

# **Amendments improve ADA**

## **Employees to benefit from changes**

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The ADA Amendments Act of 2008 is now in effect and brings with it significant changes to Americans with disabilities. The number of individuals covered by the ADA will increase dramatically as a result, in part, due to the Congressional mandate to interpret the Act broadly.

Congress further outlawed the Courts from considering mitigating measures in assessing whether an individual is disabled under the ADA; i.e., medications or prosthetic devices.

In trying to explain the future changes, it is important to look at the past. Over the last 10 years, the Courts have taken away rights from employees by determining the following diseases and physical disabilities were not, in their eyes, disabilities:

1. Epilepsy;
2. Diabetes;
3. Muscular dystrophy;
4. Amputations;
5. Multiple sclerosis;
6. Liver or kidney disease;
7. Cerebral palsy;
8. Heart conditions;
9. Mental illness;
10. Immune disorders;
11. Cancer; and
12. Learning disabilities (including dyslexia).

In the past, it was easy to show the Court an employee had one of the above medical conditions, but the Court was also requiring the employee to show how the condition affected a “major life activity” when one was using a medication or prosthetic device. For example, prior to January 1, the Courts had to consider whether the employee who had an amputated leg could still perform the major life activity with a prosthetic limb; and if the employee used the prosthetic limb in performing the daily life activities, then they were not disabled as defined under the “old” ADA.

Another example of not being covered under the “old” version of the ADA was an employee with severe hypertension, a medical condition which, if left untreated, could result in the death of the employee. Since the employee was able to control his heart condition with proper medication, the Court reasoned the disability of the employee should not be looked at “in a vacuum,” but viewed in

conjunction with whatever medication or prosthetic device used by the employee to assist in his daily life activities. The employee was found by the U.S. Supreme Court to not be disabled under the “old” ADA.

To be defined as a disabled person under the ADA now, an employee’s medical condition need only affect a single major life activity (without having to consider any medication or use of prosthetic devices) to become protected by the Act.

Some examples of these major life activities are: “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, communicating, and working.” So for example, the employee with diabetes whose eating habits are affected by his or her disease is now protected by the ADA. Last year, that person would not have been recognized by the Courts as a person with a disability.

What a difference the revised ADA will make for employees.

*Contact your regional OEA Advocacy Specialist if you are dealing with a medical issue and you aren’t sure whether you are protected by the ADA.*