

ADA Changes: What HR Professionals and Employers Need to Know



An amendment to the Americans With Disabilities Act (ADA) likely will mean that more employees will be considered disabled under the law – a development that could prompt more people to seek workplace accommodations, and at least initially, to file more lawsuits. But experts say employers that are already following the law don't have anything to worry about – the resulting changes will simply restore the ADA to its original intent and more clearly define “disability” under the law.

Passed by Congress last week, the [ADA Amendments Act of 2008](#) now awaits President Bush's signature. Experts say the president is expected to sign the bill, which will amend the original ADA. In addition to more clearly defining “disability,” the measure also is designed to reverse some of the narrow standards that the U.S. Supreme Court used in recent years to determine

who was considered disabled. The new legislation states that “disability” should “be construed in favor of broad coverage” so that individuals with legitimate disabilities are protected under the ADA.

“This could become law in a couple of weeks,” said **Michael Eastman**, executive director of labor policy for the **U.S. Chamber of Commerce**, adding that he's confident that the president will sign the bill into law. Even so, the law is not likely to go into effect until Jan. 1, so employers and HR professionals still have some time to get familiar with it.

The amendment is a win-win for businesses and those with disabilities, said **Michael Layman**, manager of labor and employment for the **Society for Human Resource Management**. Passage of the legislation also is “a big moment” in employment law, marking the first landmark change since the ADA was passed in 1990.

Despite some significant changes, however, it's likely that most businesses won't feel much of an impact – financial or otherwise, Eastman said. It still allows employers to define the essential functions of a position, and it doesn't change the fact that an individual still needs to be qualified to do a job. It also doesn't change any requirements involving what employers have to do to provide reasonable accommodations to a disabled employee.

“I don't think this is going to affect employers who are doing the right thing,” said **Antoinette S. Gilbert**, an associate labor and employment law attorney with **Karen Smith Kienbaum & Associates** in Detroit. The businesses that will feel the most impact from the change will be those that haven't complied with the existing law – the ones that have made discriminatory decisions based on disabilities. “I think it'll have a big impact on cases that are currently being litigated. It's going to result in a higher cost for employers who are currently in litigation.”

Now, with existing law and the U.S. Supreme Court's narrow definition of what constitutes a disability, roughly 90 percent of all ADA claims are lost by the plaintiff, and only 3 percent receive any kind of remedy, Gilbert said. Under the new guidelines, employers won't be able to get away with making decisions based on disability anymore. And with more legal backing, people with disabilities will have an easier time proving discrimination, she said.

In years since passage of the ADA, court decisions have eroded protections for those who otherwise might have been considered disabled. Lawmakers have said that as a result, people with a variety of disabilities, including cancer, epilepsy, diabetes, multiple sclerosis, and mental illness have been improperly denied protection under the law – in many cases because people were able to control those conditions by medications or other means. In a Texas case, for example, a federal judge ruled that a worker with epilepsy was not disabled because he was able to control his seizures with medication.

The bill, however, says that courts should not consider “mitigating measures” such as prescription drugs or other remedies in cases involving disabilities. According to the bill, an impairment that is in remission or episodic is considered a disability “if it would substantially limit a major life activity when active.” Also included in the bill is a list of major life activities as defined by the law (e.g. learning, communicating, seeing, walking), as well as body functions (e.g. immune system, normal cell growth, and neurological functions) that are required to perform major life activities.

In addition to defining a disability as an actual mental or physical impairment and one that limits one or more major life activities, the bill also provides protection in situations when someone is discriminated against because they are “regarded as” having a disability, Eastman said. For example, if an employer fires a person because it is believed that he or she has HIV, the employee would be protected under the law – regardless of whether an actual disability exists or not.

To start preparing for the changes in the law, HR professionals and employers should consider the following advice, Gilbert said.

- **Read up on the changes.** Employers need to have a good understanding of the original ADA, as well as some of the changes that will go into effect as a result of the amendment. People can visit govtrack.us, www.ada.gov, or the [EEOC](#) to read more about the ADA and the amendment.
- **Scrutinize existing policies and processes.** It's important to know how your company qualifies someone as having a disability. And it's really important to recognize that some of the disabilities that formerly were rejected during that process

may now be covered under the amended law. Take a close look at your processes and policies and make sure they're in compliance with the amendment.

- **Update handbooks and policies.** Take a look at your written policies and employee handbook, to make sure that the language in both is in line with changes in the law (e.g. guidelines about short- and long-term disabilities).
- **Provide training.** Make sure your diversity training is up to date. Before changes in the law go into effect, it also might be a good idea to provide updated diversity training to all employees and supervisors. Employees need to understand what actions are considered discriminatory and that they are not to discriminate against others on the basis of age, disability, religion, or other characteristics.

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