Implementing the Americans with Disabilities Act Amendments Act: The EEOC Regulations

A Public Policy Forum

Friday, June 3, 2011
12:00 – 2:00 pm
Collaborating Partners

- **Employment and Disability Institute**
  ILR School, Ithaca, NY

- **Dept. of Policy Analysis and Management**
  College of Human Ecology, Ithaca, New York

- **Mathematica Policy Research, Inc.**
  Princeton, NJ, Washington, DC, and Cambridge, MA

- **American Association of People with Disabilities**
  Washington, DC

- **Rutgers University, School of Management and Labor Relations, Program for Disability Research**
  New Brunswick, NJ
This forum is a project of the Rehabilitation Research and Training Center on Employment Policy for Persons with Disabilities, which is funded by the US Department of Education, National Institute on Disability and Rehabilitation Research. (Grant Number: H133B040013.)

The content of this forum does not necessarily reflect the policies of the US Dept. of Education, and you should not assume endorsement by the Federal Government (EDGAR, 75.620 (b)).
Introduction:
Susanne Bruyère, Director
*Cornell University, Employment and Disability Institute*

Facilitator:
Robin L. Shaffert, Senior Director of Corporate Social Responsibility
*American Association of People with Disabilities*

Speakers:
Chai Feldblum, Commissioner,
*Equal Employment Opportunity Commission*
Victoria A. Lipnic, Commissioner,
*Equal Employment Opportunity Commission*
Michael Eastman, Executive Director, Labor Law Policy
*US Chamber of Commerce*
Sandy Finucane, Executive Vice President,
*Epilepsy Foundation*
Introduction:
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Michael Eastman, Executive Director, Labor Law Policy
US Chamber of Commerce
Business Community Concerns

ADA Restoration Act

- Impairment standard
- Mitigating measures not considered
- Change to “qualification” language
- Regulatory authority
- Deference to EEOC
Why did we think compromise might be possible?

• History and importance of bipartisanship on ADA
• Recognition that Courts were wrong on mitigating measures
• Ample cases where lower courts had denied coverage to those Congress clearly meant to cover
• Early conceptual agreement on:
  • Mitigating measures
  • Qualifications
  • Regulatory authority and deference
• Broad “regarded as” prong
  • Impairment standard
  • Except transitory and minor

• No accommodation
ADA Amendments Act

• Familiar “actual disability” prong
  • Enhanced definitions including
    • Major life activities
    • Major bodily functions

• Rules of construction
  • Mitigating measures
  • Broad construction
ADA Amendments Act

- Rejection of holdings of key Supreme Court decisions
- Rejection of specific portion of EEOC regulation
- Expectation of new regulations
- Effective date January 1, 2009
ADA Amendments Act

- No change to qualifications
- Additional Regulatory authority consistent with APA
- No new deference standards
EEOC Proposed Regulations

Top US Chamber Concerns

• Perceived “per se” list of disabilities
• Elimination of “condition, manner, or duration” language in definition of “substantially limits”
• New language on the major life activity of working
• Inclusion of symptoms, mitigating measures in “regarded as” prong
Other concerns raised by US Chamber

• Discussion of “transitory and minor” language under prong one
• Use of broad term “depression” rather than more specific terms
• Reasonable accommodation and the “record of” prong
• Surgical interventions as mitigating measures
• Examples used for episodic conditions
For additional information

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US Chamber comments available at:
http://www.uschamber.com/sites/default/files/comments/091123_eeoc_comments.pdf
Alexandra (Sandy) Finucane, Executive Vice President, Epilepsy Foundation
What Went Wrong with the ADA

And Why We Needed to Fix It

Alexandra Finucane, Esq
Epilepsy Foundation
June 2011
Supreme Court Opinions Narrow Scope & Coverage

- Sutton v United Airlines (1999)
- Murphy v United Parcel Service (1999)
- Albertson’s v Kirkingburg (1999)
- Toyota v Williams (2002)
Lower Courts Follow Suit

- Todd v Academy Corp (Tex 1999) – epilepsy not covered by ADA
- Sorenson v University of Utah Hospital (10th Cir 1999) – multiple sclerosis not covered by the ADA
- Chenoweth v Hillsborough County (11th Cir 2001) – epilepsy not covered by ADA
- Pimental v Dartmouth Hitchcock Medical Center (2002) – breast cancer not covered by ADA
Lower Courts Follow Suit

- Orr v Wal-Mart (8th Cir 2003) – diabetes not covered by ADA
- McClure v General Motors (5th Cir 2003) – muscular dystrophy not covered by ADA
- Littleton v Wal-Mart (11th Cir 2007) – intellectual disabilities “mental retardation” not covered by ADA
Why?

