The ADA Amendments Act: P.L. 110-325

-name redacted-
Legislative Attorney

September 22, 2010

Congressional Research Service
7-....
www.crs.gov
RL34691

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

The Americans with Disabilities Act (ADA) is a broad civil rights act prohibiting discrimination against individuals with disabilities. As stated in the act, its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

The threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability. Several Supreme Court decisions, including those in *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999), and *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2004), have interpreted the definition of disability, generally limiting its application. Since these Supreme Court interpretations, lower court decisions also interpreted the definition of disability strictly. Congress responded to these decisions by enacting the ADA Amendments Act, P.L. 110-325, which rejects the Supreme Court and lower court interpretations and amends the ADA to provide broader coverage. On September 23, 2009, the Equal Employment Opportunity Commission (EEOC) issued proposed regulations under the ADA Amendments Act.

Contents

Contacts

Introduction

The Americans with Disabilities Act (ADA)[1] is a broad civil rights act prohibiting discrimination against individuals with disabilities. As stated in the act, its purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2]

The threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability. Several Supreme Court decisions have interpreted the definition of disability, generally limiting its application.[3] Since these Supreme Court interpretations, lower court decisions also interpreted the definition of disability strictly. Congress responded to these decisions by enacting the ADA Amendments Act, P.L. 110-325, which rejects the Supreme Court and lower court interpretations and amends the ADA to provide broader coverage. Two of the major changes made by the ADA Amendments Act are to expand the current interpretation of when an impairment substantially limits a major life activity (rejecting the Supreme Court's interpretation in *Toyota)*, and to require that the determination of whether an impairment substantially limits a major life activity must be made without regard to the use of mitigating measures (rejecting the Supreme Court's decisions in *Sutton, Murphy,* and *Kirkingburg)*. On September 23, 2009, the Equal Employment Opportunity Commission (EEOC) issued proposed regulations under the ADA Amendments Act. Comment on the proposed regulations must be submitted on or before November 23, 2009.[4]

Background

The original ADA definition of disability was based on the definition of disability used for Section 504 of the Rehabilitation Act of 1973.[5] The term disability with respect to an individual was defined as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."[6] The ADA Amendments Act essentially keeps the same language but rejects the interpretation given to the language by the Supreme Court.

Three Supreme Court decisions in 1999 addressed the definition of disability, and specifically discussed the concept of mitigating measures. *Sutton v. United Air Lines* involved sisters who were rejected from employment as pilots with United Air Lines because they wore eyeglasses. The Supreme Court in *Sutton* examined the definition of disability used in the original ADA and found that the determination of whether an individual has a disability should be made with

[1] 42 U.S.C. §§12101 et seq. For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by (name redacted).

[2] 42 U.S.C. §12101(b)(1).

[3] *Sutton v. United Air Lines, Inc*., 527 U.S. 471 (1999); *Murphy v. United Parcel Service*, Inc., 527 U.S. 516 (1999); *Kirkingburg v. Albertson's Inc*., 527 U.S. 555 (1999); *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2002).

[4] 74 FED. REG. 48431 (September 23, 2009).

[5] Section 504, 29 U.S.C. §794, prohibits discrimination based on disability in any program or activity receiving federal funds or in the executive branch or the U.S. Postal Service. The applicable definition of disability is codified at 29 U.S.C. §706(8).

[6] P.L. 101-336, §3(2).

reference to measures that mitigate the individual's impairment. The *Sutton* Court stated, "'a disability' exists only where an impairment 'substantially limits' a major life activity, not where it 'might,' 'could,' or 'would' be substantially limiting if mitigating measures were not taken." The Court also emphasized that the statement of findings in the ADA that some 43 million Americans have one or more physical or mental disabilities "requires the conclusion that Congress did not intend to bring under the statute's protection all those whose uncorrected conditions amount to disabilities."

Similarly, in *Murphy v. United Parcel Service, Inc*., the Court held that the fact that an individual with high blood pressure was unable to meet the Department of Transportation (DOT) safety standards was not sufficient to create an issue of fact regarding whether an individual is regarded as unable to utilize a class of jobs. The Court in *Murphy* found that an employee is regarded as having a disability if the covered entity mistakenly believes that the employee's actual, nonlimiting impairment substantially limits one or more major life activities. And in the last of this trilogy of 1999 cases, the Court in *Kirkingburg v. Albertsons* held that a trucker with monocular vision who was able to compensate for this impairment was not a person with a disability.

