



REVIVING THE ADA: LANDMARK AMENDMENTS BREATHE NEW LIFE INTO ACT

On January 1, 2009, an Amendment to the Americans With Disabilities Act (“ADA”) will go into effect, expanding the coverage of the ADA to millions of individuals who will now qualify as “disabled” and fall under the ADA’s protections. Reinstating a broad scope of protection will restore Congress’ original intent for the ADA: to assure equality of opportunity, full participation, and economic self-sufficiency for the disabled by providing a “clear and comprehensive national mandate for the elimination of discrimination and clear, strong, consistent, enforceable standards addressing discrimination.”

Despite the original broad mandate of the Act, cases decided since 1990 have resulted in such a severe narrowing of the definition of disability that people with serious conditions such as epilepsy, cancer, cerebral palsy and diabetes have been determined to not meet the definition of disability under the ADA. Ironically, these are the very individuals that the Act was designed to protect.

Although the Amendment retains the ADA’s basic definition of disability as a physical or mental impairment that substantially limits one or more major life activity, a record of such an impairment, or being regarded as having such impairment, the Amendment changes the way these terms should be interpreted by the courts. First, the Amendment defines and vastly expands the term “major life activities” to include things 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.



Major life activities have also been expanded to include the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The Amendment also removes from the “regarded as” prong of the definition of disability the requirement that the individual demonstrate that he/she has or is perceived to have an impairment that substantially limits a major life activity. The individual must only demonstrate that he/she is

regarded as having an impairment, without regard to whether it substantially limits a major life activity and that the impairment is not minor (undefined) or transitory (lasting less than six months).

The Amendment also overturns two United States Supreme Court decisions which have eroded protections for people with disabilities: *Sutton v. United Airlines, Inc.* 527 U.S. 471(1999) and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002). In *Sutton*, the Supreme Court held that people with disabilities were not qualified under the ADA if their conditions

could be controlled by medications, assistive technology or equipment. The Amendment reverses this holding and requires that the determination of whether an impairment substantially limits a major life activity must be evaluated without considering the effects of mitigation measures (other than contact lenses or ordinary eyeglasses).

Contd. P. 2

SUPREME COURT TO RULE ON 6th CIRCUIT RETALIATION CASE

On October 8, 2008 the U.S. Supreme Court heard oral argument on a question which may result in sweeping changes to the workplace: whether Title VII’s anti-retaliation provision applies to employees who voluntarily provide information during a company’s internal office investigation into suspected harassment and discrimination.

In *Crawford v. Metropolitan Government of Nashville*,

longtime Metro employee Vicki Crawford alleges that she was terminated in retaliation for participating in an investigation. In 2001, Metro hired Gene Hughes to oversee its employee relations issues in the school district. Hughes was charged with investigating claims of discrimination and harassment. After a few months, female employees reported that Hughes was subjecting

Contd' p. 2



THE AMENDMENT
OVERTURNS SUPREME
COURT DECISIONS
THAT HAVE ERODED
THE PROTECTIONS FOR
PEOPLE WITH
DISABILITIES FOR YEARS.

PMPRG Law Notes

ADA, contd.

Also overturned is the ruling in *Sutton* that a disability must limit more than one major life activity.

The Amendment also overturns the Supreme Court's holding in *Toyota* and the EEOC regulations which set the standard for disability too high. In *Toyota*, the Court interpreted the definition of disability under a demanding standard, requiring that the person be severely restricted in his/her ability to perform major life activities. The EEOC regulations similarly defined disability as "significantly restricted." The Amendment requires that the term disability be viewed broadly and that the EEOC should promulgate regulations defining "substantially limited" consistent with the original purpose of the ADA. In light of this vast expansion in ADA coverage, many more employees and applicants for employment will now qualify for ADA protection.

Your clients with medical conditions and impairments or who are regarded as such by their employer now have a greater chance of bringing a successful ADA claim against their current or former employers.

Our attorneys can quickly assess the viability of these types of claims and advise your clients about the appropriateness of legal action. Please have your clients contact our firm for an assessment of their potential claim.

Supreme Court, contd.

them to sexual harassment. During a subsequent investigation, Metro management asked Crawford, who worked under Hughes but had not filed a report against him, whether she had observed Hughes engaging in any inappropriate behavior. Crawford confided that Hughes repeatedly touched his crotch in her presence, requested to see her breasts and forcibly pulled her head to his groin area. The investigation did not result in any action being taken against Hughes. However, Crawford and other females who participated in the investigation were terminated on other grounds unrelated to the investigation.

The district court dismissed the complaint, holding that participation in an employer's internal investigation is not protected by the anti-retaliation provision of Title VII. To be protected, a sexual harassment victim must file a formal complaint with the Equal Employment Opportunity Commission (EEOC). Once an employer has initiated an investigation, witnesses -- even witnesses who object to having been sexually harassed -- fall outside the protection of the act. In November 2006, upholding the district court's grant of summary judgment, the 6th Circuit held that even assuming that Crawford's allegations were true, participation in an internal company investigation does not constitute protected activity under the anti-retaliation provision of Title VII. The panel found that the anti-retaliation clause only protects those individuals who actively instigate or initiate a complaint of discrimination, not those who merely cooperate.

Although it remains to be seen whether the Justices will broaden the anti-retaliation statute, based on a reading of the questions posed during oral argument, we are hopeful that the Court will hold that Crawford's participation falls within the "opposition" clause of the anti-retaliation statute, allowing employees who cooperate in a company investigation to legal protections under Title VII.