



## PRESIDENT BUSH SIGNS INTO LAW THE “ADA AMENDMENTS ACT OF 2008”

SEPTEMBER 2008

President Bush signed into law yesterday the “ADA Amendments Act of 2008” (the “Act”). The Amendments Act’s provisions become effective on January 1, 2009. The Amendments Act broadens the scope of protection intended by the Americans With Disabilities Act of 1990 (“ADA”), which Congress found to have been narrowed in recent years by various Supreme Court decisions and EEOC regulations.

More individuals will be protected under the ADA by virtue of the Amendments Act. Although the definition of disability remains the same – “a physical or mental impairment that substantially limits one or more major life activities” – the application of that language is changed under the Amendments Act. A summary of the major changes is listed below:

- Under current law, whether an individual is disabled is considered based on any mitigating measures he or she uses. For example, a diabetic who uses insulin is only disabled if he is substantially limited in a major life activity considering the use of insulin. Under the Act, the courts may no longer consider the ameliorative effects of mitigating measures, such as medications or prosthetics, except for eyeglasses or contact lenses, in determining whether an individual’s impairment substantially limits a major life activity.

- Under current law, the list of “major life activities” was limited by regulation and some court interpretations. Under the Act, the definition of “major life activities” now includes items from the regulations and *new items* caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

- A major life activity also now includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

- Current law generally requires that an impairment last for a significant period of time and that conditions of short duration are insufficient to constitute a disability. Under the Act, an impairment that is episodic or in remission is considered a disability if it substantially limits a major life activity when active.

The practical effect of these changes is that more individuals will be protected under the ADA and that employers will need to engage in the reasonable accommodation process more frequently.