

Important Amendments to the Americans with Disabilities Act

by Stacy A. Hickox, JD, Assistant Professor
Michigan State University, School of Labor and Industrial Relations

Amendments to the Americans with Disabilities Act (ADA) have been enacted which aim to further the original purposes of the ADA. President Bush signed the bill with these amendments on September 25, 2008. The ADA was intended to eliminate discrimination against individuals with a disability, because “physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society.” In enacting these amendments, Congress specifically intends to overturn the effects of two Supreme Court decisions which have narrowed the coverage of the ADA.

The first Supreme Court decision targeted by Congress, Sutton v. United Air Lines, Inc.,¹ excluded from the protection of the ADA those employees who can lessen the effects of their disability through treatment or some corrective device. In Sutton, the Court had excluded from the coverage of the ADA two sisters who suffered from significant vision limitations, which could be corrected to 20/20 or better with corrective lenses.

Lower courts have relied on Sutton to exclude from the ADA's coverage the following employees:

- 1) an employee with a significant hearing limitation which was correctable,²
- 2) an employee with severe depression which could be controlled with medication,³
- 3) a discharged employee with multiple sclerosis, even though she suffered extreme fatigue that occasionally caused her to fall, to experience cognitive difficulties, and to postpone activities temporarily, where her symptoms were treated with medication or use of cane,⁴
- 4) an employee with breast cancer that was treated successfully.⁵

The amendments to the ADA also target the decision of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams,⁶ which Congress finds had interpreted the term “substantially limits” to require a greater degree of limitation than was intended. The Williams court held that to be substantially limited in performing a major life activity, “an individual must

¹ 527 U.S. 471 (1999).

² Ivy v. Jones, 192 F.3d 514 (5th Cir. 1999).

³ Krocka v. City of Chicago, 203 F.3d 507, 513 (7th Cir. 2000).

⁴ Berry v. T-Mobile USA Inc., 490 F.3d 1211, 19 AD Cases 877 (10th Cir. 2007).

⁵ Adams v. Rice, 484 F. Supp. 2d 15, 19 AD Cases 217 (D.D.C. 2007).

⁶ 534 U.S. 184 (2002).

have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives.” The Supreme Court held that Ms. Williams was not disabled under the ADA because she could tend to her personal hygiene and carry out personal or household chores, even though her carpal tunnel syndrome and tendinitis precluded her from lifting more than 20 pounds or frequently lifting objects weighing up to 10 pounds, and otherwise prevented her from performing the duties of her former position at a manufacturing plant.

Congress has specifically found that the Williams decision created an “inappropriately high level of limitation necessary to obtain coverage under the ADA.” This high standard for ADA coverage has been relied upon by lower courts to exclude the following employees:

- 1) An employee with an inability to sit for more than two hours,⁷
- 2) A morbidly obese technician who still had the ability to care for himself, perform household chores, and work a broad class of jobs,⁸
- 3) A hair salon manager with reflex sympathetic dystrophy who was able to stand for 15 to 20 minutes regularly and for up to two hours occasionally, but was unable to stand all day as she had before.⁹

Congress also calls on the Equal Employment Opportunity Commission (EEOC) to revise its current regulations that define the term 'substantially limits' as 'significantly restricted' to be consistent with this Act, including the amendments made by this Act. Under those current EEOC regulations, “substantially limited” means “unable to perform a major life activity that the average person in the general population can perform”; or “significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.”¹⁰

Changes Enacted

The ADA Amendments continue to define “disability” as including “a physical or mental impairment that substantially limits one or more major life activities of such individual.” The change comes with the “Rules of Construction Regarding the Definition of Disability,” which state generally that “the definition of disability in this Act shall be construed in favor of broad

⁷ Maclin v. SBC Ameritech, 520 F.3d 781, 20 AD Cases 712 (7th Cir. 2008).

⁸ Greenberg v. BellSouth Telecommunications Inc., 498 F.3d 1258, 19 AD Cases 1153 (11th Cir. 2007).

⁹ Bryson v. Regis Corp., 498 F.3d 561, 19 AD Cases 1067 (6th Cir. 2007).

¹⁰ 29 C.F.R. § 1630.2(j).

coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.”

More specifically, the act will clarify that “an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.” In addition, “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

To counter the effects of the Sutton decision, the amendments state that “the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.” In other words, an employee can be disabled under the ADA if her condition causes a substantial limitation, even though her medication may reduce the limitations caused by her condition. The measures that will no longer be considered include different types of treatment;¹¹ the use of assistive technology, reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications. In contrast, the ameliorative effects of ordinary eyeglasses or contact lenses can still be considered in determining whether an impairment substantially limits a major life activity.¹²

These Amendments will be effective January 1, 2009. Employers are advised to carefully review their practices in determining whether an employee qualifies for ADA coverage as a person with a disability, to be sure to include

- 1) Employees who use some type of treatment or device to reduce the effects of their impairment, but would be substantially limited without that treatment or device;
- 2) Employees who are at least substantially limited in the performance of one major life activity;
- 3) Employees with a condition that is episodic or in remission, if it is substantially limiting when active.

¹¹ Examples provided include medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies.

¹² As used in the amendment, the term “ordinary eyeglasses or contact lenses” means lenses that are “intended to fully correct visual acuity or eliminate refractive error;” and the term “low-vision devices” means devices that “magnify, enhance, or otherwise augment a visual image.”

Be sure to look for the EEOC's new regulations that will further clarify the scope of a substantial limitation under the ADA. These regulations will be available through the EEOC's web site, www.eeoc.gov.