

ADA Restoration Act: Will It Redefine “Disability?”



**KIMBERLY B.
MALERBA**

Recently, the U.S. House of Representatives overwhelmingly passed a bill that could dramatically alter the landscape for employees and employers under the Americans with Disabilities Act (“ADA”). The ADA Amendments Act of 2008 (H.R. 3195), also known as the “ADA Restoration Act,” is designed specifically to restore Congress’s original intent in passing the ADA by reversing a series of U.S. Supreme Court decisions that substantially limited the scope of coverage afforded to disabled employees.

Briefly stated, the ADA prohibits, among other things, discrimination in employment by employers with fifteen or more employees. Covered employers are prohibited from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. Additionally, such employers are required to provide reasonable accommodations to qualified employees with disabilities.

When the ADA was enacted in 1990, it was intended “to provide a clear and

comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” However, despite its broad objective, the statute inadvertently permitted limiting interpretations of the definition of “disability.” Consequently, several U.S. Supreme Court decisions, including *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999), *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555 (1999), and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), narrowed the definition of disability under the ADA to exclude many physical and mental impairments from its coverage.

Under current law, the ADA defines “disability” as an individual who “has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.” Using this definition, the Supreme Court interpreted “disability” to exclude employees with disabilities who were able to mitigate their impairments – for example, those with conditions that were treatable with medication or could be addressed with the help of assistive technology. In such cases, employees were found to have no protection under the

ADA when employers discriminated against them on the basis of disability. This put employees in a catch-22, because while they were unable to perform their job duties because of their disabling conditions, they were not protected under the law because of the Supreme Court’s narrow interpretation of “disability.”

In response to this precarious position, the U.S. House of Representatives, through passage of the Bill, has attempted to reestablish the broad civil rights protections that were diminished because of the Supreme Court’s interpretations of the law. The Bill clarifies the definition of disability, including what it means to be “substantially limited in a major life activity.” Specifically, the Bill defines the term “substantially limits” to mean an impairment that “materially restricts” one or more major life activity, such as eating, sleeping, reading, lifting, communicating, and hearing. The Bill also prohibits consideration of mitigating measures in determining whether an individual has a disability. Further, the Bill clarifies that an impairment will be deemed a disability whether or not any manifestations are episodic, in remission, or latent, if when active it would substantially limit a major life activity. Significantly, while the Bill broadens protections for employees, it does not change that the ultimate burden of proof for proving discrimination rests with the employee.

Notably, even without these recent developments at the federal level, employees with disabilities in New York State have broad protection under the New York Human Rights Law (and, if applicable, the New York City Human Rights Law). Therefore, even if certain conditions are not covered under the ADA, they may be covered under state law. However, the changes in the federal ADA are still of prime importance, as employees often bring suit under both the federal and state laws because of the difference in remedies that may be sought by a disabled employee. For example, employees may seek punitive damages and attorney’s fees under the ADA, whose remedies are not available under the state statutory scheme (but are also available under the New York City Administrative Code).

Given the high stakes involved when there is a claim for disability discrimination, particularly when punitive damages and attorney’s fees are claimed, it behooves both employees and employers to keep their eyes on the progress of this Bill.

Kimberly B. Malerba, Esq., is an associate at Ruskin Moscou Faltischek in Uniondale. She may be reached at 516-663-6679 or kmalerba@rmfpc.com