

Legislative Brief

The ADA Amendments Act of 2008



On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (the "Act"). The Act carries out the Americans with Disabilities Act's objectives of providing a clear and comprehensive national mandate for the elimination of discrimination and clear, strong, consistent and enforceable standards addressing discrimination by reinstating a broad scope of protection to be available under the ADA which had been narrowed by the courts since the passage of the ADA. The Act is effective on January 1, 2009. The EEOC and other applicable federal agencies must now issue clarifying regulations.

"Disability" Under the Act

According to the ADAAA, the definition of disability must be broadly construed in favor of coverage for the individual. The Act also makes it easier for an individual to meet the definition of a person regarded as having a disability.

The ADAAA defines disability as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

The ADAAA's definition of "major life activities" includes but is not limited to the following: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and also includes the operation of a major bodily function.

Additionally, the ADAAA sets forth rules of construction regarding the definition of "disability," including that: (1) such term shall be construed in favor of broad coverage of individuals under the Act; (2) an impairment that substantially limits one major life activity need not limit other major life activities in order to be a disability; (3) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and (4) the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of specified mitigating measures.

The ADAAA gives the following examples of mitigating measures: medication, medical supplies, equipment or appliances, low-vision devices (not including eyeglasses or contact lens), prosthetics, hearing aids or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, and the use of assistive technology, reasonable accommodations or auxiliary aids or services or learned behavioral or adaptive neurological modification.

The ADAAA makes clear that no accommodations are necessary if an individual is protected under the Act because they are regarded as having a disability.

Discrimination on the Basis of Disability

Legislative Brief

The ADA Amendments Act of 2008

The Act prohibits employment discrimination against a qualified individual "on the basis of disability." Current law prohibits employment discrimination against a qualified individual with a disability because of the disability. The Act also prohibits the use of qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be related to the position and is consistent with business necessity.

Rules of Construction

Section 6 of the Act declares that nothing in the Act: (1) alters the standards for determining eligibility for benefits under state worker's compensation laws or under state and federal disability benefit programs; (2) alters the requirement to make reasonable modifications in policies or procedures, unless such modifications would fundamentally alter the nature of the goods, services, facilities, or accommodations involved; or (3) provides the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

What Should Employers Do Now?

These amendments may require employers to provide more accommodations to more of their workforce. Specifically employers should:

- (1) Start training supervisors and managers about the new rules;
- (2) Review existing protocols and make sure that they conform to the new definitions;
- (3) Review job descriptions and ensure job functions are spelled out;
- (4) Make sure that supervisors pass along disability related questions to HR, and
- (5) Consult with an employment attorney about how these changes will affect your company specifically.

For a copy of the new law, see: www.govtrack.us/congress/billtext.xpd?bill=s110-3406

If you have questions regarding this important legislative development, please contact your Scott Insurance representative.

JMK 9/08
PKN 12/08

This Scott Insurance Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.