Legal Alert: Federal Courts Reject Argument that ADA Amendments Act is Retroactive

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Since the Americans with Disabilities Act (ADA) was amended by the ADA Amendments Act of 2008 (ADAAA), which took effect on January 1, 2009, federal court decisions have declined to retroactively apply the ADAAA to plaintiffs' claims concerning conduct that occurred before the effective date. Despite arguments by employees' attorneys that courts should apply the ADAAA to claims pending as of September 25, 2008, the date the ADAAA was enacted, it does not appear that any federal court has retroactively applied the ADAAA to a plaintiff's claim regarding past conduct. However, the ADAAA has been applied to pending claims for prospective relief.

The Fifth, Sixth, and Seventh Circuit Courts of Appeals have held that the ADAAA does not apply retroactively. In general, the federal courts have determined that they must apply the laws (and interpretations of those laws) that are in effect at the time of the "complained-of-action." The courts have reasoned that absent clear Congressional intent favoring retroactive application of the ADAAA, they will not apply the amendments retroactively. Since the ADAAA only provides that the Act and its amendments shall become effective January 1, 2009, and the legislative history is void of any Congressional record regarding retroactive application to pending cases, there is no clear Congressional intent favoring retroactive application to past conduct. For example, the Fifth Circuit held that the analysis of a plaintiff's condition as a disability under the ADA should include consideration of the mitigating measures permitted under the pre-amendment interpretations of the ADA because the complained-of-action occurred before the Amendments took effect.

However, employers should examine closely previous and pending requests for accommodation. The Sixth Circuit has recently pointed out that the ADAAA does apply to claims based on prospective or incomplete acts with regard to requests for accommodation. The Sixth Circuit held that a student's claim, brought before the ADAAA's effective date, for accommodated testing based on his disputed qualifying disability under the ADA should be analyzed under the new law. The court reasoned that denial of the requested accommodation (the complained-of-action) was not "completed" because the student requested that the court require an accommodation for a test that had not yet been given. Because the complained-of-action, the denial of the student's request, would not be completed until the test was given, the application of the ADAAA would not be retroactive. The court also rejected the defendant's argument that the student's claim for attorney fees made the application of the ADAAA retroactive. The defendant unsuccessfully argued

that it could be required to pay the student's attorney fees as a result of action taken that was lawful at the time of its determination of the student's request for accommodation, but unlawful at the time of the appeal and administering the test. Although the lawsuit was not an employment related claim, it demonstrates the court's willingness to apply the ADAAA to claims and requests for prospective relief under the ADA.

Employers' Bottom Line:

Although the ADAAA likely will not be applied retroactively to most pending ADA claims for conduct occurring before January 1, 2009, it is possible that the courts may view an employer's response to an employees' request for accommodation as an incomplete act permitting application of the ADAAA. Attorneys for employees may argue that denied requests for accommodation based on pre-ADAAA definitions of disability are a continuing action and that courts should review denied accommodations in light of the ADAAA's more liberal definition of disability and should order the employer to accommodate the employee and pay the employee's attorney fees. Because this issue has not yet been decided, prudent employers may want to review recent accommodation decisions in light of the ADAAA's definitions of disability to ensure that a reasonable accommodation was not denied to an employee who may now qualify as disabled under the new law.

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