

## AMERICANS WITH DISABILITIES ACT (ADA)

On January 1, 2009, the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 went into effect, making some major changes to the way the definition of disability and eligible individuals has been interpreted in the past. As a result of how the courts had interpreted the definition of disability so narrowly, it made it difficult for most individuals to be covered under the original Americans with Disabilities Act (ADA) of 1990.

### Overall Purpose

According to Congress, the ADAAA was passed "to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' by reinstating a broad scope of protection to be available under the ADA." However, if hardly anyone was covered, then hardly anyone was actually being protected from discrimination. So, in the ADAAA Congress fixed the definition of disability to cover more people and as a result, prevent more discrimination. That means that once the Act went into effect, the question of who has a disability is no longer the main focus; instead, the focus is on whether discrimination occurred.

### Changes in the New Law

#### 1. Definition

The basic three-part definition will remain the same. Disability: (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such impairment; or (C) being regarded as having such an impairment. The ADA Amendments Act did not change the actual definition of disability - the definition is exactly the same as it was. What did change is the meaning of some of the words used in the definition and the way those words are to be applied to individuals.

#### 2. Substantially Limits

New regulations that were signed July 23, 2010 and went into effect March 15, 2011 changed the standard of the term "substantially limits". In the Amendments Act, Congress expressly gave the Equal Employment Opportunity Commission (EEOC) the authority to revise its regulations regarding the definition of substantially limits to make them consistent with the Act's purpose. In the past, the EEOC regulations had defined substantially limits as "significantly restricted," but Congress told the EEOC, that is too high a standard - go back and make it an easier standard to meet.

#### 3. Mitigating Measures

Another change is that when determining whether a person is substantially limited in a major life activity, it is assumed that the beneficial effects of mitigating measures, such as the use of assistive technology, except ordinary eyeglasses or contact lens will be ignored. In the past, the U.S. Supreme Court held the opposite, that it did not ignore mitigating measures. This holding resulted in a lot of people not being covered by the ADA - people with conditions such as epilepsy, diabetes, and mental illness, who controlled their symptoms through measures like medication, good diet, and regular sleep. Prior to the Supreme Court ruling, few people questioned whether individuals with these types of conditions had disabilities, but after the ruling it was clear that many of them did not, at least not under the ADA definition. The ADAAA rejected the Supreme Court's holding regarding the use of mitigating measures.

#### 4. Major Life Activities

Major life activities expanded to include bodily functions. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Now it will also include, the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. For example, a person with insulin-dependent diabetes will most likely be covered under the first part of the new definition of disability because it will consider what his limitations would be without his insulin and because endocrine system function is definitely considered a major life activity as of January 1, 2009.

#### 5. Limitations that are Episodic or in Remission

Conditions that are episodic or in remission will now be considered limitations as if they are active. In the past, a person whose condition was in remission or whose limitations came and went might not have been covered by the ADA, depending on how long that person's limitations were in an active state. This meant that a person with, for example, mental illness, might not be entitled to accommodations in the workplace when his condition was active because he did not meet the ADA's definition of disability. Congress addressed this in the Amendments Act by