



ADA AMENDMENTS ACT OF 2008 RESTORES AND BROADENS PROTECTIONS OF THE ADA

In response to two U.S. Supreme Court decisions which limited certain protections under the Americans with Disabilities Act ("ADA"), the law was amended on September 11, 2008. The amendments make several key changes to the ADA, and will become effective on January 1, 2009:

- The term "disability" continues to mean: (a) a physical or mental impairment that substantially limits a major life activity; (b) a record of such an impairment; or (c) being regarded as having such an impairment. However, the new law makes clear that "transitory and minor" impairments are not protected. An impairment is transitory if it has an actual or expected duration of six months or less.
- The terms "disability" and "substantially limits" are to be interpreted broadly.
- Employers may no longer consider mitigating measures in determining whether an individual has a disability, with the exception of use of ordinary eyeglasses and contact lenses.
- An impairment that is episodic or in remission is a disability if the impairment would substantially limit a major life activity when the impairment is active.
- The new law adds to the definition of "major life activity" to include the operation of a "major bodily function," such as digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Currently, the term "major life activities" includes activities of everyday living such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

The Closely Held Business Team attorneys at Harrang Long Gary Rudnick are committed to serving the needs of business owners in a responsive and proactive manner. They understand the challenges and the opportunities provided by the law in today's business climate, and are focused on the advancement of each client's success in business.

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- A person will be “regarded as having an impairment” if the person can show that he or she has been subjected to an action prohibited by the ADA because of an actual or perceived physical or mental impairment regardless of whether the impairment limits a major life activity. However, employers will not be required to provide a reasonable accommodation to individuals who are only “regarded as” disabled and are not actually disabled.

We anticipate that the Equal Employment Opportunity Commission will update ADA regulations due to these amendments, which we are watching closely. Between now and January 1, 2009, employers should update their ADA policies and train supervisors and management employees to be prepared to comply with the new law. We welcome the opportunity to assist you in implementing the ADA Amendments Act of 2008.

If you have questions or would like further information regarding this E-Newsletter, please contact Randall L. Duncan, Chair of our Closely Held Business Team, at (503) 417-6010, and we would be pleased to accommodate your request.



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