

LEGISLATIVE BRIEF

Brought to you by Capital Insurance Group

The ADA Amendments Act of 2008

On Sept. 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (ADAAA or Act). The Act carries out the Americans with Disabilities Act's (ADA) objectives of providing a clear and comprehensive national mandate for the elimination of discrimination based on disability. The Act contains consistent and enforceable standards addressing disability discrimination and reinstates a broad scope of protection that had been narrowed by the courts since the passage of the ADA.

The Act became effective on Jan. 1, 2009, and applies to discriminatory conduct that occurs after the effective date. The Equal Employment Opportunity Commission (EEOC) issued [final regulations](#) to further implement the Act on March 25, 2011. The final regulations became effective on May 24, 2011.

This Legislative Brief provides an overview of the ADAAA, including the EEOC's final regulations, and recommends steps employers should take to comply with the ADAAA.

"DISABILITY" UNDER THE ACT

According to the ADAAA, the definition of disability must be broadly construed in favor of coverage for the individual. The ADAAA 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 and working. It also includes the operation of a major bodily function.

Additionally, the ADAAA contains rules of construction regarding the definition of "disability," including that:

- The term must be construed in favor of broad coverage of individuals under the Act;
- An impairment that substantially limits one major life activity need not limit other major life activities in order to be a disability;
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
- The determination of whether an impairment substantially limits a major life activity must 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



**CAPITAL
INSURANCE
GROUP**

ADA Amendments Act of 2008

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

The Act prohibits employment discrimination against a qualified individual "on the basis of disability." Prior law prohibited 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 ADAAA 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 these 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.

EEOC FINAL REGULATIONS

The EEOC's final regulations address how the ADAAA's definition of "disability" should be interpreted. In particular, the regulations focus on the Act's goal of broadly interpreting the definition of "disability" in favor of expanded coverage.

To highlight key points, the final regulations include the following guidance:

- **Substantially Limits.** Determining whether an impairment substantially limits a major life activity requires a lower degree of functional limitation than the standard previously applied under the ADA. The determination must involve an individualized assessment. An impairment does not need to prevent or seriously restrict a major life activity to be substantially limiting.
- **Easily Identified Disabilities.** Due to their inherent nature, certain impairments will almost always be disabilities. An employer's individualized assessment for these impairments will likely be simple and straightforward. The final regulations include examples of impairments that will almost always be disabilities, such as deafness, blindness and intellectual disability.
- **"Regarded As" Component.** Under the "regarded as" component of the definition of "disability," the focus for establishing coverage under the Act is on how the individual has been treated because of a mental or physical impairment, rather than on what the employer believed about the individual's impairment.

WHAT SHOULD EMPLOYERS DO?

The ADAAA's changes may require employers to provide more accommodations to their workforce. To comply with the Act's changes, employers should confirm that they have addressed the following compliance steps, as applicable:

1. Train supervisors and managers about the Act's rules;

This 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.

© 2008-2013, 2015 Zywave, Inc. All rights reserved.

9/08, EM 5/15

ADA Amendments Act of 2008

2. Review existing protocols and make sure that they conform to the Act's definitions;
3. Review job descriptions and ensure job functions are spelled out;
4. Ensure that supervisors pass along disability related questions to Human Resources; and
5. Consult with an employment attorney about how these changes affect your company specifically.

ADDITIONAL RESOURCES

For a copy of the EEOC's final regulations, see: www.gpo.gov/fdsys/pkg/FR-2011-03-25/pdf/2011-6056.pdf.

Also, see the U.S. Department of Labor's tool, Disability Nondiscrimination Law Advisor, which helps employers determine which federal nondiscrimination laws apply to their businesses: www.dol.gov/elaws/odep.htm

This 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.

© 2008-2013, 2015 Zywave, Inc. All rights reserved.

9/08, EM 5/15