

## President Bush Signs ADA Amendments Act of 2008

President George W. Bush signed into law amendments to the Americans with Disabilities Act (“ADA”) that will clarify and expand the protections afforded to disabled individuals. The new law, entitled the ADA Amendments Act of 2008 (“ADAAA”), expressly overturns several landmark U.S. Supreme Court decisions that narrowly interpreted the definition of “disability.” The enactment of the ADAAA will most likely make disposing of ADA cases prior to trial more challenging for employers. However, in some instances, providing accommodations will be less confusing for employers because the ADAAA has made clear that employers are *not* required to provide a reasonable accommodation to individuals who are “regarded as” disabled, but not actually disabled. This is an issue over which the federal courts of appeals were previously split.

The ADAAA includes the following significant provisions:

- Employers and courts must now adopt a broad standard to determine if an employee is “disabled” by providing coverage to individuals “to the maximum extent permitted by the terms of this Act.”
- Before the amendments, the ADA was silent on the definition of a “major life activity,” leaving the issue for the courts to decide. Now, the ADAAA has a laundry list of major life activities such as “thinking,” “concentrating,” “eating” and “working.”
- Previously, an employer could argue an employee was not disabled if there were mitigating measures that the employee utilized, such as prosthetics, medications or hearing aids that corrected or alleviated the medical issues. Now, employers and courts are prohibited from considering these measures (other than a few limited exceptions related to vision) in determining whether an employee has a disability.

These changes to the ADA take effect on January 1, 2009. Employers should be aware that the range of coverage and protections afforded to employees will be broader under the ADAAA. Accordingly, employers are urged to review their organizations’ ADA policies and procedures for compliance.

If you have questions concerning the ADA or its amendments or need compliance assistance, please contact a Labor and Employment attorney at Richards, Layton & Finger.

