



ADA Amendment Changing Rules on Workers' Disability

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More than a year ago, then-President George W. Bush signed the Americans with Disabilities Amendments Act (ADAA) to provide greater protection to the disabled in the United States, as well as to readjust the balance between employer and employee interests. The original ADA focused on the individual's disability and contained a specific definition of disability.

Over the years, court decisions have had the effect of tightening the definition further. The ADAA, on the other hand, relaxes the standards for establishing a disability considerably. The ADAA does retain the ADA's original definition of *disability* – an impairment that substantially limits one or more major life activities. But it significantly revises how the classification of *disabled* should be applied and how the word *disability* should be interpreted. Thus, the bill that Bush signed into law has the effect of bringing a large number of people under the protection of the ADA whose medical or physical conditions did not previously rise to the level of a disability.

The Equal Employment Opportunity Commission (EEOC) announced proposed new regulations on Sept. 13. The public has a 60-day period to comment on the regulations, on which the EEOC is scheduled to vote on Nov. 13. These regulations are too lengthy to be discussed here, but they will certainly affect most employers. For this reason, employers are well advised to discuss the proposed regulations with legal counsel. Employers who perceive that the proposed regulations are going to be onerous or difficult should use the comment period to write to the EEOC explaining their concerns. Public comment has resulted in modifications to proposed regulations in the past and may do so again. But that will not happen if businesses do not make the effort to comment.

Additionally, employers should expect more ADA charges and lawsuits in the future. It only stands to reason that if the law covers more people, then litigation under the ADA will increase. The extent of that increase is impossible to know, but being prepared is always a good idea.

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