In the 2002 case of *Toyota Motor Manufacturing v. Williams,* the meaning of "substantially limits" was examined, and Justice O'Connor, writing for the unanimous Court, determined that the word substantial "clearly precluded impairments that interfere in only a minor way with the performance of manual tasks." The Court also found that the term "major life activity" "refers to those activities that are of central importance to daily life." Finding that these terms are to be "interpreted strictly," the Court held that "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."

Since these Supreme Court decisions, lower courts applied these holdings in various factual situations. For example, in *Orr v. Wal-Mart Stores, Inc*.,[7] the Eighth Circuit found that a pharmacist with diabetes who takes insulin and eats a special diet was not an individual with a disability because, with the medication and diet, the diabetes did not substantially affect a major life activity. Similarly, in *McClure v. General Motors Corp.,*[8] the Fifth Circuit found that an electrician with muscular dystrophy who could lift his arms only to shoulder level did not have a disability. The Eleventh Circuit examined what are major life activities in *Littleton v. Wal-Mart.*[9] The plaintiff, a 29-year-old man who was diagnosed with mental retardation as a child, was not hired for a position as a cart-push associate with Wal-Mart. The court found that "[i]t was unclear whether thinking, communicating and social interaction are 'major life activities' under the ADA" and noted that even if thinking, communicating, and social interaction were found to be major life activities, the plaintiff did not show that he was substantially limited in these activities.[10]

[7] 297 F.3d 720 (8th Cir. 2002), cert. denied, 571 U.S. 1070 (2004).

[8] 75 Fed. Appx. 983 (5th Cir. 2003).

[9] 231 Fed. Appx. 874 (11th Cir. 2007), cert. denied, 128 S.Ct. 302, 169 L.Ed.2d 247 (October 1, 2007). For a discussion of other lower court cases see National Council on Disability, "The Impact of the Supreme Court's ADA Decisions on the Rights of Persons With Disabilities," February 25, 2003, http://www.ncd.gov/newsroom/publications/2003/decisionsimpact.htm.

[10] 231 Fed. Appx. 874, 877 (11th Cir. 2007), cert. denied, 128 S.Ct. 302, 169 L.Ed.2d 247 (October 1, 2007).

The Americans With Disabilities Amendments Act

Legislative Background

On July 26, 2007, the 17th anniversary of the enactment of the ADA, bills were introduced in both the House and Senate to amend the ADA to broaden the definition of disability.[11] S. 1881, introduced by Senator Harkin, was referred to the Senate Health, Education, Labor, and Pensions Committee and hearings were held on November 15, 2007.[12] H.R. 3195, introduced by Representative Hoyer, was referred to the House Committee on Education and Labor, as well as the House Committees on Judiciary, Transportation and Infrastructure, and Energy and Commerce for a period to be determined by the Speaker. Hearings were held by the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee on October 4, 2007,[13] and on January 29, 2008, by the House Education and Labor Committee.[14]

On June 18, 2008, both the House Judiciary Committee and the House Education and Labor Committee reported out H.R. 3195, now renamed the ADA Amendments Act of 2008. H.R. 3195 as reported out of committee was significantly different from H.R. 3195 and S. 1881 as introduced.[15] Those bills would have eliminated the phrase "substantially limits" from the definition thereby broadening the definition of disability to cover the majority of the population. The House passed H.R. 3195 on June 25, 2008, by a vote of 402 to 17. The House-passed bill would have kept the term "substantially limits" and defined it as "materially restricts."

The Senate Health, Education, Labor and Pensions Committee held a hearing on July 15, 2008, where testimony was heard on several issues, including the impact of the ADA Amendments Act on education.[16] On July 31, 2008, Senator Harkin with 55 original cosponsors introduced S. 3406, the ADA Amendments Act of 2008, which tracked much of the House-passed language but made several significant changes, including deleting the House definition of "substantially limits" as "materially restricts." S. 3406 passed the Senate by unanimous consent on September 11, 2008,[17]

---

[11] In the 109th Congress, Representatives Sensenbrenner, Hoyer, and Conyers introduced H.R. 6258, 109th Cong., 2d Sess., to amend the definition of disability.

