



MANCHEL BRENNAN

COUNSELLORS AT LAW

CLIENT ALERT

(OCTOBER, 2008)

THE AMERICANS WITH DISABILITIES ACT IS AMENDED

On September 25, 2008, President Bush signed into law the Americans With Disabilities Act Amendments Act of 2008 (the "ADA Amendment Act"). The ADA Amendment Act implements certain changes and clarifications to the ADA which will go into effect on January 1, 2009. In passing the ADA Amendment, Congress found that the Courts and the Equal Employment Opportunity Commission had been interpreting the ADA in a manner which is *narrower* than the Congress intended in passing the original ADA in 1990. As such, the ADA Amendment Act seeks to broaden the coverage and protections provided under the ADA.

The ADA Amendment Act:

- Adds a non-exhaustive list of "major life activities" which is similar to that espoused by most courts and the EEOC. However, the ADA Amendment Act adds to the list of major life activities all "major bodily functions." "Major bodily functions" are defined to include, but not be limited to, the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This addition provides some definition to employers to assist in determining who is considered disabled, but also apparently clarifies the scope of major life activities to potentially encompass such conditions as infertility.
 - Provides protection to individuals who are "regarded as" having an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity, as long as the impairment is not transitory (defined as an actual or expected duration of 6 months or less) or minor.
 - Requires that the EEOC revise its regulations on the issue of what constitutes a "substantial limitation" of a major life activity. In that regard, "substantial limitation":
 - "shall be construed in favor of broad coverage;"
 - need only apply to one major life activity to constitute a disability;
 - includes impairments that are episodic or in remission, if they would substantially limit a major life activity when active; and
 - shall be determined without regard to the ameliorative effects of mitigating measures (except the use of ordinary eyeglasses or contact lenses).
 - Clarifies that the ADA does not provide the basis for a "reverse discrimination" claim. In other words, an individual cannot pursue a claim under the theory that as a non-disabled individual, he was discriminated against because he does *not* have a disability, and disabled individuals were treated more favorably because they have a disability.
 - Confirms that individuals who are only "regarded as" disabled, but who do not actually have a disability, are not entitled to reasonable accommodations.
- We anticipate that the EEOC will quickly begin the process of revising its regulations, enforcement guidance and other publications. We will keep you updated as to further developments. In the meantime, please feel free to contact us if you have any questions.