• Supreme Court Says Mitigating Measures Taken Into Account In Determining Whether Substantially Limited in Major Life Activities

• If you take medication, use a prosthetic, hearing aid, adjust diet & exercise to control condition, have chemotherapy.... These are taken into account to determine whether one is substantially limited in major life activity
Why?

• Supreme Court says “strictly construe” whether one is “substantially limited in major life activities”, looking at scope of activities of daily living, not just in the workplace

• If you can feed yourself, dress yourself, perform basic activities of life, you are not substantially limited in major life activities
Congress Intended to Protect All People with Disabilities

-Legislative history of ADA shows Congress intended to protect people with epilepsy, HIV, legal blindness, missing limbs, severe intellectual disability from discrimination and to allow for accommodations to those conditions

-Legislative history of ADA also shows that even people who were not “disabled” by their condition but were perceived or regarded as such, would be covered by the new law
Congress Intended ADA to Parallel Section 504 of Rehab Act of 1973

• Disabilities covered under 504 included epilepsy, multiple sclerosis, intellectual disabilities, hard of hearing, diabetes, bipolar disorder, back injury, depression, asthma, post-traumatic stress disorder, vision in one eye only, heart disease, missing limbs....
Disabilities No Longer Covered by ADA

- Epilepsy, diabetes, multiple sclerosis, hard of hearing, intellectual disabilities, missing limbs, heart disease, cancer, monocular vision, post-traumatic stress disorder, bipolar, depression, hard of hearing, asthma....
The Problem Needed to be Fixed

• National Council on Disability 2004 “Righting the ADA” Report Outlines Remedies
• Community Coalesces Around Fixing Definition of Disability & Scope of Coverage
• First hearings held in 2006 by then Chair of Judiciary Committee Sensenbrenner (R-WI)
• In 2007 ADA Restoration Act (ADARA) and a companion bill introduced in House & Senate on eve of ADA Anniversary
ADA Amendments Act of 2008

- Compromise bills, modified versions of the ADARA bills introduced in late 2007, pass both houses of Congress in summer of 2008
- HR 3195 passes on vote of 402 - 17
- S 3406 passes unanimously
- President Bush signs the ADAAA into law September 2008
- Law effective January 1, 2009
ADAAA

Key Principles & Clear Leg Intent

• Congress Overturned Sutton Trilogy
• Congress Overturned Toyota Case
• Retained & clarified definition of disability to include “substantial limitation on major life activity” if an accommodation was being requested
• Clarified definition to include ‘major bodily functions’
• Disability is determined without regard to ameliorative effects of mitigating measures
• In episodic conditions or those in remission, disability considered as if in ‘active state’
ADAAA

Key Principles & Clear Leg Intent

• Made clear only one major life activity or major bodily function need be affected by disability
• Made clear that intent was for coverage to be broadly construed, and that many conditions had been wrongly excluded by the courts
• “Regarded As “ prong of definition would be available to anyone who is adversely treated because of an impairment or a perceived impairment, whether or not person actually had such an impairment, BUT
• No accommodation available for such “regarded as” cases
• Transitory and minor impairments excluded from “regarded as” coverage
Background Information & Material on the ADA Restoration Act and ADAAA

For a comprehensive overview of the ADA and the restoration of the definition, see

www.law.georgetown.edu/archiveada/
Chai Feldblum, Commissioner, *Equal Employment Opportunity Commission*
Victoria Lipnic, Commissioner,

*Equal Employment Opportunity Commission*
For More Information

http://www.eeoc.gov/laws/regulations/index.cfm

- Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008
- Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008
- Fact Sheet on the EEOC’s Final Regulations Implementing the ADAAA
Related Resources

• Employment Policy for People with Disabilities online repository of over 200 related research reports and policy briefs:
  http://digitalcommons.ilr.cornell.edu/edi/

• HR Tips (over 35 brochures in English and Spanish on workplace accommodation):
  www.hrtips.org

• ADA National Network (1-800-949-4232)
  wwwadata.org

• National Technical Assistance Policy and Research Center for Employers on Employment of People with Disability:
  www.earnworks.com
Thank You!

Please complete the online evaluation which follows.