

**ADA Amendments Acts of 2008 In Line With
2004 Amendments to Puerto Rico Disability Statute**

By José A. B. Nolla-Mayoral

Member of Nolla, Palou & Casellas, LLC

On September 25, 2008, the President signed into law what was Senate Bill 3406, now known as the "ADA Amendments Act of 2008" ("ADAAA"). It was drafted with bipartisan support, and the participation of representatives from employers and employees in the legislative process. The ADAAA significantly amends the Americans with Disabilities Act of 1990 ("ADA") and will affect how employers analyze coverage under the ADA and requests for reasonable accommodation. The ADAAA becomes effective on January 1, 2009.

The ADAAA and its legislative record specifically address the effects of judicial interpretations to the ADA, and purport to restore what is said to have been its original intent. Among the court decisions specifically mentioned in the legislation are the U.S. Supreme Court's decisions in Sutton v. United Airlines, 527 U.S. 471 (1999) and Toyota Motor Manufacturing Kentucky Inc. v. Williams, 534 U.S. 184 (2002). As you may recall, in these cases the Supreme Court narrowed the definition of "disability" contained in the ADA.

In Sutton, the question turned on whether it is permissible to consider the corrective effects of measures used to treat specific conditions when making a determination of disability under Title I of the ADA. There, two pilots with severe myopia, but whose vision was 20/20 with the use of corrective lenses, had argued that the determination of whether they met the definition of disability, and therefore, protected by the ADA, should be made without considering the corrective effects of their eyeglasses.

The Sutton Court interpreted that the effects of corrective measures should be taken into account when judging whether a person is "substantially limited" in a major life activity, and thus, "disabled" within the meaning of the law. The Court concluded that the protections of the law should apply only to individuals whose impairments result in current functional limitations. The Court held that individuals whose conditions are stabilized through corrective measures (e.g. medications) do not satisfy this requirement.

In Sutton, the plaintiffs also alleged that the airline mistakenly believed that they were unable to work as pilots, except for its regional airline, but the Court also ruled that the plaintiffs had failed to allege that they were "regarded as" disabled and, hence, covered by the statute.

In Toyota, the Supreme Court ruled that workers with carpal tunnel syndrome and tendinitis who seek special treatment from their employers must show that they are impaired not only on the job, but also in activities vital to their daily lives. The Court's unanimous decision was interpreted to add to what a worker must show to state a claim based on the ADA. "To be substantially limited in performing manual tasks (and covered by the ADA), an individual must have an impairment that prevents activities that are of central importance to most people's daily lives." "The impairment's impact must also be permanent or long-term." The ADA was read to require employers to offer reasonable accommodations to people who met that criteria and were otherwise qualified to do a job. The Toyota Court said that Congress did not intend for everyone with an impairment that barred "the performance of some isolated, unimportant or particularly difficult manual task" to be covered by the ADA. It was deemed insufficient for individuals attempting to prove disability status to merely submit evidence of a medical diagnosis of impairment. Rather, the central inquiry was whether the claimant was unable to perform the variety of tasks central to most people's daily lives.

The drafters of the ADAAA found these cases to have restrictively interpreted the ADA and employees' rights. It further found that the Equal Employment Opportunity Commissions' ("EEOC") regulations defining the terms "substantially limits" as "significantly restricted" should be revised consistent with the ADAAA.

Some of the major amendments made by the ADAAA to the components of the term "disability" are:

1. "Major Life Activities" - It will now specifically include "working" as a major life activity. The Supreme Court had declined to rule on whether working was a major life activity in Toyota, at 122, and Sutton, 527 at 492. However, some First Circuit cases had already concluded that work is a major life activity. See e.g. Lebron-Torres v. Whitehall Laboratories, 251 F.3d 236, 240 (1st Cir.

2001) and Quint v. A.E. Staley Mfg. Co., 172 F.3d 1, 10 (1st Cir. 1999).

The ADAAA also includes as major life activities "reading, concentrating, thinking, communicating", "bending", and "lifting", among others. The ADAAA also now includes as major life activities the "operation of major bodily functions", "including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." The EEOC had interpreted some of these to be included in the definition of "physical or mental impairment", but were not expressly defined as such in the ADA. The inclusion of these within the definition of the major life activities of the ADA will leave no doubts about it. The EEOC's rule making authority in this area had been challenged, but the ADAAA now also authorizes the EEOC, and the U.S. Department of Justice and the Department of Transportation, to implement such rules.

2. "Regarded as" - The definition is expanded by the ADAAA to include an individual who can establish that he/she has been discriminated against because of an actual or perceived physical or mental impairment **"whether or not the impairment limits or is perceived to limit a major life activity."** Yet, this definition shall not apply to minor impairments or those that are "transitory", those expected to last less than six months. The legislation also provides that employers will not be required to provide a reasonable accommodation to individuals who are regarded as disabled.
3. Construction of "substantially limits" - The definition provided by the U.S. Supreme Court to the term "substantially limits", as discussed above, has been disallowed and, henceforth, shall be interpreted consistently with the findings and purposes of the ADAAA. This rejects the narrow interpretation of the term, as the Supreme Court ruled in Toyota. Instead, "[a]n impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability." Likewise, the amendment further specifies that "[a]n impairment that is episodic or in remission is a

disability if it would substantially limit a major life activity when active.”

4. “Ameliorative effects of mitigating measures” - In determining whether an individual has a disability, no consideration shall be given to mitigating measures, with the exception of ordinary eyeglasses and contact lenses.

The ADAAA further establishes a rule of construction of the term “disability.” The amendments direct that the term “shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act”. This is in sharp contrast with the holding in Toyota.

However, these new rules of statutory construction should not be news in Puerto Rico, inasmuch as the local legislature had a similar reaction to the above cited Supreme Court and other lower court cases when it drafted amendments to the local disability statute that closely resembles the ADA. Indeed, on September 16, 2004, the Governor of Puerto Rico signed Puerto Rico House Bill 4135 into Act No. 355, amending Act No. 44 of July 2, 1985 (“Act 44”). Act 355 directed the interpretation of the local law to be “liberally” (e.g. broad) in favor of the rights of the disabled, instead of “restrictive” (e.g. narrow) pursuant to federal case law and regulations. Thus, coverage under the local disability statute appears to be even broader than under the EEOC regulations that were challenged in Sutton.

Act 44 had already been interpreted by several Puerto Rico Supreme Court opinions as being similar in scope and coverage to the ADA. Prior to the enactment of Act 355, local courts had relied almost exclusively on federal case law interpreting the ADA when resolving claims under Act 44. In attempting to reverse such interpretations, the local legislature only amended the rule of construction, in contrast to the ADAAA which now took a further step by also amending the definitions of disability.

Given the new definitions and expansive nature of the term disability, undoubtedly, it will be easier to qualify for protection under these acts. In order to assure compliance and avoid the risk of claims in this emergent area of the law, employers have to closely analyze the need for accommodations under both the ADA and Act 44. Employers should proceed with caution in light of this expansive set of criteria.

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