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ADA Amended to Broaden Protection for Disabled Individuals

Executive Summary

Yesterday, President Bush signed into law the ADA Amendments Act of 2008. Most significantly, it will amend the Americans with Disabilities Act of 1990 ("ADA") to broaden the definition of "disability," extending the protection of the law to more people. A likely result will be an increase in employee claims of disability discrimination, which the Amendments may also make more difficult for employers to dispose of prior to a trial. This highlights the importance for employers to carefully consider any employment decisions regarding employees who might be considered disabled under the ADA and seek legal counsel to minimize potential claims of discrimination. *Reference: ADA Amendments Act of 2008, S. 3406.*

Detailed Analysis

The ADA is the federal law aimed at protecting individuals with disabilities or regarded as having disabilities from discrimination in the provision of public accommodations and discrimination in the workplace. The ADA Amendments Act of 2008 is primarily aimed at reversing some significant U.S. Supreme Court interpretations of the ADA within the last decade. Congress found that the ADA was enacted to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals based on disabilities and to provide broad coverage. Despite the intended broad coverage of the ADA, Congress found that courts have incorrectly narrowed the definition of disability and the scope of protection under the ADA.

The ADA Amendments Act specifically reverses several Supreme Court interpretations regarding who is "disabled," and therefore, protected under the ADA. An individual is disabled under the law if the individual has "a physical or mental impairment that substantially limits one or more major life activities," has a record of or is regarded as having such an impairment. The terms "substantially limited" and "major life activity" have been the focus of many court decisions interpreting the ADA. Congress found that those terms have been interpreted by the courts too narrowly. The ADA Amendments Act is aimed at correcting those interpretations to broaden coverage under the ADA in several respects.

Specific Broad Delineation of Major Life Activities and Functions.

In 2002, in one of its most significant recent decisions regarding the ADA, the Supreme Court found that the terms "substantial" and "major" should be "interpreted strictly to create a demanding standard for qualifying as disabled" under the ADA. Coverage under the ADA was limited to

individuals with impairments that prevented or severely restricted them from doing activities of central importance to most people's daily lives. Congress found that too many people have been denied coverage under the ADA based on that standard. As a result, the Amendments require that the definition of disability be construed in favor of broad coverage of individuals under the ADA.

The Amendments also go further to set forth specific major life activities and the types of bodily functions that are covered under the law. Prior to the Amendments, there was at least some disagreement amongst the country's federal courts as to whether all of the articulated activities and functions should be covered under the ADA. Major life activities now include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. Major life activity also includes the operation of a major bodily function, which 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.

In the Amendments, Congress also directs the Equal Employment Opportunity Commission ("EEOC"), which enforces the ADA, to change its regulations to be consistent with the broad coverage of the Amendments. The EEOC used to define "substantially limits" as "significantly restricted." It remains to be seen how the EEOC will re-define the term. But, now "substantially limited" should be less of a restriction and protect more individuals.

"Regarded As" Not Necessarily "Regarded As" Limited in a Major Life Activity.

The ADA Amendments Act also broadens the protection afforded to individuals who are not actually disabled, but are regarded as being disabled. The Act clarifies that in the case of being "regarded as" having an impairment, an individual is protected under the Act regardless of whether the individual's impairment limits or is perceived to limit a major life activity. This should effectively remove the "substantially limited in a major life activity" analysis from regarded as claims.

Mitigating Measures No Longer Considered.

In a landmark 1999 decision, the Supreme Court held that whether an individual is "substantially limited in a major life activity" should be determined with consideration given to the beneficial effects of any mitigating measures. Therefore, if an individual had a substantial limitation but was able to correct or minimize the limitation with the use of some mitigating measure, then the individual was not considered disabled and not protected under the ADA. Such mitigating measures could include anything from medication to prosthetic limbs or the use of other devices and equipment. In the Amendments, Congress has rejected the notion that mitigating measures should preclude an individual from ADA protection. Under the Amendments, except for ordinary eyeglasses and contact lenses, the ameliorative effects of mitigating measures will no longer be considered in determining if someone is disabled.

Similarly, the Amendments indicate that where an impairment is "episodic or in remission" it is still covered under the ADA if when active it would substantially limit a major life activity. Some courts had previously held that such conditions could only be considered disabilities under the ADA when active.

The Amendments will be effective January 1, 2009. The effect of the Amendments discussed above will be to broaden the scope of who is protected under the ADA. Many experts and national commentators are opining that this will lead to an increase in employee claims of disability discrimination. Employers may also have more difficulty in disposing of such claims short of trials. Many disability discrimination cases in the past decade have been dismissed prior to trial on grounds that the employee in question was not disabled, or not "substantially limited in a major life activity." Such dismissals will now be much more difficult for employers to obtain.

Employer Friendly Clarifications

The Amendments also confirm or clarify two points under the ADA that will prove helpful for employers in dealing with employees who could be considered disabled.

No Reasonable Accommodations for Regarded As Disabled Employees. One of the ADA's requirements is that employers reasonably accommodate disabled employees. It has not been entirely clear whether that duty exists in circumstances where an employee is not disabled, but is only regarded as disabled by an employer. The Act clarifies that reasonable accommodation is not required for individuals who are only regarded as being disabled.

Cannot be Regarded As Disabled for Temporary Impairments. Also, unlike impairments that are "episodic or in remission," under the Amendments an individual cannot be regarded as disabled for only having an impairment that is minor or lasts for six months or less.

In conclusion, employers must understand that more individuals will be protected under the ADA as of January 1, 2009. Even more than before, employers must carefully consider any employment decisions regarding employees who might be protected under the ADA, and should seek legal counsel where appropriate to minimize potential claims of disability discrimination.

Should you have any questions, please do not hesitate to contact your local counsel or Steve Lyman, John Ryan or Kevin Gfell at Hall, Render, Killian, Heath & Lyman, P.C., 317/633-4884.

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