

# Akerman Practice Update

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## The Americans With Disabilities Act Broadens Its Scope

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On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008, returning the ADA to its original intent when first enacted in 1990. Over the past 18 years, the courts have interpreted the ADA in a variety of circumstances (primarily when employers have been sued for violations of its various provisions). These interpretations have limited the scope of the statute, too far in the opinion of Congress, by more narrowly defining who has a "disability" under the statute and who is "regarded as disabled."

Under the amendments, Congress made it clear that "the primary object" of the statute "should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." Coverage under the statute is to be to "the maximum extent" possible. For employers, this means that when in doubt on whether a person is "disabled" under the statute, they should assume the person qualifies as "disabled."

One area of the definition that got a face lift was whether "mitigating measures" could be considered when determining if someone was "disabled." For example, courts had held that those who voluntarily used mitigating measures, such as a prosthesis, medication, or corrective lenses were not disabled if the use of the devices/medications meant they were not "substantially limited" in performing their daily activities. The amendments change the rules and hold that whether a person is disabled is to be considered without regard to the use of such measures, with the sole exception of "ordinary eye-glasses or contact lenses."

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By expanding the definition of who is "disabled," Congress returns the focus to whether someone is discriminated against on the basis of a disability, which will turn on who is a "qualified person with a disability" and the availability of reasonable accommodations. These definitions were not changed; however, the amendments make it clear that physical requirements for a job must be job related. If they are not, then they will be subject to challenge and modification for an otherwise qualified individual.

The amendments also expand the definition of "regarded as disabled." This definition applies to any "impairment" whether or not the impairment actually limits the person in his or her daily life. It also includes medical conditions expected to last more than 6 months, including things such as cancer that may go into remission, but are subject to again reappear. While people without disabilities do not have a claim under the statute based on their lack of a disability, an employee does not have to have an actual disability to take advantage of the "regarded as disabled" provision protections. Accordingly, given this expanded definition, there will certainly be those who may not meet the definition of "disabled" but who will nonetheless attempt to utilize this provision to challenge an adverse employment decision.

In short, the impact on employers will be that more employees will qualify as "disabled" under the ADA. Not only does this give more employees protections under the statute, but it will likely raise more questions when it comes to providing reasonable accommodations to persons with disabilities. As before, each situation will need to be evaluated as it arises and more situations now fall under the ADA umbrella. As employers review policies, procedures, job qualifications, sick leave requests, and requests for reasonable accommodations, they should keep in mind the new reach of the ADA.

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