
FOR YOUR INFORMATION

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News For School and Municipal Clients

New Americans with Disabilities Act Amendments

On September 25, 2008, President George Bush signed into law the ADA Amendments Act of 2008 (“the Act”). In the findings section of the Act, Congress explained that the purpose of the law is to restore the intent and protections of the Americans with Disabilities Act of 1990 (“ADA”), following a series of U.S. Supreme Court decisions that narrowed the ADA’s definition of disability. With the new Act, Congress intends to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection under the ADA.

The ADA’s definition of disability with respect to an individual is still defined as (a) a physical or mental impairment that substantially limits one or more major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having an impairment. However, the Act adds to the definition in several ways.

First, the Act enumerates a list of major life activities that were previously addressed in the regulations promulgated by the United States Equal Employment Opportunity Commission (EEOC) and by interpretations of the courts. Congress’ stated purpose in

establishing this list is to reject the standards enunciated by the U.S. Supreme Court in 2002, in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, which severely restricted the definitions of important ADA terms, such as “major life activities” and “substantially limits.” The list of major life activities, which is not exhaustive, incorporated into the ADA by the Act, includes “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” The Act also states explicitly that a major life activity includes the “operation of a major bodily function” and identifies a non-exhaustive list of major bodily functions, which includes “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

Second, the U.S. Supreme Court’s 1999 decision in *Sutton v. United Air Lines, Inc.*, changed the application of the “regarded as” prong in the definition of disability. The Act reinstates the prior interpretation of this prong by explaining that an individual who is only “regarded as” having a disability, but who does not actually suffer from an impairment, is not entitled to a reasonable

accommodation. Thus, the rights and obligations that arise out of a determination of whether a reasonable accommodation exists that would allow the individual to perform the functions of the position are only relevant when the individual actually has a disability.

Third, the Act identifies four “rules of construction” regarding the definition of disability, which are: (1) the definition of disability shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA; (2) the term “substantially limits” shall be interpreted consistently with the findings and purposes of the Act; (3) an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability; and (4) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Finally, in *Sutton*, the U.S. Supreme Court held that whether an individual has a disability must be determined after taking into consideration the effect of mitigating measures, such as (a) medication, medical supplies, equipment or appliances, prosthetics, hearing aides, cochlear implants, mobility devices, oxygen therapy equipment; (b) the use of assistive technology; (c) reasonable accommodations or auxiliary aides or services; and (d) learned behavioral or adaptive neurological modifications. Congress rejects

the Court’s conclusion in *Sutton*, and states explicitly that the determination of whether an individual’s impairment substantially limits a major life activity shall be made without regard to the remedial effects of such mitigating measures. However, under the Act, ordinary eyeglasses and contact lenses are not mitigating measures that must be disregarded when determining whether an individual has an impairment that substantially limits a major life activity.

The Act defines auxiliary aids or services to include (a) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (b) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (c) acquisition or modification of equipment or devices; and (d) other similar services and actions.

The Act is effective on January 1, 2009. The EEOC is evaluating the impact of these changes on its regulations and official publications concerning the ADA, as well as the informal opinions and advice provided by the agency. It is expected that the EEOC will provide further guidance about the impact of the Act in the near future. These changes are likely to impact not only employees, but also eligibility determinations of students, as qualified persons with a disability under Section 504 of the Rehabilitation Act of 1973, which has the same disability definition as the ADA.

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