

# PUBLICATION

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## ADA Amendments Act of 2008: Summary and Current Status

September 19, 2008

The *ADA Amendments Act of 2008*, H.R. 3195, which is pending in Congress, would provide a new definition of the "substantial limitation" on a major life activity requirement under the current law. The original bill, named the "ADA Restoration Act," would have entirely eliminated the "substantial limitation" language in the ADA. The original bill stalled in the Senate last year.

A new version of the bill, titled the "ADA Amendments Act of 2008," was introduced in Congress this year. The House of Representatives passed it on June 25, 2008 by a vote of 402 to 17. Senator Tom Harkin (D - Iowa) re-introduced the new version of this bill with 54 co-sponsors in the Senate on August 1, 2008. On September 11, 2008, the Senate version of the bill, S. 3406, passed by unanimous consent via a voice vote (with a total of 77 co-sponsors as of the date of passage). The Senate version will now go back to the House, and the bills must be reconciled. If the House accepts the Senate version, the Act will be passed with a veto-proof majority. It is likely a version of the Act will be enacted into law this term of Congress. If passed, the current bill would become effective January 1, 2009.

The ADA Amendments Act retains the "substantial limitation" requirement to establish a disability, but makes it easier to meet that standard. "Substantially limits" would mean "materially restricts." The ADA Amendments Act instructs that courts are to "construe broadly" the definition of a disability.

The determination of whether an impairment substantially limits a major life activity "shall be made without regard to ameliorative effects of mitigating measures . . . ." For example, the bill specifically states that "medication, prosthetics, hearing aids, assistive technology, learned behavior or adaptive neurological modifications" are not to be considered in determining whether there is an impairment that causes a substantial limitation on a major life activity. Only ordinary eyeglasses and contacts may be considered as a mitigating measure. The Act would also prohibit a court from considering whether the manifestations of the disability are "episodic, in remission or latent" when determining if a person has an impairment that would qualify as a disability.

The Act specifically defines a "major life activity" to include, but is not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working." A major life activity also includes "major bodily functions," which includes "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

The Act expands the scope of who may be considered disabled under the Act, and limits what may be considered a mitigating measure. The Act will broaden the scope of the ADA, and will result in more individuals making claims under the Act. In addition, there is the distinct possibility that individuals whose claims were denied in the courts based upon the construction of the original ADA will attempt to bring their claims a second time under the new definitions established under the ADA Amendments Act.

The amendments would result in a whole new segment of employees being classified as disabled under the ADA who do not meet the definition of having a disability under the current ADA. This in turn may result in additional individuals to whom employers will need to offer reasonable accommodations at work. Employers

and their legal counsel will have to address what types of accommodations are reasonable and must be extended to this new class of disabled individuals.