

The ADA Amendments Act of 2008

Notice Concerning the Americans with Disabilities Act (ADA) Amendments Act of 2008

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of Equal Employment Opportunity Commission's (EEOC) ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act

- directs EEOC to revise that portion of its regulations defining the term "substantially limits"
- expands the definition of "major life activities" by including two non-exhaustive lists.
 - The first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating).
 - The second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions")
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active
- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation and
- emphasizes that the definition of "disability" should be interpreted broadly.

EEOC will be evaluating the impact of these changes on its enforcement guidance's and other publications addressing the ADA.

Reference: www.eeoc.gov

On January 1, 2009, the Americans with Disabilities Act (ADA) Amendments Act of 2008 went into effect. At the present we do not yet have any regulations or court interpretation; all that we have are the words of the Amendments Act and its legislative history.

Anticipate more Disability Discrimination Cases

Under the new ADA Amendment changes more employees and job applicants are able to claim disability under these rules and thus be able to go in court; managers and their agencies must be prepared to defend their employment of nondiscrimination. The Amendments Act did not change the definition of reasonable accommodation. Even though the definition did not change, it is clear that with a definition, more focus will be placed on providing reasonable accommodations.

Providing Reasonable Accommodations

- Employers can choose among effective accommodation options and do not always have the requested accommodation.
- Employers do not have to provide accommodations that pose an undue hardship.
- Employers do not have to provide as reasonable accommodations personal-use items on or off the job.
- Employers do not have to remove essential functions, create new jobs or lower production as an accommodation.
- Employers should provide flexible work schedules, telework and other reasonable accommodation to help employees perform at their highest level.

This is a brief summary of the ADA Amendments Act of 2008. For additional information, refer to the various websites.

References:

www.jan.wvu.edu

www.eeoc.gov

www.federaltimes.com

www.diversityinc.com