

September 2008

## Contacts

If you have questions or would like more information, please contact any of the attorneys listed at the end of this Alert. Hunton & Williams' [labor and employment law practice](#) covers the entire spectrum of labor and employment litigation, arbitration, administrative practice before the NLRB, EEOC, and the DOL, federal contract compliance, wage-hour standards, workplace safety and health standards, workers' compensation, contractual rights and remedies, Sarbanes-Oxley and whistleblower claims, workplace investigations and client counseling under federal and state labor and employment laws. Hunton & Williams LLP provides legal services to corporations, financial institutions, governments and individuals, as well as to a broad array of other entities. Since our establishment more than a century ago, Hunton & Williams has grown to more than 1,000 attorneys serving clients in 100 countries from 19 offices around the world. While our practice has a strong industry focus on energy, financial services and life sciences, the depth and breadth of our experience extends to more than 100 separate practice areas, including bankruptcy and creditors' rights, commercial litigation, corporate transactions and securities law, intellectual property, international and government relations, regulatory law, products liability, and privacy and information management.

## ADA Amendments Act Clears Senate; Likely to be Enacted Soon

By unanimous consent, on September 11, 2008, the United States Senate passed its version of the ADA Amendments Act (S. 3406) (the "Amendment"). The Amendment is intended to rectify what many legislators perceived as the Supreme Court's overly harsh interpretation of the Americans with Disabilities Act ("ADA" or the "Act") in two separate decisions.

In the first such decision, *Sutton v. United Airlines Inc.* (1999), the Supreme Court held that mitigating devices such as artificial limbs, hearing aids and medications must be taken into account in determining whether a person could be considered disabled under the Act. The proposed Amendment overturns this decision by specifically providing that determination of whether a person's impairment substantially limits a major life activity must be made without reference to any effects of mitigating measures (other than very common ones, such as glasses or contact lenses).

The second Supreme Court decision targeted by the proposed Amendment is *Toyota Motor Mfg., Ky., Inc. v. Williams* (2002), where the Court held that a "demanding standard" had to be met before an individual would be considered

substantially limited in a major life activity. Similarly, the proposed Amendment rejects a regulation promulgated by the Equal Employment Opportunity Commission that holds that "substantially limited" means "significantly restricted."

The proposed Amendment seeks to broaden the definition of a "major life activity," and provides that the term "substantially limits" must be interpreted in accord with the purposes of the Amendment, which specifically reference a need for broader coverage under the Act.

The Senate bill rejected one phrase proposed by the House of Representatives, which had suggested that the definition of disability "shall be construed broadly." The Senate instead adopted more moderate language, noting that the ADA is to be interpreted "in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act."

Other changes addressed by the Amendment include a clarification that impairments that are episodic or in remission will still be considered a disability, to the extent that they would substantially limit a major life activity when active.

The Amendment's supporters intend this provision to afford protection to sufferers

of chronic illnesses, such as cancer or diabetes. Also, the Amendment provides that an individual need not prove that his impairment limits, or is perceived to limit, a major life activity to demonstrate that he is “regarded as” being disabled.

Widely viewed as a compromise between employer interests and disability activists, bipartisan support for this measure ensured its speedy passage in the Senate. The Amendment will now return to the House of Representatives, which had passed its own version of this bill in July 2008. The Amendment

is expected to pass in the House, and the President is expected to sign the bill when it reaches his desk. If passed, the Amendment will become effective on January 1, 2009.

Despite support from many employer groups, this measure is likely to increase the number of disability discrimination claims faced by employers. The expanded scope of the definitions will increase the universe of employees who may be considered “disabled” under the Act. Thus, employers will want to pay extra attention to employees who seek,

or appear to require, accommodation under the ADA, and to be sure to engage in a well-documented interactive process to reach such an accommodation. Additionally, when disability claims proceed to litigation, the proposed legislative changes will make it more difficult for such cases to be dismissed at the summary judgment stage, prior to trial. The Hunton & Williams Labor & Employment team has followed these developments, and is ready to assist clients to minimize any potential disruption to your business.

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