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THE EMPLOYMENT AND LABOR GROUP AT METZ LEWIS LLC WISHES TO ALERT EMPLOYERS OF AN IMPORTANT RECENT AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT

What happened:

On September 25th, President Bush signed into law the ADA Amendments Act of 2008 (ADAAA or the Act). This law, which becomes effective January 1, 2009, expands the coverage of the ADA in several significant ways by overturning several recent Supreme Court rulings that had narrowly interpreted the Americans with Disabilities Act (ADA). The result is that it will be easier for employees to show that they have a “disability” and are therefore entitled to the protections of the ADA. Accordingly, employers will need to significantly alter how they view and handle disability issues in the workplace and defend disability claims in litigation.

What the ADAAA does and states:

Congress has explicitly stated that the purpose of this amendment is to “restore the intent and protections of the Americans with Disabilities Act of 1990,” in light of federal court decisions which had, over time, narrowed the group of people Congress had intended to protect when it enacted the ADA and provided employers with certain legal defenses. Faithful to that purpose, the ADAAA overturns several judicial interpretations of the scope of coverage under the ADA. Specifically, the ADAAA overturns two major U.S. Supreme Court decisions (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), and *Sutton v. United Airlines*, 527 U.S. 471 (1999)) which (1) required that an individual be “prevented or severely restricted in an activity that is of central importance in most people’s daily lives” before being deemed to have a protected disability and (2) held that the ADA did not protect an employee who was able to manage the symptoms of his or her disability by using “mitigating measures” (such as medication, prosthetics, etc.).

Some significant provisions of the ADAAA can be briefly summarized as follows:

First, the ADAAA reinterprets the phrase “substantially limited” so that its definition is now much broader and, therefore, no longer “demand[s] [the] exhaustive analysis” described in *Williams*. The new Act includes a non-exhaustive list of major life activities and major bodily functions:

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caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Included on the list of major bodily functions are normal cell growth and immune system, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrinal, and reproductive functions.

Second, under the ADAAA, “mitigating measures” now cannot be analyzed in interpreting an employee’s alleged disability. Because the current law allows employers to argue that certain conditions (such as vision problems, epilepsy, diabetes, depression, etc.) do not rise to the level of a “disability” because they can be managed through medication or other treatment, this change is very significant.

Third, the ADAAA expands the ADA to protect those who suffer from an episodic impairment or one that is in remission, if the condition would substantially limit a major life activity when it is active.

What employers should do:

Because the ADAAA changes a number of key aspects of the ADA, employers should invest the time, between now and January 1st, to become familiar with the new provisions. Employers should review company handbooks, policies and procedures to incorporate the provisions of the ADAAA. All human resources, employee health personnel and managers/supervisors need to be trained on the changes so that proper decisions regarding employee disabilities and reasonable accommodations can be made.

The Employment and Labor Group, which includes nearly a quarter of the Firm’s attorneys, stands ready to help employers understand and adjust to these new developments. We can [train your staff](#), draft or re-write your policies and procedures, assist in the handling of and response to disability issues, and guide you through management decisions – all with the goal of keeping you out of government agencies and courts while preserving your right to run your business.

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