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LEGAL ALERT



Legal Alert: President Signs ADA Amendments Act

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On September 25, 2008 President Bush signed into law the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The statute, which expands protection of persons with disabilities in the workplace, will become effective on January 1, 2009. **Expansion of Who the Act Covers as Disabled** The “Findings and Purposes” section of the ADAAA notes that the U.S. Supreme Court, and lower courts, have interpreted the definition of disability too restrictively, meaning that persons who should have been protected under the ADA have not been. Although not changing the ADA’s technical definition of disability, Congress states that the term must be interpreted in favor of broad coverage to the maximum extent permitted under the terms of the law. **Mitigating Measures No Longer Relevant** Revising a major prior victory for employers, the Act overturns the Supreme Court’s decision in *Sutton v. United Air Lines, Inc.* (1999), and related cases, which held that whether an individual is disabled should be determined with reference to mitigating devices, such as medication. The ADAAA states that the determination of whether a condition substantially limits an individual’s major life activities must be made without regard to the effects of mitigating measures. The Act specifically excludes eyeglasses and contact lenses from the list of mitigating measures that should not be considered. As a result of these changes, millions of persons not previously covered by the ADA will now qualify for its protections. **“Regarded As” Claims Expanded** In addition to protecting persons who actually have a disability, the ADA has always protected persons from discrimination because an employer “regarded” them as having a disability that they did not have. Under the original version of the ADA, persons who claimed discrimination because they were regarded as having a disability were required to prove that the perceived disability substantially limited a major life activity. According to the ADAAA, this interpretation was too narrow. Now, employees only need to show that discrimination based on a perceived disability violates the law, regardless of whether the impairment actually limits, or is perceived to limit, a major life activity. Further, settling a disagreement among federal courts under the prior version of the ADA, the ADAAA clarifies that employers do not have a duty to reasonably accommodate individuals who claim “regarded as” discrimination. The ADAAA also specifically states that “regarded as” claims cannot be based on impairments that are transitory or minor, which the Act defines as impairments with an actual or expected duration of six months or less. **“Substantially Limits” Expanded** To be protected as an individual who has an actual disability, the law requires the individual to prove that he or she is substantially limited in a major life activity. The Act also states that in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, (2002), the Supreme Court interpreted the term “substantially limits” to impose too high of a standard. Similarly, the Act states that the current EEOC regulations defining the term

“substantially limits” as “significantly restricted” express too high of a standard. Accordingly, the Act states that the determination of whether an individual’s impairment is a disability under the ADA “should not demand extensive analysis.” The Act directs the EEOC to revise its regulations on the definition of “substantially limits” to be consistent with the Act’s goal of broadening coverage of individuals protected under the ADA. The Act also states that an impairment that limits one major life activity does not need to limit other major life activities in order to be a disability. Also, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. **“Major Life Activities” Clarified** The ADAAA contains an expanded, nonexclusive list of examples of major life activities. Among those now included are caring for oneself, performing manual tasks, learning, reading, bending, concentrating, and thinking. The Act also clarifies that “major life activities” include major bodily functions including, but not limited to, functions of the immune system, normal cell growth, digestion, bowel and bladder functions, as well as neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. **No Reverse Discrimination** The ADAAA makes clear that reverse discrimination claims may not be made under the ADA. Specifically, the Act states that individuals who do not have disabilities may not claim that they were subject to discrimination because of their lack of a disability. **Employers’ Bottom Line** Employers should revise any written policies or procedures to make sure they comply with the requirements of the ADAAA. Employers should also make sure that all employees who will be involved in dealing with employment issues involving individuals with disabilities, such as making reasonable accommodation, are adequately trained on the new law. If you have any questions regarding the ADAAA or the ADA in general, please contact the author of this Alert, Tim Bland, tbland@fordharrison.com or 901-291-1514 or the Ford & Harrison attorney with whom you usually work.