[12] "Restoring Congressional Intent and Protections under the Americans with Disabilities Act," Before the Senate Committee on Health, Education, Labor, and Pensions, November 15, 2007, http://help.senate.gov/Hearings/2007_11_15_b/2007_11_15_b.html.

[13] Hearing on H.R. 3195, the ADA Restoration Act of 2007, Before the House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, October 4, 2007, http://judiciary.house.gov/Hearings.aspx?ID=182.

[14] "H.R. 3195: The ADA Restoration Act of 2007," Before the House Committee on Education and Labor, January 29, 2008, http://edlabor.house.gov/hearings/fc-2008-01-29.shtml.

[15] The changes were a result of extensive negotiations between the business community and national disability organizations. See discussions of this process at 153 Cong. Rec. S. 8350 (Sept. 11, 2008)(Statement of Senator Harkin); 153 CONG. REC. H. 8294 (September 17, 2008)(Statement of Representatives Hoyer and Sensenbrenner).

[16] "Determining the Proper Scope of Coverage for the Americans with Disabilities Act," Before the Senate Committee on Health, Education, Labor, and Pensions, July 15, 2008, http://help.senate.gov/Hearings/2008_07_15/2008_07_15.html.

[17] 153 Cong. Rec. S. 8356 (Sept. 11, 2008). For the Statement of Managers to Accompany S. 3406 see 153 Cong. Rec. S. 8344 (Sept. 11, 2008).

and passed the House September 17, 2008. P.L. 110-325 was signed into law on September 25, 2008.

General Definition of Disability

Definition and Rules of Construction

The ADA Amendments Act (ADAAA) defines the term disability with respect to an individual as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))."[18] Although this is essentially the same statutory language as was in the original ADA, P.L. 110-325 contains new rules of construction regarding the definition of disability, which provide that

- the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;
- the term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act;
- an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active; and
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.[19]

The findings of the ADA Amendments Act include statements indicating that the Supreme Court decisions in *Sutton* and *Toyota* as well as lower court cases have narrowed and limited the ADA from what was intended by Congress. P.L. 110-325 specifically states that the then-current Equal Employment Opportunity Commission (EEOC) regulations defining the term "substantially limits" as "significantly restricted" are "inconsistent with congressional intent, by expressing too high a standard." The codified findings in the original ADA are also amended to delete the finding that "43,000,000 Americans have one or more physical or mental disabilities." This finding was used in *Sutton* to support limiting the reach of the definition of disability.

[18] P.L. 110-325, §4(a), amending 42 U.S.C. §12102(3). The ADA Amendments Act does not specifically list covered disabilities, but the EEOC proposed regulations do provide examples of impairments that will consistently meet the definition of disability, including autism, cancer, cerebral palsy, diabetes, epilepsy, HIV or AIDS, multiple sclerosis and muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia. EEOC Proposed Regulations, to be codified at 29 C.F.R. § 1630.2(j)(5); 74 FED. REG. 48441 (September 23, 2009). The EEOC proposed regulations also noted some impairments that are usually not considered to be disabilities, stating the following: "[t]emporary, non-chronic impairments of short duration with little or no residual effects (such as the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely) usually will not substantially limit a major life activity." EEOC Proposed Regulations, to be codified at 29 C.F.R. § 1630.2(j)(8); 74 FED. REG. 48443 (September 23, 2009).

[19] Low vision devices are not included in the ordinary eyeglasses and contact lens exception.

Substantially Limits a Major Life Activity

The ADA Amendments Act states that the purposes of the legislation are to carry out the ADA's objectives of the elimination of discrimination and the provision of "'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection available under the ADA." P.L. 110-325 rejected the Supreme Court's holdings that mitigating measures are to be used in making a determination of whether an impairment substantially limits a major life activity as well as holdings defining the "substantially limits" requirements. The substantially limits requirements of *Toyota* as well as the EEOC regulations defining substantially limits as "significantly restricted" are specifically rejected in the new law. The proposed EEOC regulations state that "[a]n impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered a disability."[20]

