

## **IS YOUR COMPANY PREPARED FOR THE MAJOR CHANGES TO THE AMERICANS WITH DISABILITIES ACT?**

On September 25, 2008, President Bush signed the Americans With Disabilities Act Amendments Act of 2008 which are to take effect January 1, 2009. These amendments make very important changes to the Americans With Disabilities Act (ADA) in regard to the meaning of “disability.” The amendments are in response to several court decisions which dramatically narrowed the scope of “disability” thereby protecting fewer and fewer individuals with impairments. Basically, these amendments expand the scope of individuals covered by the law by expanding the scope of the definition of disability.

### **Major Life Activity**

The amendments retain the ADA’s basic definition of “disability” which is defined as having an impairment that substantially limits one or more major life activities, or having a record of such an impairment, or being regarded as having such an impairment. However, the amendments change the way these statutory terms should be interpreted. Significantly, the amendments expand the definition of “major life activity” to include even activities not covered by the Equal Employment Opportunity Commission (“EEOC”) in its regulations. The new definition of “major life activity” includes behavior such as reading, bending, communicating, eating, thinking, and concentrating among many others. Therefore, if someone has an impairment that substantially limits their ability to read or bend, etc., they will now be considered disabled. Another expansion of the definition of “major life activity” includes major bodily functions such as functions of the “immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.”

### **Mitigating Measures**

The most significant amendments to the ADA have to do with mitigating measures. Case law allowed employers and therefore the courts to consider mitigating measures in determining whether or not someone is in fact “disabled.” For example, if employees with epilepsy (which might otherwise be an impairment) could take medication to prevent the seizures, courts found they were in fact not disabled. The amendments now prohibit courts and employers from considering mitigating measures such as medication in determining whether or not someone is disabled. The only exception is “ordinary eyeglasses or contact lenses” which can be considered in determining whether or not someone has a seeing disability. The amendments also state that even if an employee’s condition is in remission the condition may still be considered a protected condition if it substantially limits a major life activity.

### **What You Should Do**

The amendments also direct the EEOC to revise its regulations to meet these new amendments. It remains to be seen how far the EEOC will go in revising its own regulations, however, any employer facing a decision on whether someone is disabled must now radically alter their thinking and consider the expansion of the definition of disability. Our advice will generally be, once again, to err on the side of caution and if the question is close, go ahead and assume the individual meets the definition of disability and act accordingly (e.g. consider an accommodation). For more detailed information on these changes, please refer to the EEOC’s website at: [www.eeoc.gov](http://www.eeoc.gov). You will have to dig down to find the information but it is worth the effort!