

CLIENT ALERT

FEBRUARY 2009

Americans With Disabilities Act Amendments Act Of 2008

President Bush signed the Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”) on September 25, 2008, and its changes took effect on **January 1, 2009**. The ADAAA represents the first major revision to the Americans with Disabilities Act since its enactment in 1990 and expands the number of individuals who qualify for its protection. The changes apply to all employers covered by the ADA: those with fifteen or more employees for twenty or more weeks in the current or previous calendar year.

The ADAAA maintains the ADA’s basic definition of “disability” as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it makes several important changes. Notably, the ADAAA:

- rejects the U.S. Supreme Court's interpretation that "substantially limits" means "prevents or severely restricts" and calls for a lower standard;
- prohibits the consideration of mitigating measures such as medication, hearing aids or accommodations (besides ordinary eyeglasses or contact lenses) in determining whether an impairment constitutes a disability;

- expands and clarifies what fits within the definition of "major life activities," include the addition of reading, bending, communicating, and other activities not previously recognized; and
- provides that an individual who is merely regarded as having an impairment (regardless of whether he or she actually has an impairment or whether that impairment is a disability) is protected from disability discrimination, but is not entitled to reasonable accommodations.

The passage of the ADAAA means that more employees (and job applicants) will qualify for ADA protections. Employers may now be required to make more accommodations for disabilities and should exercise greater care when making employment decisions affecting individuals with physical or mental impairments. To ensure compliance with the ADAAA, employers may want to consider in-house training and review of policies and practices, and establishing a process for centralized decision making involving employees with physical or mental impairments and employee requests for accommodations.

If you would like to speak with us regarding these amendments, please Diane M. DeGiacomo, Chair of our Employment Law Group.

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