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EMPLOYMENT NOTE

CONGRESS AMENDS ADA TO EXPAND DEFINITION OF “DISABILITY”

To: Clients and Friends of Tannenbaum Helpern Syracuse & Hirschtritt LLP
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Background

On September 25, 2008, President Bush signed into law s. 3406, the ADA Amendments Act of 2008 (“ADAAA”). The ADAAA amends the Americans with Disabilities Act of 1990 (“ADA”) and becomes effective on January 1, 2009.

The ADA was originally enacted to prohibit employers from discriminating against workers on the basis of disability and requires that employers provide reasonable accommodations to disabled employees.

The ADAAA explicitly reverses several recent U.S. Supreme Court cases which, according to Congress, had “narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect.”

Like the ADA, the ADAAA states that the term “disability” means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. The ADAAA, however, sets forth liberalized standards for meeting this statutory definition of “disability.”

No Consideration of “Mitigating Factors”

The ADAAA provides that the determination of whether an impairment limits a major life activity shall be made without regard to the corrective effects of mitigating factors such as medication, medical supplies, equipment, low-vision devices (which do not include ordinary glasses or contact lenses), prosthetics, hearing aids, cochlear implants, mobility devices or oxygen therapy equipment; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

Broad Definition of “Major Life Activities”

Whereas the ADA did not define what should be considered major life activities, the ADAAA provides that 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. The amendment also states that such activities include the operation of a 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.

Liberal “Substantially Limits” Standard

Although the ADAAA does not provide a new definition of “substantially limits,” it explicitly rejects the rigorous standards adopted by the Supreme Court and the EEOC and directs the EEOC to liberalize its current regulations that define “substantially limits.”

Impairments that are Minor, Episodic or in Remission

Individuals who are *regarded* as having a physical or mental impairment that substantially limits one or more major life activities are protected from discrimination regardless of whether the individual actually does have such an impairment. The ADAAA provides that this protection does not apply to impairments that are transitory and minor, which is an impairment with an actual or expected duration of 6 months or less. Note that the amendment states that an actual impairment that is episodic or in remission qualifies as a disability if it would substantially limit a major life activity when active.

Implications

The amendment provides broader protections for workers by expanding the definition of “disabled” under the ADA. As a result of these changes, employers should anticipate a significant increase in ADA claims and lawsuits. Specifically, more employees will fall under the new definition of disabled and employers may not recognize that certain conditions may now be considered a disability.

Employers must proactively review their policies and procedures for responding to disability-related complaints and requests for reasonable accommodations. The new law also underscores the importance of drafting accurate job descriptions and providing appropriate employee training. Employers are advised to consult with counsel when making employment related decisions concerning employees who may be disabled.

This is a general summary of recent legislative action and is not intended to be legal advice rendered in response to a specific set of facts. If you have any questions regarding compliance with the ADA or its interaction with other employment laws please contact Andrew W. Singer at singer@thshlaw.com or (212) 508-6723, or Joel A. Klarreich at jak@thshlaw.com or (212) 508-6747. This may constitute an attorney advertisement in certain jurisdictions.