The Senate Statement of Managers notes that the courts had not interpreted the term "substantially limits" in the manner Congress had intended and discussed the methods Congress had considered in order to express its intent. The House of Representatives had defined the term "substantially limits" as "materially restricts" in order "to convey that Congress intended to depart from the strict and demanding standard applied by the Supreme Court in *Sutton* and *Toyota*."[21] However, the Senate rejected the use of the term "materially restricts," concluding that "adopting a new, undefined term that is subject to widely disparate meanings is not the best way to achieve the goal of ensuring consistent and appropriately broad coverage under this Act."[22] In passing the Senate bill, House debate indicated that although the term "materially restricts" was not ultimately adopted, the intent was the same as that of the Senate language. Thus, House debate stated that the descriptions of the changes intended by the term "materially restricts" in the House Committee Reports should be read as what is intended by the language of P.L. 110-325.[23]

The ADA Amendments Act specifically lists examples of major life activities including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The act also states that a major life activity includes the operation of a major bodily function. The House Judiciary Committee report indicates that "this clarification was needed to ensure that the impact of an impairment on the operation of major bodily functions is not overlooked or wrongly dismissed as falling outside the definition of 'major life activities' under the ADA."[24] There had been judicial decisions which found that certain bodily functions had not been covered by the definition of disability. For example, in *Furnish v. SVI Sys., Inc.*[25] the Seventh Circuit held that an individual with cirrhosis of the liver due to infection with Hepatitis B was not an individual with a disability because liver function was not "integral to one's daily existence."

The House debate contains a colloquy between Representatives Pete Stark and George Miller on the subject of the meaning of "substantially limits" in the context of learning, reading, writing,

[20] EEOC Proposed Regulations, to be codified at 29 C.F.R. § 1630.2(j)(1); 74 FED. REG. 48440 (September 23, 2009).

[21] 153 Cong. Rec. S. 8345 (Sept. 11, 2008)(Statement of Managers to Accompany S. 3406, the Americans with Disabilities Act Amendments Act of 2008).

[22] *Id.*

[23] 153 Cong. Rec. H.8294 (September 17, 2008).

[24] H.Rept. 110-730, Part 2, at 16 (2008).

[25] 270 F.3d 445 (7th Cir. 2001).

thinking, or speaking. The colloquy finds that an individual who has performed well academically may still be considered an individual with a disability. Representative Stark stated the following:

> Specific learning disabilities, such as dyslexia, are neurologically based impairments that substantially limit the way these individuals perform major life activities, like reading or learning, or the time it takes to perform such activities often referred to as the condition, manner, or duration. This legislation will reestablish coverage for these individuals by ensuring that the definition of this ability is broadly construed and the determination does not consider the use of mitigating measures.[26]

The EEOC's proposed regulations echo this colloquy, specifically stating that

> An individual with a learning disability who is substantially limited in reading, learning, thinking, or concentrating compared to most people, as indicated by the speed or ease with which he can read, the time and effort required for him to learn, or the difficulty he experiences in concentrating or thinking, is an individual with a disability, even if he has achieved a high level of academic success, such as graduating from college. The determination of whether an individual has a disability does not depend on what an individual is able to do in spite of an impairment.[27]

What it means to be substantially limited in working was also addressed by the EEOC proposed regulations. The EEOC noted that usually an individual with a disability will be substantially limited in another major life activity so that it would be unnecessary to determine whether the individual was substantially limited regarding working. However, where that is not the case, the EEOC proposed that "[a]n impairment substantially limits the major life activity of working if it substantially limits an individual's ability to perform, or to meet the qualifications for, the type of work at issue."[28] The EEOC also stated that this interpretation is to be construed broadly and should "not demand extensive analysis."[29]

Regarded as Having a Disability

The third prong of the definition of disability covers individuals who are "regarded as having such an impairment (as described in paragraph (3))." Paragraph 3 states that "[a]n individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity." However, impairments that are transitory and minor are specifically excluded from the regarded prong. A transitory impairment is one with an actual or expected duration of six months or less. The ADA Amendments Act also provides in a rule of construction in Title V of the ADA that a covered entity under Title I,[30] a public entity under Title II, or a person who operates a place of public accommodation under Title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an

[26] 153 Cong. Rec. H. 8291 (September 17, 2008).

[27] EEOC Proposed Regulations, to be codified at 29 C.F.R. § 1630.2(j)(6)(C); 74 FED. REG. 48442 (September 23, 2009).

[28] EEOC Proposed Regulations, to be codified at 29 C.F.R. § 1630.2(j)(7); 74 FED. REG. 48442 (September 23, 2009).

