

LABOR AND EMPLOYMENT LAW ALERT
September 30, 2008

AMERICANS WITH DISABILITIES AMENDMENTS ACT OF 2008

On September 25, 2008, President Bush signed the ADA Amendments Act of 2008 (“ADAAA”). The statute becomes effective on January 1, 2009.

The ADAAA retains the current ADA definition of disability as: i) a physical or mental impairment that substantially limits one or more major life activities, ii) having a record of such an impairment, or iii) being regarded as having such an impairment. The statute mandates that the term “disability” be construed in favor of broad coverage of individuals under the ADA, to the maximum extent permitted by the ADAAA. The ADAAA does not provide a definition for the term “substantially limits.” Moreover, the ADAAA redefines the term “major life activity” to be a non-exclusive list of activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Further, the definition also 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.

According to the ADAAA, an individual is disabled if he or she is “regarded as having such an impairment.” The ADAAA explains that an individual establishes the elements of the “regarded as” prong if he or she has been subjected to an adverse employment action because of a perceived or actual physical or mental impairment regardless of whether such impairment either limits or is perceived to limit a major life activity. Two statutory restrictions limit this otherwise expansive prong. First, the impairment cannot be transitory and minor. A “transitory” impairment is one with an actual or expected duration of six months or less. Second, an employer has no obligation to even consider a request for a reasonable accommodation under the “regarded as” prong of the definition.

The ADAAA prohibits consideration of the effects of mitigating measures such as medication, assistive technology, hearing aids, or prosthetics, in determining whether an individual has a disability. The only exceptions are ordinary eyeglasses or contact lenses.

Under the ADAAA, the employee continues to bear the burden of proving that he or she is a qualified individual with a disability.

The ADAAA will be discussed during the Labor and Employment Law Practice Group Round Table to be held at McConnell Valdés LLC on Friday, October 17, 2008 from 9:00 a.m. to 11:30 a.m. For registration please call at (787) 759-9292, ext. 3389.

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McV LLC LABOR AND EMPLOYMENT LAW PRACTICE GROUP

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