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NEW ADA ENTITLEMENTS

On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 (“ADAAA”). The signing significantly expands the scope of the Americans with Disabilities Act (ADA) of 1990. The Act was designed with the purpose “to restore the intent and protections of the Americans with Disabilities Act of 1990,” and broadens the ADA’s definition of “disability.” The Act will go into effect on **January 1, 2009**.

The new ADA entitlements include the following:

1. Rejects Certain U.S. Supreme Court Decisions:

a. ***Sutton vs. United Air Lines, Inc.***

The requirement expressed by the Supreme Court in *Sutton vs. United Air Lines, Inc.*, 527 U.S. 471 (1999), has been rejected by the ADAAA. As a result, employers are no longer able to take into account mitigating measures (such as prosthetics or hearing aids) when determining if an individual has a disability under the ADA. However, employers may still take into account eyeglasses and contact lenses when determining if an individual has a disability under the ADA.

b. ***Toyota Motor Manufacturing, Kentucky, Inc. vs. Williams***

The standards expressed by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. vs. Williams*, 534 U.S. 184 (2002), has been rejected by the ADAAA. The ADAAA rejects the standard that to be substantially limited in performing a “major life activity” under the ADA, “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” In addition, the Act instructs the Equal Employment Opportunity Commission (EEOC) to revise current regulations that defines the term “substantially limits” as “significantly restricted.”

2. Expands Definition of “Major Life Activities.” “Major life activities” include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, breathing, learning, reading, concentrating, thinking, communicating, and working. In addition, a “major life activity” also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Important note: An individual with an impairment that is *episodic* or *in remission* is a disability if it would substantially limit a major life activity when active.

3. **Restores View of The “Regarded As” Prong.** An individual may meet the requirement that they were “regarded as” having a disability if they were subjected to discrimination (unlawful actions) 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.”

Important note: “Regarded as” claims must be based on impairments with an actual or expected duration of longer than six (6) months. In addition, employers do not have to provide reasonable accommodations to individuals who are “regarded as” disabled.

4. **Expresses View on Standards and Tests Related to Uncorrected Vision.** Covered employers shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered employer, is shown to be job-related for the position in question and consistent with business necessity.
5. **Gives Authority to Issue Regulations.** The ADAAA gives authority to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation to issue regulations implementing the definitions of disability.

Important note: Under the ADAAA, an individual, without a disability, cannot bring a claim under the ADA based on discrimination due to a lack of a disability.

Recommended Next Steps for Employers:

1. Provide training to supervisors and managers, informing them on the new ADA entitlements. Employers should review provisions of the ADA, including accommodating employees *and* applicants with disabilities.
2. Review current ADA policies, including process of accommodating employees with disabilities. Ensure ADA policies are consistent for *all* employees.
3. Review current employee job descriptions to ensure essential functions are accurately described within each position.
4. Develop and/or update tools needed for the employee accommodation process, including forms, letters, and processes.

Waggoner, Irwin, Scheele & Associates are prepared to help your organization with the new ADA entitlements. Whether you need guidance amending your current ADA policies or assistance “filling in the gaps,” our knowledgeable consultants can provide the valuable insight you need to move forward.

Please contact Kent Irwin with specific questions at 765.286.5195.

ADAAA updates will be posted on our website: www.wisconsultants.com