

ADA AMENDMENTS ACT (ADAAA)

NATIONAL RESTAURANT ASSOCIATION
Las Vegas, Nevada
January 12-13, 2009

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An Overview of the Presentations

- Preparing for the ADAAA
 - The ADA Today
 - ADAAA: Changes to the ADA
 - Reasonable Accommodations & The Interactive Process

- Title III of the ADA
 - The Proposed Regulations/Selected Criteria
 - Web-Site Accessibility
 - Audio Content Issues
 - Qualified Small Business
 - Discussion of “Safe Harbor”

The ADA Today

- Title I prohibits discrimination by employers against “qualified individuals with a disability.”
 - Prohibits discrimination in the context of hiring, firing, advancement, training, compensation, and other terms and conditions of employment.
- A “qualified individual with a disability” is a person with a disability who, with or without a reasonable accommodation, can perform the essential functions of the job.

The ADA Today (con't.)

- “Disability” is defined as:
 - (a) a physical or mental impairment that substantially limits one or more of the major life activities;
 - (b) a record of such an impairment; or
 - (c) being regarded as having such an impairment.

- Three steps to determining if an individual is disabled under the first prong:
 1. Is there a physical or mental impairment?
 2. Is the life activity affected a “major life activity”?
 3. Does the impairment “substantially limit” the activity?

ADAAA: The ADA Amendments Act

- Findings and Purposes
 - To restore the original intent and scope of the Americans with Disabilities Act of 1990 by reinstating a broad scope of protection.
 - To overturn a series of United States Supreme Court decisions.

ADAAA: Definitional Changes

- Major Life Activities

- New definition of “**major life activities**”:

- Statute defines **MLA** to include:

- caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working; and

- **MAJOR BODILY FUNCTIONS:** functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

- The impairment need only limit *one* major life activity.

- Episodic impairments may be a disability.

- Still must be qualified to perform essential functions of job.

ADAAA: Definitional Changes

- Regarded As Having An Impairment

- New definition of “**regarded as having an impairment**”:

- No need to demonstrate that an impairment is “substantially limiting” under the “regarded as” prong.
- If the impairment is transitory and minor – with an actual or expected duration of 6 months or less – the “regarded as” prong is *not* available.
- Employers are not required to provide accommodations to an individual who is “regarded as” having an impairment.

ADAAA: What has not changed

- Impairment
- Interactive process
- Reasonable accommodation
- “Undue hardship” defense for employers
- Enforcement of Performance Standards & Conduct Rules
- ADA is *not* an affirmative action statute
 - Accommodations are to level the playing field – not to provide an advantage.
 - Even if an individual receives an accommodation s/he need not be selected over another equally qualified candidate.

Reasonable Accommodation

- The ADA requires covered employers to provide “reasonable accommodations” to the known disabilities of qualified individuals to remove workplace barriers.
- It is generally the responsibility of the disabled individual to inform the employer of the need for an accommodation.

What impact will the ADAAA have on the workplace?

- Increased number of individuals in the workplace who are protected by the federal law.
- Range of coverage and protections afforded under the amended ADA will expand significantly.
- The ADAAA's broad coverage and protections remove the focus from a "disability" inquiry, and place it squarely on the interactive process.
- Uptick in litigation?

What should you do to prepare for the ADAAA?

- Interactive process.
- Review EEOC Publications, e.g., See Commission Issuance of 9/3/08.
- Update job performance/performance standards.
- Review reasonable accommodation procedures and active accommodations.