



NO. 87 — September 2008

PRESIDENT BUSH SIGNS ADA AMENDMENTS BILL: MAJOR CHANGES TO COME

By: Attorney Douglas P. Seaton & Law Clerk Emily L. Ruhsam

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The Lawyers for Employers

Alec J. Beck
Robin N. Kelleher
Brittany Mayer-Schuler
Michael L. McCain
Jon S. Olson
Gregory L. Peters
Thomas R. Revnew
Douglas P. Seaton
Bryan T. Symes
Corie J. Tarara
Robert L. Grossman,
of counsel
Linda C. Schwartz,
of counsel

7300 Metro Blvd, #500
Minneapolis, MN 55439
Tel 952.896.1700
Fax 952.896.1704
www.seatonlaw.com

The Upper Midwest's premier
management labor and
employment law firm

On September 25, 2008, President Bush signed the Americans with Disabilities Amendments Act (ADAAA) into law. The bill arrived on the President's desk after approval from the House and the Senate earlier in September. The Act, being called a "compromise" between business and worker advocacy groups, is scheduled to take effect January 1, 2009.

Originally labeled the "ADA Restoration Act," the ADAAA was ostensibly introduced to "restore" the intent and protections of the Americans with Disabilities Act of 1990 after several Supreme Court decisions limited application of the law. The ADAAA makes clear that protections under the ADA are broad and apply to anyone facing discrimination due to a disability.

Changes Under the Act

Some of the changes under the Act include:

- **Major Life Activities (MLA)** will be defined as: standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working (along with seeing, hearing, eating, sleeping, walking, speaking, breathing and learning). In addition, major life activities include the following "major bodily functions": immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Any "material impairment" to one or more MLA's will now be regarded as a disability.
- **Regarded As:** Regardless of whether an individual has a disability, if that individual is perceived as having an impairment by the employer, he or she is "regarded as" impaired and protected.

Transitory and Minor Impairment: The ADA will not apply to “transitory and minor” impairments (those with an actual or expected duration of 6 months or less).

Episodic or Remissive Impairment: The ADA will apply to impairments that are episodic or in remission if the impairment substantially limits a major life activity when active.

Mitigating Measures: Mitigating measures (i.e. medication, prosthetics and assistive technology) may not be used in determining whether someone has a disability. For example, if an employee has a mental illness, the employee will be considered disabled even if he or she is taking medication that mitigates the illness. Currently, the only exception to this prohibition is for ordinary eyeglasses and contact lenses. (Nevertheless, if an employer uses selection criteria based on an employee’s uncorrected vision, the criteria must be “job-related for the position in question and consistent with business necessity.”)

Changes for Employers

In the nearly two decades since the ADA was passed, court decisions have steadily decreased the number of persons who are eligible for the Act’s protections. The standard argument of defense labor and employment attorneys has been that if an employee is “able to fully perform the job,” he or she is probably not disabled, and if too impaired, he or she is probably “not qualified.” Because of this type of analysis, employers have won the majority of ADA charges and lawsuits filed in recent years. The ADAAA will take away many of these arguments from employers and will require a renewed focus on qualifications for positions.

Under the ADAAA, it will thus become more important than ever to have accurate and up-to-date job descriptions defining essential duties and any required physical/mental functions. Employers should begin reviewing and updating all company job descriptions, with a focus on ensuring that the essential duties and functions are accurate reflections

of the job. Hiring, discipline and termination policy and decision-making templates will need to be reviewed and more carefully documented and utilized as well.

Please call the authors or any lawyer at Seaton, Beck & Peters P.A. if you have any questions about compliance planning under the ADAAA.

<p style="text-align: center;">Mark Your Calendar</p> <p>The 2008 Minnesota SHRM State Conference will be held in St. Cloud on October 13 and 14. Seaton, Beck & Peters is a corporate sponsor of this event with a booth at the show, as well as presentations by Alec Beck, Greg Peters and Tom Revnew. For more information go to www.mn-shrm.org or contact one of the Seaton, Beck & Peters attorneys listed above.</p>
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<p style="text-align: center;">Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?</p> <p>If your Company’s employee policy handbook, hiring and discipline materials, drug and alcohol testing policies, or other critical labor or employment documents or policies are more than 2 years old (or non-existent), <u>your Company is at risk</u>. Call us at 952.896.1700 or fax 952.896.1704 if you are interested in a complimentary review of your materials and information on our cost-effective “fixed fee” program to customize and update these materials for your Company. The cost is \$875.00 for handbook and employment materials (with 2 hours customizing time included) and \$425.00 for drug and alcohol testing policy and materials (with 1 hour customizing time included).</p>
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