

## ADA AMENDMENTS ACT OF 2008 SIGNED INTO LAW

On September 25, 2008, the ADA Amendments Act of 2008 (the "Act") was signed into law by President Bush. The Act, which is effective January 1, 2009, expands the scope of disabilities covered under the Americans with Disabilities Act of 1990 (the "ADA"). In part, the Act broadens the scope of protection available to employees by rejecting two Supreme Court decisions which had narrowly construed the definition of "disability" under the ADA.

The Act instructs courts that "the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." More specifically, the Act rejects the standard announced by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), which required that the determination of whether an impairment substantially limits a major life activity be balanced against the "ameliorative effects of mitigation measures," such as medication or medical devices. The Act also rejects the standards set forth by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), which held that (1) the terms "substantially limited" and "major life activities" must be strictly construed when determining the existence of a qualifying disability and that (2) an individual must show that such disability prevents or severely restricts him/her from "doing activities that are of central importance to most people's lives." The rejection of these decisions calls into question numerous court decisions that have denied protection for various conditions, including diabetes, epilepsy, heart disease, mental disabilities and cancer.

In addition to rejecting the Supreme Court decisions, the Act also adds new definitions and provisions which provide guidance for determining whether an individual's impairment is considered a disability. In particular, the Act contains the following amendments:

- The Act specifically provides that the term "disability" shall be construed in favor of broad coverage for individuals;
- The Act prohibits the consideration of "mitigating measures," such as medication, medical supplies, prosthetics, hearing aids, mobility devices and assistive technology, in determining whether an individual has a disability;
- The Act clarifies that an impairment that substantially limits one major life activity need not limit other major life activities in order to be a disability; and
- The Act states that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

As a result of these amendments, many employees who were not previously protected under the ADA may now be considered to have a disability. This will likely result in an increased number of requests for accommodations made by employees to their employers. Such requests for accommodation must be considered in light of the new amendments, thereby requiring that employers revisit their existing policies, handbooks and procedures in order to avoid potential lawsuits based upon improperly denied accommodations.

If you would like to further discuss the details of the ADA Amendments Act of 2008, or to discuss other labor and employment matters facing your organization, please contact:

Jonathan Stoler (New York)  
+1 (212) 332-3857  
jstoler@sheppardmullin.com