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LEGAL ALERT



## Legal Alert: Is the ADA Amendments Act Retroactive?

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As discussed in prior Legal Alerts, the ADA Amendments Act (ADAAA) expands the definition of who is "disabled" under the law. The ADAAA specifically states that its provisions become effective on January 1, 2009.

Nonetheless, attorneys for employees have already begun arguing that courts should apply the ADAAA retroactively. In other words, in their view, the new law would apply to any claims pending as of September 25, 2008, which was the date it was enacted.

In making such an argument, attorneys for employees rely on a series of cases that they contend holds that legislation that is enacted to overrule court decisions may be applied retroactively. According to this argument, the ADAAA principally was enacted to overrule court decisions, including the U.S. Supreme Court decisions in *Sutton v. United Airlines, Inc.* and *Toyota Manufacturing, Kentucky, Inc. v. Williams*. Thus, employees' attorneys argue that the ADAAA should be applied retroactively.

If courts adopt this argument, it obviously will be detrimental to employers who relied on pre-ADAAA case law in making decisions regarding whether employees are protected as disabled and thus entitled to reasonable accommodation. If courts apply the more liberal standards of the ADAAA retroactively, it could result in liability in some cases where the employer unwittingly failed to reasonably accommodate a disabled employee because the employer determined that the employee did not meet the ADA's definition of disability, as it then existed.

### Employers' Bottom Line:

Although it seems clear that the drafters of the ADAAA did not intend for the Act to be applied retroactively, it is possible that some courts may, nonetheless, apply it retroactively. Thus, to be safe, employers may want to review recent accommodation decisions in light of the ADAAA's more liberal definition of disability to ensure that a reasonable accommodation was not denied to an employee who would qualify as disabled under the new law.

If you have any questions regarding the ADAAA or the issues discussed in this Alert, please contact the author, Tim Bland, in our Memphis office at 901-291-1514 or [tbland@fordharrison.com](mailto:tbland@fordharrison.com) or the Ford & Harrison attorney with whom you usually work.