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A CHANGE FOR THE BETTER?: THE ADA AMENDMENTS ACT OF 2008

By JASON LEWIS

Consider the following scenario: James Todd, a stocker at a local factory, suffered from epilepsy.¹ Although he took medication to control his condition, he continued to experience seizures on a weekly basis.² His medication caused him to have decreased cognitive functioning and memory problems.³ Despite his condition, a U.S. District Court ruled that Todd was not substantially limited in a major life activity. Therefore, he did not qualify as disabled under the Americans with Disabilities Act (ADA), and was not entitled to the Act's legal protections.⁴

Court decisions such as Todd's case resulted in many disability advocates fearing that disabled individuals "could be forced to choose between treating their

conditions and forfeiting their protections under the ADA, or not treating their conditions and being protected.”⁵

In response to this concern, Congress passed the ADA Amendments Act of 2008 (ADAAA), which became effective on January 1, 2009.⁶ Congress, among other goals, aimed to restore the original intent and protections of the ADA by providing broad coverage to disabled persons.⁷

Notwithstanding Congress’ intent, however, disabled individuals and advocacy groups still have a lingering question: while the new bill professes to expand coverage, will courts follow suit and interpret the ADAAA accordingly?



THE ADA AMENDMENTS ACT

President George H.W. Bush signed the original ADA into law on July 26, 1990.⁸ Through the legislation, Congress aimed to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁹ As such, Title I of the Act prohibits private employers from discriminating against qualified individuals with disabilities in all terms, conditions, and privileges of employment.¹⁰

In the text of the Act, Congress specifically defines a disabled individual as: (1) a person that has a “physical or mental impairment that substantially limits one or more major life activities”; (2) has “a record of such an impairment”; or (3) is “regarded as having such an impairment.”¹¹

However, Congress did not define “substantially limits” or “major life activities” in the Act. U.S. District Courts and Courts of Appeals varied in their interpretation of these two terms until the Supreme Court addressed them in two ADA cases: *Sutton v. United Air Lines, Inc.* in 1999 and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* in 2002.¹²

In *Sutton*, the Court ruled that when determining whether one’s impairment “substantially limits” a “major life activity,” it must look to the corrective measures that the individual uses in treating the impairment.¹³ Thus, because the plaintiffs in *Sutton* could fully correct their visual impairments with glasses or contact lenses, they were not substantially limited within the meaning of the Act.¹⁴

In *Toyota*, the Court ruled that the terms “substantially” and “major” “need[ed] to be interpreted strictly to create a demanding standard for qualifying as disabled.”¹⁵ Moreover, the Court stated that in order 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.”¹⁶

Congress specifically rejected the rulings of these two cases in the ADAAA. In reference to *Sutton*, Congress directly addressed mitigating measures.

“The determination of whether an impairment substantially limits a major life activity shall be made *without* regard to the ameliorative effects of mitigating measures.”¹⁷ Under the Amendments, the Court in *Sutton* now would not consider the plaintiffs’ use of glasses or contact lenses when determining whether they were substantially limited under the Act.

In reference to *Toyota*, Congress stated that judicial decisions “ha[ve] created an inappropriately high level of limitation necessary to obtain coverage under the ADA. . . . The definition of disability in this Act shall be construed in favor of broad coverage of individuals.”¹⁸

HOW HAVE ADVOCACY GROUPS RESPONDED TO THE NEW AMENDMENTS?

Barry Taylor, Director of Equip for Equality, a disability-rights advocacy organization, states that the ADAAA restores Congress' initial intent of eliminating disability discrimination.

"Everyone was optimistic when the ADA was first passed; Congress made findings that we thought would redress disability discrimination. However, over time, courts began to construe the statute so narrowly that it negated the intent of Congress."¹⁹

"People with disabilities will [now] have their claims decided on the merits of the case rather than on technicalities," Taylor said.²⁰

Andrew Imparato, President of the American Association of People with Disabilities, also expressed his satisfaction with the ADAAA.

"This is the most important piece of disability legislation since the enactment of the ADA in 1990," Imparato said.²¹

Most employer-advocate groups generally support the new amendments.

The U.S. Chamber of Commerce, an organization that represents businesses, stated that the new legislation "strikes the right balance between protections for individuals with disabilities and the obligations and requirements of employers."²²

Randel Johnson, vice president of Labor, Immigration and Employee Benefits at the U.S. Chamber of Commerce, stated that "[a]fter many months of negotiation, the legislation represents a sound compromise between the Senate, the House, the business community, and the disability community."²³

Despite the overwhelming support for the ADAAA, some employer-advocate groups express skepticism over the broad coverage that the Act may afford disabled employees.

