

# ADA AMENDMENTS ACT OF 2008

## (Eff. Date: 1/1/2009)

On September 25, 2008, the ADA Amendments Act of 2008 was signed into law by the President of the United States. The stated purpose of the Act is to restore Congress' original intent for protections under the Americans with Disabilities Act of 1990 (ADA) which has been narrowed by numerous court decisions since its enactment.

Because the ADA includes protection from discrimination in the terms of employment, including benefits, the changes made by the ADA Amendments Act of 2008 will affect employer sponsored group health plans. The ADA applies to employers with 15 or more employees. The changes made by the Act are effective January 1, 2009 and apply to both self funded and fully insured plans.

A copy of the ADA Amendments Act of 2008 can be downloaded from the Internet at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s3406enr.txt](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3406enr.txt). Section number references from the Act have been provided below to assist you in finding the provisions in the Act for more detail.

### DEFINITION OF DISABILITY

While leaving the definition of disability substantially unchanged, the Act expands the scope of that definition by adding a new definition for the term "major life activity" and providing rules for applying the definition of disability.

#### Disability

The term disability is defined as:

- A physical or mental impairment that substantially limits one or more major life activities of an individual; or
- An individual that has a record of such an impairment; or
- An individual that is regarded as having such an impairment.

*(ADA Amendments Act of 2008 Sec.4 Disability Defined and Rules of Construction (1))*

#### Major Life Activity

The term major life activity is defined as specifically including, but not limited to the activities of:

- |   |                                     |   |
|---|-------------------------------------|---|
| <input type="checkbox"/> Caring for oneself;      | <input type="checkbox"/> Walking;   | <input type="checkbox"/> Learning;      |
| <input type="checkbox"/> Performing manual tasks; | <input type="checkbox"/> Standing;  | <input type="checkbox"/> Reading;       |
| <input type="checkbox"/> Seeing;                  | <input type="checkbox"/> Lifting;   | <input type="checkbox"/> Concentrating; |
| <input type="checkbox"/> Hearing;                 | <input type="checkbox"/> Bending;   | <input type="checkbox"/> Thinking;      |
| <input type="checkbox"/> Eating;                  | <input type="checkbox"/> Speaking;  | <input type="checkbox"/> Communicating; |
| <input type="checkbox"/> Sleeping;                | <input type="checkbox"/> Breathing; | <input type="checkbox"/> Working.       |

And specifically including, but not limited to the operation of the following major bodily functions:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Immune system;      | <input type="checkbox"/> Bladder;      | <input type="checkbox"/> Circulatory;   |
| <input type="checkbox"/> Normal cell growth; | <input type="checkbox"/> Neurological; | <input type="checkbox"/> Endocrine; and |
| <input type="checkbox"/> Digestive;          | <input type="checkbox"/> Brain;        | <input type="checkbox"/> Reproductive   |
| <input type="checkbox"/> Bowel;              | <input type="checkbox"/> Respiratory;  |   |

*(ADA Amendments Act of 2008 Sec.4 Disability Defined and Rules of Construction (2))*

### RULES OF APPLICATION

The Act requires that the following rules be used in applying the definition of disability:

- The definition of disability for purposes of the ADA must be interpreted in the broadest sense and to the maximum extent permitted by the terms of the Act.



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- The term substantially limits must be interpreted in a manner that is consistent with the stated Congressional findings and purpose in the ADA Amendments Act of 2008.
  - An impairment that substantially limits one major life activity is not required to limit other major life activities in order to be considered a disability.
  - An impairment that is intermittent or in remission must be considered a disability if it would substantially limit a major life activity when it was active.
  - The determination of whether an impairment substantially limits a major life activity must be made without regard to the compensating effects of treatments or other mitigating measures (e.g. prescription drugs, medical supplies, medical equipment, artificial limbs or other prosthetic devices, low vision devices excluding normal eye glasses or contact lenses, hearing aids or cochlear implants, mobility devices, oxygen therapy equipment, interpreters for the hearing impaired, or readers or taped texts for the visually impaired)
- (ADA Amendments Act of 2008 Sec.4 Disability Defined and Rules of Construction (4))*

## **IMPLICATIONS FOR GROUP HEALTH PLANS**

The provisions of the Act will substantially increase the number of protected individuals and the number of conditions that are considered a protected disability under the ADA. That, combined with the fact that the Act effectively reverses numerous long-standing legal decisions that formed the basis for plan design decisions under group health plans, means employers should review their plans for exclusions and limits that may be based on what will be a protected disability under the new rules.

Under current ADA regulations, a provision of a group health plan is disability based if it singles out a specific disability (e.g. deafness, AIDS, schizophrenia), a discrete group of disabilities (e.g. cancer, kidney disease, muscular dystrophies), or a treatment that is primarily used for a specific disability or group of disabilities.

If a disability-based provision is identified, it needs to be evaluated to determine if it falls under any of the safe harbor provisions of the ADA. A disability-based provision of a group health plan will not be considered a violation of the ADA if:

- The provision applies equally to all employees and does not single out a specific disability, discrete group of disabilities, or a treatment used primarily in the treatment of such.
- The provision applies equally to all conditions (e.g. pre-existing condition exclusions, experimental treatment exclusions).
- The disability-based distinction is actuarially justified and other conditions of a similar magnitude are treated in a similar manner.
- The disability-based distinction is necessary to ensure the group health plans financial soundness.
- The disability-based distinction is necessary to prevent an unacceptable and drastic change in premium cost or benefits offered.
- The specific treatment being excluded has no medical value or benefit.

Provisions that are disability-based and do not fall within the safe harbor provisions should be revised or removed from the plan.

## **EFFECTIVE DATE**

Changes made by the ADA Amendments Act of 2008 are effective January 1, 2009.  
*(ADA Amendments Act of 2008 Sec.8 Effective Date)*



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