

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



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The ADA Amendments: Legislative CPR for a Weakened Statute

In September, President Bush signed into law several key amendments to the Americans with Disabilities Act. The new law responds to decisions by the federal courts that Congress believed narrowed the ADA in ways that denied appropriate protection for employees.

The changes expand the number of workers who are entitled to protection under the ADA and thereby broaden employers' duties to provide employees with reasonable accommodations.

Employers need to know the following about the September changes:

- The ADA defines "disabled" as "substantially limited" in a "major life activity." The amendments add to the list of "major life activities," which now include reading, bending, communicating, and performing virtually all major bodily functions ("immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions").
- Rulings by the U.S. Supreme Court had held that whether an individual is "disabled" depends on how he or she functions after his or her physical limitations are treated. Now, an employee will be considered "disabled" or not based on his or her physical condition before receiving treatment or other remedial measures.
- An impairment that is episodic or in remission will nonetheless be a disability if it would substantially limit a major life activity when active.
- Congress directed the EEOC to revise its regulations on what the term "substantially limited" means. The amendments explicitly state that "disability" should be broadly interpreted, suggesting that new regulations will likely make it easier to prove that a limitation is "substantial."

TIP

Amendments to the ADA have broadened what it means to be disabled and entitled to reasonable accommodation. Employers should now be more careful to consider the ADA whenever an employee has a health issue, even one he or she manages successfully with medication or other treatment.



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