Andrew Grossman, Senior Legal Policy Analyst for The Heritage Foundation, stated that "Under [the ADAAA], most employees could claim they have an

impairment, such as asthma or chronic stress, and sue if they were either laid off or not hired in the first place, contending discrimination.”²⁴

Grossman is also concerned that the ADAAA may disproportionately impact small business. “Big businesses have the structure in place – general counsel offices, compliance experts, disability consultants – to make these accommodations in a relatively efficient manner. For a small business, however, the costs of compliance on a per-employee basis are far higher,” Grossman said.²⁵

“To accommodate a single disabled employee, a small employer may need to bring in a number of outside experts, including a labor lawyer, an ADA consultant, and even an ergonomics expert or engineer,” Grossman added. “By requiring the expertise of outside professionals, such laws put small businesses at a competitive disadvantage to larger firms, which can spread increased costs across their entire workforce.”²⁶

Nevertheless, employment law professor Michael Zimmer states that the overall bipartisanship of the bill made its signing into law less contentious.

“Since both employee and employer rights’ groups were [in support of the bill,] the [Bush] administration had no reason not to go along with it.”²⁷

WHAT DOES THE FUTURE HOLD?

While courts have yet to apply the ADAAA to disability discrimination cases, practitioners feel that the ADAAA will encourage more claimants to come forward.

“The number of cases that we have seen has increased dramatically,” Taylor said. “[Whereas before] many private attorneys were not taking many disability cases because of their difficulty, the number now will likely go up.”²⁸

Republican Representative Roy Blunt of Missouri expresses that the ADAAA will be a positive factor for the workforce. “[The bill] puts people to work, creates opportunity and makes America a more productive country,” Blunt said.²⁹

Still, Zimmer questions how the courts will interpret the new ADAAA. “Before, courts were frightened about [interpreting the statute broadly] because

they did not want to open the door to unending litigation. Given Congress' instructions to interpret the statute broadly, it will be interesting to see how courts now treat discrimination claims."³⁰

Thus, it will be up to the courts to execute Congress' mandate to provide broad coverage for disabled workers.

NOTES

1 *Todd v. Academy Corp.*, 57 F. Supp. 2d 448, 449-50 (S.D. Tex. 1999).

2 *Id.* at 449.

3 *Id.* at 453-54.

4 *Id.* at 454; Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (1990).

5 Reuters, *US Senate passes bill protecting disabled people*, REUTERS, Sept. 11, 2008, available at <http://www.reuters.com/article/idINN1131121320080911>

6 Americans with Disabilities Act Amendments Act of 2008 [hereinafter ADAAA], Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended in scattered sections of 42 U.S.C. § 12101 *et seq.*).

7 *Id.*

8 42 U.S.C. § 12101 *et seq.* (1990).

9 42 U.S.C. § 12101(b)(1) (1990).

10 Disability Discrimination, The U.S. Equal Employment Opportunity Commission, available at <http://eeoc.gov/types/ada.html>. Public employers are covered under the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*

11 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (1990).

12 *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

13 *Sutton*, 527 U.S. at 488-89.

14 *Id.*

15 *Toyota*, 534 U.S. at 197.

16 *Id.* at 198.

17 ADAAA, *supra* note 6.

18 *Id.*

19 Interview with Barry Taylor, Legal Advocacy Director, Equip for Equality, in Chicago, Ill. (Feb. 15, 2009).

20 *Id.*

21 Reuters, *supra* note 5.

22 Press Release, U.S. Chamber of Commerce, U.S. Chamber Lauds Senate Action on the Americans with Disabilities Act (ADA) (Sept. 11, 2007), available at http://www.uschamber.com/press/releases/2008/september/080911_ada.htm.

23 *Id.*

24 See Andrew M. Grossman & James Sherk, The ADA Restoration Act: Defining Disability Down (July 2, 2008), available at <http://www.heritage.org/Research/Labor/lm27.cfm>.

25 *Id.*

26 *Id.*

- 27 Interview with Michael Zimmer, Employment Law Professor, Loyola University Chicago School of Law, in Chicago, Ill. (Feb. 15, 2009).
- 28 Interview with Barry Taylor, *supra* note 19.
- 29 Robert Pear, *House Votes to Expand Civil Rights for Disabled*, N.Y. TIMES (June 26, 2008) available at <http://www.nytimes.com/2008/06/26/washington/26rights.html?fta=Y>.
- 30 Interview with Michael Zimmer, *supra* note 27.