Changes to the ADA and Their Impact on Employers and Employees

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IN 1990, Congress passed the Americans With Disabilities Act (the "ADA"), and various new protections for employees with qualifying disabilities became the law in the land. Since then, courts have grappled with a slew of challenging issues under the ADA ranging from whether persons with cancer, AIDS, carpal tunnel syndrome, and stress-related disorders qualify as "disabled" to whether providing indefinite leaves of absence, telecommuting, or ergonomically improved work stations constitute "reasonable accommodations" under the ADA. On January 1, 2009, amendments to the ADA are to take affect and may have a significant impact on businesses across the country.

The crux of the ADA remains intact. Specifically, the law will continue to provide certain protections to persons with qualifying disabilities, and it will continue to mandate that employers with 15 or more employees consider and implement reasonable accommodation for qualifying individuals unless it would be an "undue hardship" to do so. As a result, the threshold issue of whether a person is or is not protected by the ADA (i.e., whether he or she has a qualifying medical condition) remains critical.

The ADA Amendment Act clarifies that the ADA is to be interpreted "in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act."

The ADA Amendment Act overturns the Supreme Court's decision in Toyota Motor Mfg. v. Williams (2002) in which the Court held that a "demanding standard" had to be met before a person could be considered to suffer from a "disability" (defined generally as "substantial impairment of a major life activity").

The Amendment overturns the Supreme Court's decision in Sutton v. United Airlines, Inc. (1999), which decided that "mitigating measures" such as medications or prosthetics should be considered when assessing disability.

Under the ADA generally, as noted above, one must demonstrate a "substantial impairment" of a "major life activity" to qualify for protection. Courts regularly require that an impairment impact more than one "major life activity" to meet the threshold definition. The Amendment clarifies that it is not necessary that an impairment limit multiple major life activities as long as the impairment substantially limits one major life activity.

These changes will likely result in a broadening of ADA coverage. For example, under the Williams and Sutton decisions, persons with epilepsy controlled by medications were likely not considered "disabled" under the ADA and, therefore, were not entitled to any reasonable accommodation. The amendment likely requires that employers consider such individuals as qualifying under the ADA, consider accommodations as needed, and generally treat such individuals as covered under the Act.

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Whether that will have a major impact on businesses is unknown. On the one hand, a person with a medical condition that is controlled by medication, in theory, will not need or seek accommodation. On the other hand, medications may not alleviate all of the symptoms of a condition, and there may be very legitimate reasons for an employee with an illness controlled by medication to still require accommodation.

As mentioned, there are other changes to the law, and their full impact will not be known for some time. As with any changes to the laws that impact employers and employees, it is best for everyone to become familiar with the law. Certainly if you are someone who has a medical condition that you believe is impacting your ability to perform the essential functions of your job, you may want to look at the revisions to the ADA and consider speaking with someone about its impact on your particular situation. From a company's perspective, in light of the changes to the law, it may be time to re-evaluate company practices, policies, and handbooks to determine whether the revisions will impact your company and, if so, how you can best prepare for the future.

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