act's plaintiff-friendly revisions now make compliance critical. If they have not already done so, business owners and operators should review their compliance with the ADA and ensure that their businesses comply with the law.

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