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The Americans with Disabilities Act at 25 Years: A Look Back and What's Ahead

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This Sunday marked the 25th anniversary of the ***Americans with Disabilities Act*** ("ADA"), which was signed into law by President George H.W. Bush on July 26, 1990. The enactment of the ADA represented a bipartisan commitment to fight discrimination against individuals with disabilities in many aspects of everyday life, including in the workplace and in places of public accommodation.

The ADA is an example of how the law can significantly evolve over a relatively short period of time based on judicial interpretation and Congress's response to decisions that, in the eyes of Congress, do not comport with the legislative intent of the law. The anniversary is therefore an opportunity not only to look back upon the remarkable history of the ADA, but also to consider what changes may be still to come.

The Supreme Court Speaks on the ADA … and Congress Answers

In the years following the passage of the ADA, courts, including the United States Supreme Court, were called upon to analyze the definition of "disability" and, more specifically, when an impairment "substantially limits one or more of the major life activities of such an individual" under the language of the law. In *Sutton v. United Airlines, Inc.* and *Murphy v. United Parcel Service, Inc.*, both decided in 1999, the Supreme Court held that an impairment should be considered in its mitigated state (*e.g.,* with the benefit of corrective lenses or when controlled by medication) in determining whether it "substantially limits" a major life activity. A few years later, in 2002, the Supreme Court in *Toyota*

Motor Manufacturing, Kentucky, Inc. v. Williams further narrowed the interpretation of when an impairment is a "substantial limitation" of a major life activity, concluding that a plaintiff must show more than a limitation on job-specific tasks, but rather must demonstrate a permanent or long-term impairment in the ability to perform "activities that are of central importance to most people's daily lives."

These cases demonstrated the literal approach the Court was taking to interpret the coverage of the ADA. And in fact, employers prevailed on nearly every workplace ADA case brought before the Supreme Court at the time – a possible exception being *Cleveland v. Policy Management Systems Corp.* in 1999, in which the Supreme Court held that a plaintiff's receipt of Social Security Disability Insurance ("SSDI") benefits does not automatically bar, or even present a strong presumption against, an ADA claim. However, in *Cleveland*, the Court went on to further hold that, in order to survive summary judgment, a plaintiff cannot ignore her SSDI contention that she was too disabled to work, but must explain why that contention is consistent with her ADA claim that she can perform the essential functions of the job, at least with reasonable accommodation.

On the heels of *Sutton*, *Murphy*, *Williams*, and other decisions making it more difficult for individuals to prove that an impairment constituted a "disability" under the ADA, Congress in 2008 stepped in and took the groundbreaking step of overruling the Supreme Court's precedents via passage of the ADA Amendments Act of 2008 ("ADAAA"). In doing so, Congress made clear that the Supreme Court's prior interpretations of the definition of "disability" went beyond that which was intended under the ADA as originally drafted. The ADAAA broadened the definition of "disability" by, among other things, expanding the definition of "major life activities" and making clear that the term "substantially limits" is to be construed broadly in favor of expansive coverage, and that an impairment need not prevent or severely restrict a major life activity to be considered substantially limiting.

Looking Ahead

So what's next for the ADA? Since the ADAAA became effective on January 1, 2009, the Supreme Court has yet to decide any cases interpreting the expanded definitions set forth by Congress. At the same time, the Equal Employment Opportunity Commission ("EEOC") reports that the percentage of overall charges received per year involving claims of disability discrimination continues to rise, with disability claims representing nearly 30% of charges filed in 2014.

Certainly then, employers are well advised to remain vigilant regarding their obligations under the ADA and to take heed of the EEOC's guidance that, post-ADAAA, the primary focus in any situation involving an applicant or employee with a disability should be not on whether a disability in fact exists (though an individual must still demonstrate that he or she is qualified for the job in question), but rather on the interactive process and a determination whether or not a reasonable accommodation exists that would enable the individual to perform the essential functions of the position. While only time will tell what the Supreme Court will say about the ADAAA and the scope of its protections going forward, there is little question that the ADA continues to impact employers and workers with disabilities just as heavily (and perhaps even more so) than it did following its inception 25 years ago.

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