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Senate Passes ADA Amendments Act

The Senate has unanimously approved its version of the ADA Amendments Act (S.3406). The legislation will now stop at the House of Representatives for review and approval of changes from the initial House version (H.R. 3195), which passed overwhelmingly in June. The final version of the bill will then go to the President's desk, where it's expected to receive a signature of approval.

The ADA Amendments Act will expand interpretation of the ADA's coverage, which has been narrowly construed by case law since a string of U.S. Supreme Court decisions starting in 1999. The Act specifically targets the 1999 decision in *Sutton v. United Airlines Inc.*, which limited the ADA's protection for persons whose disabilities could be "mitigated" by measures such as medication, treatment, or assistive devices, and the 2002 decision in *Toyota Motor Manufacturing, Ky, Inc. v. Williams*, which tightened the standard for individuals to be considered "substantially limited" by their disability.

In the House version of the bill, the "substantially limits" language of the original ADA was retained yet redefined to include impairments that "materially restrict" a person from performing major life activities. This language was intended to overturn the *Williams* decision by providing a less stringent standard in order to qualify as "disabled" under the ADA.

The Senate version, however, shies away from the "materially restricts" language, which also could have been subject to interpretation and restriction via costly litigation and case law. Instead, the Senate bill provides that the term "substantially limits" must be interpreted consistently with the "findings and purposes" of the ADA Amendments Act. Those findings and purposes are provided as a list of general and specific requirements at the beginning of the Act, which champion a less demanding standard than is currently applicable.

Finally, the Senate bill revises the House's command that the definition of disability "shall be construed broadly," instead clarifying that the Act is to be construed "in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act."

The House is expected to approve the Senate's version of the bill, which retained the other substantial changes proposed by H.R. 3195, including:

- expansion of the definition of a "major life activity";
- an impairment that substantially limits one major life activity doesn't have to limit other major life activities to be considered a disability;
- impairments that are episodic or in remission are considered a disability if they would substantially limit a major life activity when active;
- overturning the *Sutton* standard by specifying that determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of listed mitigating measures; and
- an individual doesn't have to establish his impairment limits or is perceived to limit a major life activity to be "regarded as being disabled."

The amendments would become effective January 1, 2009, presumably to allow time for the EEOC to issue new regulations and for employers to ensure compliance.