

COVERAGE OF THE AMERICANS WITH DISABILITIES ACT BROADENED

Municipal employers should be aware that beginning January 1, 2009, a larger class of individuals will qualify for the protections of the Americans with Disabilities Act (ADA). On that date, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) will take effect. The ADAAA expressly overrules a number of federal court and United States Supreme Court decisions that have narrowed the interpretation and application of the ADA, particularly the definition of “disability.” The ADAAA provides, among other things, that the definition of disability must be “construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.”

Under the ADA, a disability is defined as a physical or mental impairment that substantially limits one or more major life activities. An individual will also be considered to have a disability if he or she has a record of such impairment or is regarded as having such impairment. The U.S. Supreme Court has held that if a physical or mental impairment is controlled through medication or an assistive device (e.g., prosthesis) so that the individual is not substantially limited in a major life activity, the individual would not be considered disabled under the law. *Sutton v. United Airlines*, 527 U.S. 471 (1999). The ADAAA rejects this approach and provides that the ameliorative effects of mitigating measures such as medication, equipment and prosthetics should not be considered in determining whether an individual has an impairment that substantially limits a major life activity. Ordinary eyeglasses or contact lenses are the only exception.

While the original ADA did not define a major life activity, the ADAAA explicitly lists the types of activities it considers to be major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. It also adds major bodily functions, such as functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Under the ADAAA, an individual with an impairment who has no apparent limitations on daily life activities may still be considered disabled if one of these major bodily functions is impaired.

Finally, the ADAAA also broadens the “regarded as” prong of the ADA to protect individuals discriminated against because the employer regarded them as having a physical or mental impairment, even if the perceived impairment would not have constituted a disability under the law. Under the ADAAA, an individual meets the requirement of being “regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA “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.” Said another way, an employer who discriminates because it thought the employee or applicant was disabled cannot escape liability simply because the person discriminated against did not actually have a qualifying disability.

Municipal employers should understand that Congress’s main intent in passing the ADAAA was to provide ADA coverage to more people and to compel courts to apply a less demanding standard in determining whether a person is covered by the ADA. This will likely result in an increase in the number of employees and applicants who are considered qualified for ADA protection. Municipal employers will likely have a greater obligation to reasonably accommodate these individuals, even if they are fully able to perform their job duties while taking medication or using prescribed medical devices. To learn more about the ADA and the ADAAA, visit www.eeoc.gov/types/ada.html.

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