

The Americans with Disabilities Amendments Act (“ADAA”), signed by President Bush on September 25, 2008, will become effective on January 1, 2009. The ADAA broadens the scope of the original Americans with Disabilities Act (“ADA”) as it has been interpreted since it was originally signed into law, overturning several Supreme Court opinions which had narrowed the protections afforded by the ADA.

The Scope of “Disability”

First, the ADAA enlarges the definition of disability, providing that “whether an individual’s impairment is a disability under the ADA should not demand an extensive analysis.” The meaning of disability, therefore, should be construed in favor of broad coverage.

In addition to this general interpretive direction, the legislation also broadens the scope of the term disability in several specific ways:

- Impairments which are episodic or in remission are to be considered disabilities if they would limit a substantial life activity when active.
- Courts will no longer be able to consider mitigating measures (except regular eyeglasses and contact lenses) when determining whether an individual is disabled.
- The current definition of the term “substantially limits” in the EEOC regulations is too narrow a definition and sets a standard that is too high. The legislation instructs the EEOC to revise the definition in the new regulations. Although it is not known precisely what standard the new regulations will set, it is certain that the question of whether an individual’s incapacity rises to the level of a “disability” will be easier to meet.

Expansion of “Major Life Activities”

The ADAA expands the current definition of “major life activities” by including two non-exhaustive lists:

- General activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- Major Bodily Functions, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The “Regarded As” Prong

The “regarded as” prong has also been changed. Employees will now be protected by the “regarded as” prong if the individual proves discrimination because of an actual or perceived physical or mental impairment, regardless of whether the employer actually considers the employee to be limited in a major life activity. However, such claims may not be based upon a minor or transitory impairment.

Individuals who are covered only under the “regarded as” prong are not entitled to reasonable accommodation.

Practical Implications

The practical implication of these new regulations is that far fewer suits will be dismissed due to inability to prove a “disability”.

Employers may wish to implement a more formal process for handling reasonable accommodation requests, including standard forms, internal guidelines and template letters to facilitate communication.