



ADA RESTORATION ACT (S. 1881/H.R. 3195)

A Civil Rights Promise to Fulfill

An Important Civil Rights Victory

In 1990, Congress, with overwhelming bipartisan support, passed and President George H.W. Bush signed the Americans with Disabilities Act (ADA). Leaders from both parties heralded the Act, which was described as an “emancipation proclamation for people with disabilities.” Prior to the passage of the ADA, studies indicated that people with disabilities were underprivileged and disadvantaged as compared to other Americans. They suffered from higher rates of poverty, lower levels of education, social isolation, and fewer opportunities because of discrimination, fear, and neglect.

Like other historic civil rights laws before it, the ADA was built on the framework of equal opportunity, economic independence, and full participation. It was Congress’ intention that people with disabilities would be protected from discrimination in the same manner as those who had experienced discrimination on the basis of race, color, sex, national origin, religion, or age – by treating these characteristics as factors that are ordinarily irrelevant for purposes of making determinations regarding employment.

Congress’ Original Intent

The ADA was intended to protect anyone who is treated less favorably because of a current, past, or perceived disability. When Congress passed the ADA, Congress adopted the definition of disability from Section 504 of the Rehabilitation Act of 1973, a statute that was well litigated and understood. The Rehabilitation Act defined disability to mean:

- a physical or mental impairment that substantially limits one or more major life activities;
- a record of such an impairment; or
- being regarded as having such an impairment.

Congress expected that, as under the Rehabilitation Act, health conditions that were commonly understood to be disabilities would continue to include diabetes, epilepsy, intellectual disabilities, multiple sclerosis, amputation, and many other impairments. The congressional record also made clear that a disability was to be assessed without regard to the availability of mitigation measures. But the harsh reality is that in the years since the ADA’s passage, these protections have been eroded by the courts.

Judicial Rollback of the ADA

Through a series of decisions in the employment context, the Supreme Court narrowed the definition of disability contrary to Congress’ intent. The ADA has been narrowed in three main ways:

- by requiring that mitigating measures – such as medication, hearing aids, and prosthetics – must be considered in determining whether a person has a disability under the ADA;
- by ruling that there must be a demanding standard for proving one’s disability, in which the term “substantially limited” is applied in a very strict manner and the term “major life activity” only covers activities that are of a “central importance” to most people’s lives; and
- by requiring people who allege they are being regarded as substantially limited in the major life activity of working to show that their employer believed them incapable of performing not just the job they had been denied, but also a broad range of jobs.

It is well established that our civil rights laws are intended to have a broad remedial purpose. However, a 2006 study indicated that plaintiffs have lost more than 97% of ADA employment discrimination claims, more than under any other civil rights statute – and the majority of these cases are being lost because courts determine plaintiffs are not disabled. As stated by the National Council on Disability, the Supreme Court decisions narrowing the definition of disability “ha[ve] significantly diminished the civil rights of people with disabilities.”

In passing the ADA, Congress expected that, as with other civil rights laws, the courts would focus on whether a person who has been discriminated against has proven that the discrimination was based on a personal characteristic such as race, sex, religion, or disability, not on whether he or she has proven that the characteristic actually exists. By interpreting the definition of disability so narrowly, the Supreme Court has inappropriately shifted the focus away from an employer’s alleged misconduct and onto whether an individual can first meet a demanding standard for qualifying as disabled.

This narrow reading is inconsistent with both Congress’ intent and with the other civil rights statutes upon which the ADA was modeled. Indeed, the effects of the decisions have been absurd. Under the Rehabilitation Act and Title VII of the Civil Rights Act, courts rarely spend time analyzing whether a plaintiff really falls within a protected class, but rather properly focus on whether the plaintiff has proven that the alleged discriminatory action has taken place because of, for example, his or her handicap, race, or gender.

In a civil rights context, requiring a person to meet an extremely high standard for qualifying as disabled makes little sense if the plaintiff can show an employer has taken an adverse action based on an individual’s physical or mental impairment. Why should an employer be able to fire someone for being disabled, but then argue they cannot be sued because the person is not disabled enough to be protected by the ADA? Moreover, the Court’s emphasis on mitigating measures has meant that individuals – who by any common-sense standard have serious health conditions and who are fortunate to find treatments that may make them more independent – may have no recourse if they are victims of employment discrimination.

A Modest Congressional Fix

Clearly, this is a problem that requires an appropriate congressional fix. The ADA Restoration Act restores the original intent of the ADA by clarifying that anyone with an impairment, regardless of the successful use of mitigating measures, is entitled to seek a reasonable accommodation in the workplace or further remedies. Specifically, the Act:

- amends the definition of disability so that individuals whom Congress originally intended to protect from discrimination are covered under the ADA;
- prevents the courts from considering mitigating measures when deciding whether an individual qualifies for protection under the ADA; and
- focuses on whether someone can show that he or she was treated less favorably on the basis of disability and not whether an individual has revealed enough private and highly personal facts to demonstrate how he or she is limited by an impairment.

Changing the ADA in this way would once again bring it into conformity with Title VII of the Civil Rights Act and other civil rights laws. The courts could properly focus on the reason an adverse action has been taken – in this case, disability – rather than on whether the person has proven specifics of a his or her physical or mental condition.

S. 1881 and H.R. 3195 would reestablish Congress’ original intent in passing the ADA and restore the Act to its place as one of our country’s great civil rights laws.

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