

Society for Human Resource Management (SHRM)

ADA Amendments Act Passes House

By Joanne Deschenaux

The U.S. House of Representatives June 25 voted 402-17 in favor of the ADA Amendments Act (H.R. 3195), legislation designed to clarify and strengthen the protections of the Americans with Disabilities Act (ADA).

The bill now goes to the Senate. However, one of the act's key proponents, Sen. Ted Kennedy, D-Mass., is not expected to return to work until after the August recess.

Bipartisan Support

Democratic and Republican leaders both spoke out in praise of the bill. House Majority Leader Steny Hoyer (D-Md.), said that, "With the ADA Amendments Act, we make it clear today that a cramped reading of disability rights will be replaced with a definition that is broad and fair. That those who manage to mitigate their disabilities are still subject to discrimination—and still entitled to redress." Education and Labor Committee Senior Republican Rep. Howard P. "Buck" McKeon, R-Calif., concurred, saying that, "With today's vote, the House has spoken loudly and clearly about the importance of strong, meaningful and practical protections for individuals with disabilities against discrimination in the workplace and elsewhere."

The bill rejects U.S. Supreme Court decisions that resulted in a narrowing of the coverage of the act, excluding for example, many individuals with diabetes, epilepsy, cancer and muscular sclerosis.

Bill Represents Compromise

The bill that passed the House is the same version that the House Education and Labor Committee and the House Judiciary Committee approved on June 18. It represents a compromise between business groups and worker advocacy groups. An earlier version of the bill would have changed the definition of disability established when the ADA was first passed by Congress in 1990. The compromise proposal retains the original requirements in the ADA that a disability must substantially limit a major life activity, and that individuals with disabilities must demonstrate that they are qualified for the job. It also explicitly excludes from coverage impairments that are minor and transitory, lasting less than six months. "This takes away such impairments as the flu or a broken leg," Larry Lorber, an attorney with Proskauer Rose in Washington, D.C., told *SHRM Online* in a June 26 interview.

However, the bill would redefine the term “substantially limits” to mean “materially restricts,” which is undefined under current ADA law and remains undefined in the bill.

In addition, the bill further provides that the determination of whether an individual has an impairment that limits a major life activity would be made without regard to the “ameliorative effects” of various “mitigating measures” like medications; it would however allow for consideration of corrections or improvements in vision obtained through the use of “ordinary eyeglasses or contact lenses.”

SHRM President and CEO Susan R. Meisinger said in a statement, “Both the employer and disability communities have been able to unite behind this bill for a reason—it is an effective remedy that is perfect for no one, but fair for everyone. It will put more Americans to work and protect the people most deserving of that accommodation.”

Impact on HR

If the legislation as written passes the Senate and is signed into law, “there will be a much wider swath of people who will be covered” by the ADA, Lorber said. One direct impact on HR would be that the obligation of an individual interviewing an applicant who may have an impairment “to engage in an interactive process, to assume that they have a disability and see if they can accommodate them is going to be significantly enhanced.”

Further, Lorber said, by providing that individuals who are “regarded as” impaired are covered by the ADA but are not entitled to reasonable accommodation, “the legislation is designed to treat impairments in the same way that courts treat race and gender.” Therefore, HR professionals should be prepared to give the same types of reasons for not hiring people with impairments or perceived impairments, he said, and this leads to the conclusion that job descriptions will be more important than ever. “Job description, job description, job description—they have to be updated and they have to be relevant,” Lorber remarked.

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