[29] *Id.*

[30] Title I of the ADA covers employment, title II covers states and localities, and title III covers places of public accommodations such as grocery stores, doctors' offices, and movie theaters.

individual who meets the definition of disability solely under the "regarded as" prong of the definition.[31]

The Senate Statement of Managers notes that there were some reservations about this change but that it was included "given our strong expectation that ... individuals [who had been given reasonable accommodations under the 'regarded as' prong by courts] would now be covered under the first prong of the definition, properly applied."[32] The House debate echoed the Senate interpretation and expanded on congressional intent, stating the following:

> We, and the Senate, expressed our confidence that individuals who need accommodations will receive them because, with reduction in the burden of showing a "substantial limitation," those individuals also qualify for coverage under prongs 1 or 2 (where accommodation still is required). Of course, our clarification here does not shield qualification standards, tests, or other selection criteria from challenge by an individual who is disqualified based on such standard, test, or criteria. As is currently required under the ADA, any standard, test, or other selection criteria that results in disqualification of an individual because of an impairment can be challenged by that individual and must be shown to be job-related and consistent with business necessity for necessary for the program or service in question.[33]

Employment-Related Provisions

The ADA Amendments Act amended Section 102 of the ADA to "mirror the structure of [the] nondiscrimination protection provision in Title VII of the Civil Rights Act of 1964."[34] The act strikes the prohibition of discrimination against a qualified individual with a disability because of the disability of such individual and substitutes the prohibition of discrimination against a qualified individual "on the basis of disability." The Senate Managers' Statement noted that this change "ensures that the emphasis in questions of disability discrimination is properly on the critical inquiry of whether a qualified person has been discriminated against on the basis of disability, and not unduly focused on the preliminary question of whether a particular person is a 'person with a disability.'"[35]

P.L. 110-325 also provides that covered entities may not use qualification standards based on an individual's uncorrected vision unless the standard is shown to be job related and consistent with business necessity.

[31] Under previous law, the circuits were split on whether there is a duty to accommodate a "regarded as" plaintiff. See e.g., *D'Angelo v.ConAgra Foods, Inc.,* 422 F.3d 1220 (11th Cir. 2005)(duty to accommodate); *Kaplan v. City of North Las Vegas,* 323 F.3d 1226 (9th Cir. 2003), cert. denied, 540 U.S. 1049 (2003)(no duty to accommodate).

[32] 153 Cong. Rec. S. 8347 (Sept. 11, 2008)(Statement of Managers to Accompany S. 3406, the Americans with Disabilities Act Amendments Act of 2008).

[33] 153 Cong. Rec. H. 8290 (September 17, 2008).

[34] 153 Cong. Rec. S. 8347 (Sept. 11, 2008)(Statement of Managers to Accompany S. 3406, the Americans with Disabilities Act Amendments Act of 2008).

[35] *Id.*

Rules of Construction

The ADA Amendments Act makes several additions to Title V of the ADA. The act states that the ADA does not alter eligibility standards for benefits under state workers' compensation laws or under state or federal disability benefit programs. P.L. 110-325 also states that nothing in the act alters the provision of Section 302(b)(2)(A)(ii),[36] specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved. The Senate Statement of Managers notes that this provision was added at the request of the higher education community and "is included solely to provide assurances that the bill does not alter current law with regard to the obligations of academic institutions under the ADA, which we believe is already demonstrated in case law on this topic."[37] The Managers' Statement also noted that this provision "is unrelated to the purpose of this legislation and should be given no meaning in interpreting the definition of disability."[38]

The ADA Amendments Act specifically prohibits reverse discrimination claims and states that nothing in the act shall provide the basis for a claim by a person without a disability that he or she was subject to discrimination because of a lack of a disability. The Senate Statement of Managers observes that the intent of this provision is "to clarify that a person without a disability does not have the right under the Act to bring an action against an entity on the grounds that he or she was discriminated against 'on the basis of disability.'"[39]

As was discussed previously, the rules of construction provide that a covered entity under Title I, a public entity under Title II, or a person who operates a place of public accommodation under Title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability solely under the "regarded as" prong of the definition.

