

## **New ADA Amendments Act Expands Disability Protections**

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Newly enacted ADA Amendments Act of 2008, signed into law by President Bush on September 25th, will increase the number of individuals entitled to protection from discrimination based on their disability or perceived disability. The Amendments, which will become effective on January 1, 2009, will potentially enlarge school districts' exposure to employee disability discrimination claims and expand the number of students who are entitled to 504 Plans.

According to the Act's findings, the Amendments to the ADA are a response to Court decisions which, "have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities." As such, the Amendments redefine the definition of those who are protected under the ADA. The Amendments make it easier for people with an episodic impairment or impairment that is in remission to claim disability protection. Further, the Amendments now extend protection to any individual who is perceived as having a physical or mental impairment, regardless of whether the individual actually has a disability. Of great importance, the Amendments specifically call for broad coverage requiring a liberal interpretation of the ADA definition of disability as opposed to the narrow interpretation of disability that Courts have given the term in the past.

In addition to changing the defined class of individuals who are considered disabled under the ADA, the Amendments also changed the analysis for determining whether an impairment qualifies as a disability under the ADA. Overturning previous court decisions, the ADA will now mandate that mitigation measures, such as medications or assistive hearing aids, not be considered in determining whether an individual has a disability. Further, to show that an individual has a qualifying disability or past disability under the ADA, an individual still must show that he/she is "substantially limited in a major life activity." The definition of "major life activities" however, has been redefined to expressly include bodily functions such as "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." Further, Congress rejected court decisions that have imposed a strict and demanding standard of the "substantially limits" showing requiring that a person's impairment "prevent or severely restrict the individual from doing activities that are of central importance to most people's daily lives."<sup>1</sup> The Amendments redefine the term "substantially limits" to mean "materially restricts," a lower standard than courts have previously required.

The Amendments also change the definition of disability under Section 504 of the Rehabilitation Act of 1973 to the new definition provided in the ADA. Section 504 protects students with disabilities from discrimination by any entity that receives federal funding.

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<sup>1</sup> Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).

Students with disabilities who may not qualify for services under the IDEA may qualify for accommodations and the implementation of a “504 Plan” under Section 504. In the past however, if a student with a disability could be brought to the level of an average peer with “mitigating measures,” such as medications, the disabled student did not qualify for Section 504 services. With the new prohibition on considering mitigating measures and the requirement that “disability” be interpreted broadly, it is likely that more students will qualify for Section 504 services.

With these Amendments, more individuals will qualify for reasonable accommodations and it will be easier to meet the necessary showing that they are an individual with a disability for discrimination claims and/or Section 504 services. As such, it is more important than ever for school districts to be aware of the requirements relevant to disabled employees and students and strictly adhere to them.