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LABOR AND EMPLOYMENT BULLETIN

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PRESIDENT SIGNS ADA AMENDMENTS ACT OF 2008

Yesterday, President Bush signed into law the ADA Amendments Act of 2008 (S. 3406). The Act makes several substantive revisions to the ADA, with a view toward broadening the scope of the law's coverage. Most importantly, it reverses several decisions of the United States Supreme Court interpreting the key phrase, "qualified individual with a disability." These changes make it easier for plaintiffs to pursue legal claims under the ADA.

The new Act aims to "reinstate" the broad scope of the ADA originally intended by Congress, and to provide "a clear and comprehensive national mandate for the elimination of discrimination" against individuals with disabilities, and "clear, strong, consistent, enforceable standards addressing discrimination."

The ADA's definition of "disability" is expanded in several ways. The new Act provides specific examples of "major life activities" and "major bodily functions," and provides that "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." Perhaps most importantly, though, the Act provides that the impairment of a major life activity is to be evaluated without regard to the effects of most medications, prostheses, or other mitigating measures. "Ordinary eyeglasses or contact lenses" can still be considered as mitigating an impairment, but the Act includes new rules for qualification standards and tests relating to uncorrected vision. In sum, Congress has instructed the courts that the ADA's definition of disability "shall be construed in favor of broad coverage under the Act, to the maximum extent permitted by the Act."



The law also resolves disagreement among lower courts by clarifying that it is not necessary to provide reasonable accommodation to an individual who is merely “perceived as” having a disability.

In response to the Act, the Equal Employment Opportunity Commission is expected to revise its ADA regulations within the coming months.

These changes to the ADA become effective on January 1, 2009. Employers likely will experience an increase in ADA charges and lawsuits as plaintiffs’ lawyers recognize that more individuals meet the tests for being disabled and covered by the law. Accordingly, employers should begin reviewing their policies for compliance with the newly-amended ADA immediately, and should consider offering training to HR decision-makers on the new contours of the law.

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