Legal Alert: ADAAA Legislative History Provides Possible Clue to New "Disability" Definition

11/5/2008

One definition of the term "disability" under the Americans with Disabilities Act (ADA) is "a physical or mental impairment that substantially limits a major life activity." The Americans with Disabilities Act Amendments Act (ADAAA) retains the same wording of that definition, but makes clear that the courts' and the EEOC's interpretations of the term "substantially limited" as requiring that an individual prove that he or she is "significantly restricted" in a major life activity, or words to that effect, impose too high of a standard for proving that an individual is disabled. Unfortunately, the ADAAA does not set forth a new standard, but instead requires the EEOC to issue new regulations doing so. With the January 1, 2009 effective date of the statute rapidly approaching, employers are understandably anxious for guidance on the issue.

The ADAAA's legislative history provides some indication of how at least some members of Congress think the term should be interpreted. Given that the entire purpose of the ADAAA is to restore Congress' purported original intent to the interpretation of the ADA, perhaps the EEOC will find the legislative history's interpretation of the standard persuasive. At a minimum, it provides employers with the best guidance currently available as to what the appropriate standard might be.

Specifically, in the September 16, 2008 Congressional Record, Senator Harkin quotes from the ADA's original committee report to demonstrate that Congress intended the term "substantially limited" to mean that an individual's "important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." By way of example, Senator Harkin further states in the Congressional Record that, "a person who can walk for 10 miles continuously is not substantially limited in walking because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing discomfort."

Given that the ADAAA also includes a very expansive list of what constitutes major life activities, if the EEOC adopts the above definition of "substantially limited," or something similar, coverage under the Act will be radically expanded. For example, previous case law under the ADA held that persons with even significant lifting restrictions (e.g., no lifting over 20 pounds) did not qualify as disabled. Under the standard set forth in the ADAAA's legislative history, such persons might be considered disabled.

Employers' Bottom Line:

As employers begin preparations to comply with the ADAAA by its effective date of January 1, 2009, they should keep in mind that a much lower standard will be applied to determine who qualifies as "substantially limited" in a major life activity, and thus is protected as disabled. The focus of ADA cases will move away from arguments over whether an employee is disabled and thus protected by the ADA, to the question of whether the employer discriminated against the employee. While the standard set forth in the ADAAA's legislative history may not be the standard ultimately adopted by the EEOC, it provides the best currently available guidance as to what the standard might be.

If you have any questions regarding the issues discussed in this Alert, please contact the author, Tim Bland, a partner in our Memphis office, at tbland@fordharrison.com or 901-291-1514 or the Ford & Harrison attorney with whom you usually work.