

# Americans with Disabilities Act: Synopsis of 2008 Amendments

by Jennifer M. Becker

EIGHTEEN YEARS AFTER the Americans with Disabilities Act of 1990 (the ADA) was enacted to eliminate discrimination against individuals with disabilities, President George W. Bush signed the ADA Amendments Act of 2008 (amendments) “to restore the intent and protections of the ADA.” The amendments, Public Law No. 110-325, passed both houses of Congress by unanimous consent and became effective January 1, 2009.

The amendments affect Title I of the ADA — the employment title, which prohibits disability-based discrimination in the workplace. Under the ADA, covered employers must avoid singling out workers with disabilities because of their impairments. Employers also must avoid adhering to standard practices that adversely affect workers with disabilities. Covered employers must also provide reasonable accommodations to account for the disabilities of employees.

To date, the predominant issue in Title I cases has been whether an individual’s impairment is a disability, as that term is defined in the ADA. The amendments retain the ADA’s three-pronged definition of “disability” as having a physical or mental impairment that substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.<sup>1</sup> However, since the amendments require that the definition of disability be construed in favor of broad coverage of individuals under the ADA<sup>2</sup>, it is more likely now that an individual’s impairment will be considered a disability.

The amendments include the following provision:

**Mitigating measures are no longer to be used in determining disability.** *In Sutton v. United Airlines Inc.* and its companion cases, the U.S. Supreme Court has held that corrective and mitigating measures, such as medication and assis-

sive technology, must be considered in determining whether an individual is disabled under the ADA.<sup>3</sup> The amendments explicitly overturn these cases and mandate that the determination of whether an impairment substantially limits a major life activity be made without regard to the ameliorative effects of mitigating measures, with the exception of eyeglasses and contact lenses.<sup>4</sup>

**Perception of impairment is now sufficient whether or not impairment limits a major life activity.** Prior to the amendments, under the third prong of the ADA’s definition of disability, an individual was required to show that he or she was perceived as having an impairment that substantially limits a major life activity. Under the amendments, an individual will now meet the definition of disabled if he is simply perceived as having an impairment, without regard to whether the impairment limits or is perceived to limit a major life activity.<sup>5</sup>

**The amendments provide a list of “major life activities.”** Under the ADA, an impairment substantially limits a major life activity if it prevents a person from performing a function that the “average person in the general population” can perform.<sup>6</sup> The amendments set forth a non-exhaustive definition of “major life activities” that builds on the Equal Employment Opportunity Commission’s (EEOC’s) definition and other activities that have been added by court decisions, such as eating and major bodily functions.<sup>7</sup> Under the amendments, the term “major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and major bodily functions.<sup>8</sup>

**Less is needed to prove that one is “substantially limited” in a major life activity.** Under the Supreme Court’s ruling in *Toyota Motor Mfg. Ky. Inc. v. Williams*<sup>9</sup> and the EEOC regulations,<sup>10</sup> in order to be considered “substantially limited” in a major life activity, an individual was required to prove that he was unable to perform or “significantly restricted” from performing such activity.<sup>11</sup> The amendments denounce the strict standard for “substantially limited” set forth in *Toyota* and the EEOC regulations as having created an inappropriately high level of limitation necessary to obtain coverage under the ADA, and they mandate that the term be interpreted less strictly.<sup>12</sup> The amendments also express Congress’s expectation that the EEOC will revise its regulations to define “substantially limited” to be consistent with findings of the amendments.

**Other rules of construction and amended findings.** The amendments set forth other rules of construction to broaden coverage under the ADA. Under the amendments, an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.<sup>13</sup> Furthermore, an impairment that is episodic or in remission is considered to be a disability if it would substantially limit a major life activity when active.<sup>14</sup> The amendments also change two findings in the ADA that the Supreme Court has considered to impose limitations on its interpretation of the ADA: the findings that “some 43,000,000 Americans have one or more physical or mental disabilities” and that “individuals with disabilities are a discrete and insular minority.”<sup>xv</sup>

Two of the 2008 amendments’ key accomplishments are to broaden the definition of disability and lessen the “sub-

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stantially limits” standard. As a result, it should be easier for a plaintiff to prove that he is disabled, which should result in more ADA claims going to trial than before.

Endnotes:

- 1 42 U.S.C. § 12102(1).
- 2 42 U.S.C. § 12102(4)(A).
- 3 *Sutton v. United Airlines Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service*, 527 U.S. 516 (1999); *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
- 4 42 U.S.C. § 12102(4)(E)(i).
- 5 42 U.S.C. § 12102(3)(A).
- 6 29 C.F.R. 1630.2(j)(1)(i).
- 7 29 C.F.R. 1630.2(i); *Lawson v. CSX Transp. Inc.*, 245 F.3d 916 (7th Cir. 2001) (holding that eating is a major

- life activity); *Fiscus v. Wal-Mart Stores Inc.*, 385 F.3d 378 (3d Cir. 2004) (holding that eliminating waste from the blood is a major life activity).
- 8 42 U.S.C. § 12102(2).
- 9 *Toyota Motor Mfg. Ky. Inc. v. Williams*, 534 U.S. 184 (2002).
- 10 29 C.F.R. 1630.2(j).
- 11 *Toyota*, 534 U.S. at 198. 29 C.F.R. § 1630.2(j)(1).
- 12 42 U.S.C. § 12102 (4)(B). ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b)(4), 2008 Stat. 3406, 3553-3554 (2008).
- 13 42 U.S.C. § 12102(4)(C).
- 14 42 U.S.C. § 12102(4)(D).
- 15 42 U.S.C. §§ 12101(a)(1) and (7), prior to being amended by the ADA Amendments Act of 2008.