LawTrends

A publication of Eastman & Smith Ltd.

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Established 1844

January 2009
Special Issue

Amendments to the Americans with Disabilities Act Effective January 1, 2009

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Substantial revisions to the Americans with Disabilities Act (ADA) were signed into law on September 25, 2008, and are effective January 1, 2009. Since ADA became law in 1990, courts have narrowly interpreted it to apply only to those qualified individuals who were "substantially limited" in an activity "of central importance to most people's daily lives." This preserved Congress's original intent that the ADA protect only individuals with serious disabilities. The ADA Amendments Act of 2008 (ADAAA) is Congress's effort to broaden the scope of the law's protections and to extend dual rights of nondiscrimination and reasonable accommodation to a much larger class of persons.

In 1999, the U.S. Supreme Court held that whether an impairment substantially limits a major life activity must be determined by looking at the individual's abilities with corrective measures. For example, insulin dependent diabetics were not disabled if medication controlled the diabetes. Under the ADAAA, however, the test is whether the individual would be disabled without the use of insulin. As a result, the number of people who are now protected under ADA will be expanded greatly. Mitigating measures which must be ignored when evaluating ADA protection may include such common measures as medication, diet and exercise.

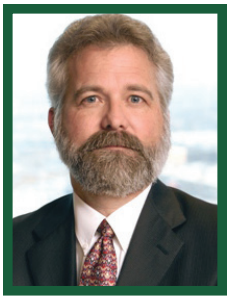
In 2002, the U.S. Supreme Court held that "substantially limits" means the individual must be "severely restricted" in major life activities. Congress feels this standard "created an inappropriately high level of limitation necessary to obtain coverage under the ADA." Under the new law, Congress has explicitly directed that the disability and substantially limited concepts be broadly construed and has ordered the EEOC to revise its regulations to expand

the class of individuals protected. Congress also has created non-exhaustive lists of major life activities falling within the scope of protection at the workplace, including activities not generally recognized in the past (i.e. reading, communicating, bending, reproductive functions and digestion). Courts, at least initially, will be hard-pressed to find any individual with any impairment not disabled.

In addition to demanding persons with non-disabling conditions controlled by medication, diet or exercise be considered disabled, now Congress also demands that an individual with a condition in remission and causing no present impairment be deemed disabled for workplace protection persons.

Finally, the change likely to prompt the most litigation, is the expansion of the "regarded as" prong of ADA. Before ADAAA, individuals claiming to be regarded as disabled needed to establish that the employer regarded them as substantially limited in a major life activity. The ADAAA rejects this analysis, providing that an individual is protected if the employer (usually a supervisor) takes an adverse action because of any actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. A supervisor who regards an individual as impaired may, by reassignment, layoff, etc., expose the company to litigation and possible ADA damages.

For more information on ADAAA, please contact Mr. Dixon or Ms. Pawlicki at our Toledo office (419-241-6000).



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