

Human Resources 4U



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Americans with Disabilities Amendment Act

The “Americans with Disability Act” (ADA) became law in 1990. It was designed to prevent discrimination against employees with disabilities. A disability is defined as an impairment that “substantially limits one or more major life activities” (note: in California, impairments need only limit rather than substantially limit major life activities to be covered).

Since 1990 there have been several Supreme Court rulings that Congress felt strayed from the original intent of the law. Therefore, they passed the ADA Amendment Act (ADAAA). The ADAAA becomes law 1/1/09. All employers with 15 or more employees are covered by the act. The overall intent of the ADAAA is to encourage the courts to interpret the ADA in favor of broad coverage and to vastly expand the definition of disability. There are four major changes incorporated into the ADAAA, it:

- Prohibits employers and courts from considering the effects of mitigating measures, with the exception of ordinary eyeglasses and contact lenses, when determining whether an employee has a disability. For example, employers no longer may take into account mitigating measures such as hearing aids, prosthetics, medication, or insulin when determining whether someone has a disability.
- Expands the list of major life activities in which an employee may be limited. The new list is non-exhaustive and specifically includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function, such as functions of the immune system, normal cell growth and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.
- Removes the “substantially limits” requirement from the “regarded as” prong of ADA disability. Now someone with an impairment can be regarded as having a disability, even without the perception that the impairment limits a major life activity, provided that the impairment is not an impairment with an actual *or expected* duration of six months or less. Employees who fall under the “regarded as” part will not be entitled to a reasonable accommodation.
- Provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

As a result of the ADAAA, employers should review all their Job Descriptions, making sure that job descriptions accurately describe what employers believe are the essential functions of the job and then concentrate on the essential functions of the job and job restrictions when identifying the need for a reasonable accommodation. This will have to be done on a case-by-case basis in consultation with the employee. All “reasonable accommodation” discussions should be documented.

In addition, all employers should provide ADA training to supervisors and managers. Training should remind managers of their duty to accommodate not only employees with disabilities but also applicants with disabilities. And finally, you should develop forms, letters and processes necessary to handle accommodation requests.

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