

ADA Historical Perspective

The Americans with Disabilities Act of 1990 (ADA) currently “prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with job disabilities in job application procedures, including hiring, advancement, compensation, job training and other terms and conditions of employment” (AAOHN, 2002).

- Title I: requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others, i.e., prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities, and other privileges of employment, restricts questions asked about an applicant's religious affiliate and/or disability before a job offer is made, and requires employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.

Legislation has been introduced in the House (H.R. 3195) and Senate (S.1881) that could expand the ADA coverage with minor impairments rather than serious disabilities. Reps. Hoyer (D-MD) and Sensenbrenner (R-WI) as well as Sens. Harkin (D-IA) and Specter (R-PA) are sponsoring the “ADA Restoration Act of 2007”, which would redefine “disabled” and what constitutes a disability by striking the concept of “substantial limitation of a major life activity” (SHRM, 2007). The current rule defines “disability” as:

- A physical or mental impairment substantially limiting one or more of the major life activities (walking, seeing, hearing and performing manual tasks) of such individual,
- A record of such impairment, and
- Being regarded as having such an impairment.

The Restoration Act of 2007 amends the definition of “disability” to read:

- A physical or mental impairment,
- A record of a physical or mental impairment, or
- Being regarded as having a physical or mental impairment.

The Restoration Act would accomplish the above in the following ways:

- Restore the broad scope of protection enacted by the Rehabilitation Act of 1973;
- Reinstate original congressional intent of the definition of disability by clarifying ADA protection:
 - available for all individuals who are subjected to adverse treatment based on actual or perceived impairment, or
 - record of impairment, or
 - adversely affected by prejudiced attitudes, such as myths, fears, ignorance, or stereotypes concerning disability or particular disabilities, or
 - failure to remove societal and institutional barriers such as communication, transportation and architectural barriers, and
 - failure to provide reasonable modifications to policies, practices, and procedures, reasonable accommodations, auxiliary aids and services.
- Establish a clear and comprehensive prohibition of discrimination on the basis of disability and provide broad coverage and vigorous and effective remedies without unnecessary and obstructive defenses by striking the current definition of “disability” by omitting “substantial limitation of a major life activity”, thereby expanding coverage to anyone with a physical or mental impairment; and

- Respond to certain decisions of the Supreme Court that elements of the definition need to be interpreted strictly to create a demanding standard for qualifying as disabled,' and, consistent with that view, has narrowed the application of the definition in various ways, such as:
 - Supreme Court ruling in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* [534 U.S. 184, 197 (2002)] [D'Arruda, K. (2002). Supreme Court Update – Toyota Motor Manufacturing v. Williams. *AAOHN Journal*, 50(5), 210-212.
- Prohibit employers from considering the effect of mitigating measures, such as glasses or medication, when determining whether someone requesting accommodations has a disability, which overturns the Supreme Court's elimination from the Act's original intent, as in *Sutton v. United Airlines, Inc.* [527 U.S. 471 (1999)].

The ADA Restoration Act has substantial support with 241 co-sponsors of the House version, which is enough to pass the House chamber. AAOHN is seeking input from AAOHN State Legislative Coordinator (SLC), Advocates, Board members and members in general, as to the impact on the occupational and environmental health nurse and their responsibility for worker health and safety.

Please review and submit comments to Dean Burgess (dean@aaohn.org) by Wednesday, February 6, 2008.

Resources

A Guide to Disability Rights Laws (2005). Retrieved on January 2008 from <http://www.ada.gov/cguide.htm#anchor62335>.

Smith, A. (2007). Congress Fast-Tracks Dramatic Expansion of ADA. Retrieved on January 2008 from www.shrm.org/law/library/CMS_023920.asp (membership required).

Thomas Law: ADA Restoration Act of 2007 (Introduced in House) HR 3195 IH. Retrieved on January 2008 from <http://thomas.loc.gov/cgi-bin/thomas>.

Thomas Law: Americans with Disabilities Act Restoration Act of 2007 (Introduced in Senate) S 1881 IS. Retrieved on January 11, 2008 from <http://thomas.loc.gov/cgi-bin/thomas>.

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