Regulatory Authority

The Supreme Court in *Sutton* questioned the authority of regulatory agencies to promulgate regulations for the definition of disability in the ADA. The definition of disability is contained in Section 3 of the ADA, and the ADA does not specifically give any agency the authority to interpret the definitions in Section 3, including the definition of disability. The Supreme Court declined to address this issue since, as both parties to *Sutton* accepted the regulation as valid, "we have no occasion to consider what deference they are due, if any." The ADA Amendments Act specifically grants regulatory authority and states that "[t]he authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act, includes the authority to issue regulations implementing the definitions contained in sections 3 and 4."

---

[36] 42 U.S.C. §12182(b)(2)(A)(ii).

[37] 153 Cong. Rec. S. 8347 (Sept. 11, 2008)(Statement of Managers to Accompany S. 3406, the Americans with Disabilities Act Amendments Act of 2008).

[38] *Id.*

[39] *Id.*

Conforming Amendment

The Rehabilitation Act is amended by the ADA Amendments Act to reference the definition of disability in the ADA. The Senate Statement of Managers noted the importance of maintaining uniform definitions in the two statutes so covered entities "will generally operate under one consistent standard, and the civil rights of individuals with disabilities will be protected in all settings."[40] The Senate Statement of Managers also stated the following:

> We expect that the Secretary of Education will promulgate new regulations related to the definition of disability to be consistent with those issued by the Attorney General under this Act. We believe that other current regulations issued by the Department of Education Office of Civil Rights under Section 504 of the Rehabilitation Act are currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act.[41]

Effective Date

The effective date of the ADA Amendments Act is January 1, 2009.

Judicial Decisions Under the ADA Amendments Act

Since the ADA Amendments Act became effective January 1, 2009, there have been a number of judicial decisions which have sought to allege violations of the ADA as it is amended by the ADAAA. These cases usually have involved fact patterns that took place prior to the ADAAA's effective date, and courts have followed the general rule that, absent clear congressional intent, a statute enacted after the events at issue in a suit does not apply.[42] However, in *Jenkins v. National Board of Medical Examiners,*[43] the plaintiff sought accommodations on the U.S. Medical Licensing Examination and the Sixth Circuit found that the ADAAA did apply. The court reasoned that since the plaintiff was seeking prospective relief (i.e., accommodations for an examination in the future), there was no injustice to the defendant. The case was remanded for consideration and provides no guidance on the substantive interpretation of the ADAAA.[44]

Although the vast majority of ADA Amendments Act cases still turn on the issue of retroactivity, there are a few district court cases addressing the merits of an ADA Amendments Act issue. In *Hoffman v. Carefirst of Fort Wayne, Inc.*,[45] the district court stated that it had "tried in vain" to find relevant case law, noting that this was one of the first cases of its kind. The central issue in *Hoffman* was whether an individual whose cancer is in remission is an individual with a disability under the ADA as amended. Finding that the plaintiff was an individual with a disability, the court

[40] *Id.*

[41] *Id.*

[42] See e.g., *EEOC v. Agro Distribution, LLC,* 555 F.3d 462 (5th Cir. 2009).

[43] 2009 U.S. App. LEXIS 2660 (6th Cir. Feb. 11, 2009).

[44] For a discussion of the possible impact of the ADA Amendments Act on schools see Wendy F. Hensel, "Rights Resurgence: The Impact of the ADA Amendments Act on Schools and Universities," 25 Ga. St. U. L. Rev. 641 (2009).

[45] 2010 U.S. Dist. LEXIS 90879 (N.D. Ind. Aug. 31, 2010). See also *Broderick v. Research Foundation of State University of New York,* 2010 U.S. Dist. LEXIS 82031 (Aug. 11, 2010), where the court, noting the new, broader definition of disability, found that the plaintiff failed to state a claim since she did not explain what major life activity was effected by her hip and lower back injury.

observed that the ADA's amended language specifically provides that an impairment that is in remission is a disability if it would substantially limit a major life activity when active and that the question of whether an individual has a disability "should not demand extensive analysis." Interestingly, the court found this conclusion further bolstered by the EEOC's proposed regulations which provide that cancer is an example of an impairment that will consistently meet the definition of disability and that cancer is an example of an impairment that can be in remission.

There will undoubtedly be more cases involving the ADA Amendments Act. The EEOC announced on September 9, 2010, that it was filing suit in three cases using the new definition of disability.[46] These cases involved individuals with diabetes, cancer, and severe arthritis.

Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

[46] http://www.eeoc.gov/eeoc/newsroom/release/9-9-10a.cfm.