

The ADAAA: Hope for Employees with Health Conditions

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against individuals with disabilities and requires employers to provide reasonable accommodations to these individuals. Over the course of time, judges eroded the protections of the ADA. As a result, Congress enacted the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

In 2004, plaintiffs lost 97% of disability lawsuits brought against employers.¹ One of the primary reasons plaintiffs lost so frequently was that it was nearly impossible meet the definition of “disability.” Meeting the definition of “disability” is a necessary element for claiming protection under the ADA.² Thankfully, the ADAAA makes major changes the way “disability” is defined.

The ADA defined, and still defines, a “disability,” as a “physical or mental impairment that substantially limits one or more major life activities.”³ It is important to note prior to the ADAAA, the ADA did not provide a list of major life activities, although the Equal Employment Opportunity Commission (EEOC) published a list of major life activities in its regulations.⁴ Whether an activity is a “major life activity” covered under the ADA is an issue of law.

One of the crucial changes the ADAAA brings to the ADA is that it provides a non-exhaustive list of major life activities that is more expansive than that contained in the EEOC regulation.⁵ Notable additions include the activities lifting and bending.⁶

An earlier Supreme Court decision, *Toyota Motor Mfg. Kentucky, Inc. v. Williams*, held an impairment had to be “permanent or long-term” in order to be a “disability.”⁷ This had horrific consequences for individuals with episodic conditions or conditions in remission, like cancer and asthma. These individuals could be denied the protection of the ADA if they were

NOTE: The article must not be relied upon for legal advice. Legal advice cannot be rendered without an analysis of the facts of a particular situation. The purpose of this article is to inform you of interesting developments affecting employees and its use should be limited to entertainment purposes. If you have questions about the application of concepts discussed in the article, you should consult your legal counsel.

¹ John D. Thompson, “What Is and Is Not a Disability Under the New Law?” The New ADA, Minnesota Continuing Legal Education, December 2008, citing 154 Cong. Rec. H6062 (daily ed. Je. 25, 2008).

² 42 U.S.C. § 12112(a).

³ 42 U.S.C. § 12102(1). There are other ways an individual might claim he has a disability, but this is the definition upon which we will focus for the purpose of this article.

⁴ 29 C.F.R. § 1630.2(i).

⁵ See 29 C.F.R. § 1630.2(i) and 42 U.S.C. § 12102(2)(a).

⁶ 42 U.S.C. § 12102(2)(a).

⁷ 534 U.S. 184 (2002).

asymptomatic or in remission either *at the time of the lawsuit* or *at the time of the adverse employment action*.⁸ This effectively meant your employer could terminate you after you were better even if the termination was motivated by your health condition.

Congress attempted to correct this injustice with the ADAAA. One of the most drastic changes the ADAAA brings to the ADA is the addition of certain bodily and physiological functions in the definition of “major life activity.”⁹ These include, but are not limited to: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.¹⁰ The ADAAA explicitly provides “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”¹¹ This is good news for employees with these types of conditions.

Finally, the ADAAA overturns the Supreme Court’s holding in *Sutton v. United Airlines, Inc.*¹² In *Sutton*, the Court held judges should take corrective or mitigating measures into account when determining whether an individual has a disability.¹³ This allowed judges examine how medications, prosthetic devices, medical equipment, and other aids affected otherwise disabled individuals.¹⁴ This meant a plaintiff could be denied coverage under the ADA if he utilized medication that helped him perform the major life activity he claimed was substantially limited by his condition--even if the major life activity was basic---like breathing. The ADAAA provides that mitigating measures, except ordinary glasses and contacts, should not be considered when evaluating whether an individual is substantially limited in a major life activity.¹⁵

The ADAAA brings hope to employees with health issues. If you are an employee with a health condition, you have resources. You can contact the Minnesota Department of Human Rights or the EEOC for information. You can also contact your steward who may be able to help you talk to your employer. For advice about your rights, consult your attorney.

⁸ See Penelope Phillips, “Practical Implications of the Americans with Disabilities Act Amendments Act of 2008,” *The 35th Annual Employment and Labor Law Institute*, Minnesota Continuing Legal Education, November 2008, pg. 6 citing *Ellison v. Software Spectrum, Inc.*, 85 F.3d 187 (5th Cir. 1996) and *Hirsch v. National Mall & Serv., Inc.*, 989 F.Supp. 977 (N.D. Ill. 1997).

⁹ 42 U.S.C. § 12102 (2)(b).

¹⁰ *Id.*

¹¹ ADAAA § 3(4)(D).

¹² 527 U.S. 471 (1999).

¹³ *Id.*

¹⁴ See *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002), a case involving a diabetic pharmacist terminated for closing the Wal-Mart pharmacy where he worked so he could eat lunch. The judge in that case ruled that the ameliorative effects diet and insulin injections at the time of the lawsuit must be taken into account when determining whether Orr was “disabled.”

¹⁵ See ADAAA § 3(4)(A)(E) and 42 U.S.C. § 12102(4)(e).