

The Americans with Disabilities Act Expanded: More Medical Conditions and More People to be Covered

The ADA Amendments Act of 2008 will effectively broaden the scope of who is considered an individual with a “disability.”

The Senate and the House of Representatives both recently passed the ADA Amendments Act of 2008. If enacted, the bill will broaden the Americans with Disabilities Act (“ADA”). The White House has indicated that President Bush will sign the bill which, once signed, will take effect January 1, 2009.

Generally, the ADA prohibits covered entities, including employers, from discriminating against a qualified individual with a disability. To be considered a qualified individual with a disability, a person must have a physical or mental impairment that “substantially limits” one or more of that person’s major life activities. These basic provisions of the ADA will not change.

If enacted, however, the ADA Amendments Act of 2008 will overturn four U.S. Supreme Court decisions that interpret the ADA in a restrictive manner, and will effectively broaden the scope of who is considered an individual with a “disability.” Specifically, the bill will overturn three Supreme Court decisions ruling that

“mitigating measures” that help individuals control or cope with impairments must be considered when determining whether or not an employee has a disability and is covered by the ADA. For example, currently a person with insulin-controlled diabetes is likely not considered to be disabled by the ADA. Under this Amendment, such a person would likely have a “disability” under the ADA.

The bill will also overturn a case in which the Supreme Court ruled that a “demanding standard” should apply in determining whether a person with impairments is “substantially limited” in a major life activity, and is therefore “disabled.” The Act would specifically direct the Equal Employment Opportunity Commission (“EEOC”) to abandon a regulation stating that “substantially limited” means “significantly restricted,” and instead ask the EEOC to promulgate a new, less stringent regulation. Regardless of the EEOC’s regulatory action, the net effect will be to expand the number of individuals who could be entitled to ADA protections.

For more information regarding any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

In sum, these changes will significantly broaden the coverage the ADA provides employees and potential employees. Employers

should keep these changes in mind when addressing issues or policies that could involve the ADA.

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