

## **ADA Amendments Mean Employers Need to Be More Cautious**

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In the [ADA Amendments Act of 2008](#), which President George W. Bush signed into law on Sept. 25, 2008, Congress amended the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*, to be consistent with its original intention of "providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and to "provide broad coverage."

The amendments, which became effective on Jan. 1 and apply to conduct after that date, substantially change "how employers and courts are to evaluate ADA claims," noted Judge Robert James of the U.S. District Court for the Western District of Louisiana, Monroe Division, in December 2008 in *Knox v. City of Monroe*.

By rejecting the narrow and exacting holdings in two U.S. Supreme Court cases and then expanding key definitions in the ADA, the amendments significantly broaden the protective scope of the ADA. As a result of the new law, employers should take a more cautious approach in their employment practices and decisions and should expect an increase in the number of disability discrimination claims asserted by employees.

In *Sutton v. United Air Lines Inc.* (1999), the U.S. Supreme Court held that a determination of a person's "disability" under the ADA should be made with reference to "measures that mitigate the individual's impairment, including, in this instance, eyeglasses and contact lenses." In *Sutton*, the court upheld the dismissal of the complaint under the ADA by two sisters, who, with their glasses and contacts, could function as well as individuals without a visual impairment, but who were not hired to be commercial airline pilots due to their failure to meet the employer's uncorrected vision requirement. The court held that the sisters had failed to state a claim under the ADA because they did not have a "disability" due to the fact that they had at least 20/20 vision with their corrective lenses. The court reasoned that although the sisters may have had an impairment, their impairment, when corrected by lenses, did not "substantially limit" a major life activity, as required by the ADA.

The expanded definition of "disability" in the amendments specifically "reject[s] the requirement" in *Sutton* "that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures." Now the ameliorative effects of mitigating measures include medication, medical supplies, equipment, prosthetics, hearing aids, mobility devices, oxygen therapy equipment and supplies, assistive technology, reasonable accommodations, auxiliary aids or services, or learned behavioral or adaptive neurological modifications, and other aids are *not* to be considered in determining whether a person's impairment substantially limits a major life activity.

The amendments also reject the *Sutton* court's reasoning that to be "regarded as" disabled by an employer under the third prong of the definition of "disability," an individual's impairment must "substantially limit" her in a major life activity in a broad class of jobs. Under the amendments, an individual can prevail under the "regarded as" prong if she establishes that she has been discriminated against "because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." This change in the law significantly reduces the standard of proof required of an employee asserting a claim that he was discriminated against because he was "regarded as" disabled.

In 2002's *Toyota Motor Manufacturing, Kentucky Inc. v. Williams*, the U.S. Supreme Court created a "demanding standard for qualifying as disabled" and held that, for purposes of being disabled under the ADA, an individual's impairments must prevent or restrict her from "doing activities that are of central importance to most people's daily lives," rather than just the "tasks associated with her specific job." The amendments reject the Supreme Court's "demanding standard" and "inappropriately high level of limitation necessary to obtain coverage under the ADA" announced in *Toyota Motor*. Instead, the amendments shift the legal inquiry to "whether entities covered under the ADA have complied with their obligations," and away from an "extensive analysis" of an individual's impairment. The definition of "disability" now "shall be construed in favor of broad coverage of individuals ... to the maximum extent permitted by the terms" of the ADA. Furthermore, under the amendments, "an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability."

The amendments specifically identify and expand "major life activities" in connection with the definition of "disability" to include: "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Furthermore, under the amendments, a "major life activity" includes "the operation of a major bodily function including ... functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

As a result of the broadened protection under the amendments provided to individuals with a disability, employers should increase their sensitivity to their job applicants and employees with a physical or mental impairment, exercise greater caution and diligence before making any adverse employment decisions regarding a person with an actual or perceived impairment, and expect and prepare for an increased number of disability discrimination claims under the ADA.

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