

**ALERT**

## LABOR & EMPLOYMENT

September 2008

### Congress Passes the ADA Amendments Act of 2008

On Sept. 17, 2008, the U.S. House of Representatives passed the ADA Amendments Act of 2008 (the “Act”), by a voice vote, following the Senate's passage of the bill last week. President George W. Bush is expected to sign the measure into law, which is slated to take effect on Jan. 1, 2009. As written, the purpose of the Act is to “restore the intent and protections” of the ADA, essentially by overturning certain decisions of the U.S. Supreme Court that currently limit the definition of disability.

The Act broadens the ADA’s definition of “disability” in several ways, and criticizes the restrictive interpretation the courts and the Equal Employment Opportunity Commission (“EEOC”) have placed on the law’s requirement that a physical or mental impairment substantially limit a major life activity in order to constitute a disability. The Act specifically rejects the U.S. Supreme Court’s decision in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), where the Supreme Court said that to be substantially limited in performing a major life activity under the ADA, “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.”

The Act also indicates that current EEOC regulations defining the term “substantially limits” as “significantly restricted” are too strict. It makes clear that impairments that are *episodic* or *in remission* can qualify as disabilities if the impairment would substantially limit a major life activity when active. Rejecting the Supreme Court’s decision in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), the Act specifies that “substantially limits” is to be determined without considering mitigating measures (save for ordinary eyeglasses or contact lenses).

In addition, the Act defines “major life activity” to include not only tasks such as caring for oneself, performing manual tasks, seeing, hearing, but also the operation of “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 Act also seeks to restore a broad reading of the “regarded as” prong of the definition of disability, consistent with a case decided under the Rehabilitation Act of 1973, *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987). The Act says that an individual may be “regarded as” having a disability if the individual has been subjected to an unlawful action because of an actual or perceived physical or mental impairment, “whether or not the impairment limits or is perceived to limit a major life activity.”

In addition to broadening the definition of “disability,” the Act also clarifies the following:

- A covered entity may not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test or other selection criteria is job-related and consistent with business necessity;
- The Act does not change the standards for determining eligibility for benefits under state worker’s compensation laws or under state or federal disability benefit programs;
- The EEOC, the Attorney General and the Secretary of Transportation may issue regulations implementing the definition of disability;
- Individuals without disabilities may not bring suit under the ADA for alleged discrimination based on their lack of a disability; and
- Reasonable accommodation need *not* be provided to individuals who are only regarded as disabled.

Understanding the changes in the law is critical for private employers, state and local governments and public accommodations. The now-broadened definition of disability likely will make it more difficult for employers in a lawsuit to win a case at summary judgment on the grounds that a plaintiff is not disabled and/or was not regarded as disabled. Indeed, one of the Act’s stated purposes is to convey Congress’ intent that “the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations,” and “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.”

Lawyers at Barnes & Thornburg LLP will host informational seminars to further discuss the implications of this important new legislation before it takes effect.

For more information regarding the ADA Amendments Act of 2008, upcoming seminars on this topic, or any other labor and employment issues, contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm’s Labor and Employment Law Department in the following offices: Norma W. Zeitler, Chicago (312-214-8312); Eric H.J. Stahlhut, Elkhart (574-296-2524); Mark S. Kittaka, Fort Wayne (260-425-4616); Michael A. Snapper, Grand Rapids (616-742-3947); Peter A. Morse, Indianapolis (317-231-7794); Kenneth J. Yerkes, Indianapolis (317-231-7513); Kathleen K. Brickley, South Bend (574-237-1105); and Teresa L. Jakubowski, Washington, D.C. (202-371-6366).

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