

Effective ADA Compliance

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ADAAA

- ADA Amendments Act of 2008
- Passed in 2008 effective January 1, 2009—not retroactive
- Purpose: to restore the original intent of ADA provisions
- Purpose: to reject prior cases and federal regulations
- Brands “Sutton” and “Toyota” cases as overly restrictive
- Many in Congress and the nation felt that ADA had been too limited in application by the Courts
- 97% of cases in favor of employer

Limitations in prior cases

- *Sutton v. United Air Lines*, 527 U.S. 471, S.Ct. 2139, 144 L.Ed.2d 450 (1999)
 - Twin sisters with severe myopia correctable to 20/20 applied for pilot positions. They were found not to be disabled under the act
- *Toyota Kentucky v. Williams*, 534 U.S. 184, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002)
 - Assembly line worker with carpal tunnel syndrome. The Supreme Court concluded that types of manual tasks of central importance to people in their daily lives must be implicated
- *School Board of Nassau County v. Arline*, 480 U.S. 273, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987)
 - Broader definition from Section 504 of the Rehabilitation Act applicable
 - Regulations of HHS Department with Congressional oversight

Implementation

- Regulations not issued by EEOC
- Deadlocked at Commission
- Expected regulations after additional appointments are likely to be consistent with pro employee background for the amended act
- More employees will be covered
- Many issues and disabilities will not be apparent

Changes under ADAAA

- Mitigation, treatment or management of a disability
- Major Life Activities
- Episodes or in remission
- Broad interpretation for coverage
- Regarded as disabled
- Vision tests

Mitigation and Disability under ADA

- Courts no longer consider medication, prostheses, learned behavior in determining disability
- Even if condition is fully controlled and not manifested, individual is still disabled
- Mere possibility is probably enough
- Unlikely that medical analysis will reach that conclusion in many cases

Major Life Activities

- New act includes matters not in the former regulations
 - Lifting
 - Reading
 - Concentrating
 - Thinking
 - Eating
 - Standing
 - Sleeping
 - Bending
- Adds major bodily functions
 - Immune system
 - Bladder
 - Brain
 - respiratory
 - Cell growth
 - circulatory
 - endocrine
 - bowel
 - neurological
 - reproductive

Episodes or Remission

- Conditions that occur from time to time are still covered if not currently symptomatic
- Conditions in remission are still covered
- Test is whether the condition would impair a major life activity "if active"
- Combined with new list of major life activities results in all conditions covered unless actually cured

Broad Interpretation

- The Act specifically requires that it be read broadly for purposes of providing coverage
- Rejects Supreme Court precedent of “high standard” to show “substantially limiting”
- Rejects EEOC definition of “substantially limits” as setting too high a standard
- This unusual statutory context will create judicial expansion
- May raise new issues of statutory interpretation and possible constitutional attacks

Regarded as Disabled

- Regarded as under prior law included “substantially limiting” and “major life activities”
- No longer requires these for persons perceived as disabled
- Virtually no limits
- Only temporary and minor limitations are excluded
- Duty of reasonable accommodation does not apply to “regarded as” individuals

Vision Tests

- Employment vision tests change
- Requires compliance with statutory process on steps
- Must have job related, reasonable business necessity

Consequences

- Vastly greater exposure in terms of covered employees
- Much greater opportunity for error
- Obligations are still the same for the most part, just apply to far more people
- Will not be able to avoid suit on the basis of defined disability, as in most cases past

Steps to Take

- Policy revision needs to be underway based on the act, even prior to regulations
- Immediately determine how to identify potential disability claims
- Have a clear process for handling claims that are potentially covered
- Implement supervisory training on this issue now as a stop gap measure

**"That's
all
folks!"**

