

Looking backward to move forward

A plaintiff's attorney's view of the ADA after 25 years

By Justin D. Cummins

Most observers looked upon the adoption of the Americans with Disabilities Act ("ADA") by Congress a quarter century ago as a landmark development in the law. Particularly, advocates within the disability communities held out hope that differently abled people would soon have equal opportunity both inside and outside the workplace.

Unfortunately, the promise of the ADA remained significantly unfulfilled. Nowhere was this more evident than inside the workplace. Too often, employment cases prosecuted under the ADA turned into hyper-technical litigation about whether the ADA even applied to the plaintiffs. Many cases failed on this basis without even reaching the question about whether the plaintiffs experienced discrimination or harassment based on disability status.

By the time Congress turned to the task of amending the ADA in 2008, a person considering pursuit of ADA claims faced a daunting legal landscape. Given decisions under the ADA by the Supreme Court, federal Courts of Appeals, and federal District Courts across the country, plaintiffs had to prove that they were extremely limited in their capacity — but not so limited that they could not perform the essential job functions.

As a practical matter, plaintiffs had to walk a very narrow and highly technical line in order to show that they had a right to pursue claims under the ADA in the first place. The plaintiffs fortunate enough to establish that the ADA applied to them nonetheless faced the challenge of proving they experienced discrimination or harassment because of disability status. As reflected by the soaring rates of summary judgment for employers in employment cases generally, plaintiff success on the merits of a discrimination or harassment claim under the ADA remained far from certain.

In the context of this bleak outlook for many people with disabilities, Congress revisited the original purpose of the ADA and evaluated whether the law needed to be amended in response to how federal courts had been applying the law. In an explicit rebuke of the prevailing federal precedent, including several high-profile Supreme Court opinions, Congress amended the ADA in numerous and meaningful ways. Those changes took effect on Jan. 1, 2009.

The dimensions to the amendments are multifaceted, but they all clearly reflect the intent of Congress to make it easier for people with disabilities to pursue claims in court and otherwise enforce rights under the ADA. To illustrate, the amendments generally require federal courts to ignore mitigating factors, such as medication taken, when determining whether plaintiffs have a sufficient limitation to trigger coverage by the ADA. In addition, the amendments provide an illustrative list of a wide array of activities — including "major bodily functions" — that, when sufficiently limited, support application of the ADA. In further highlighting the liberal approach required by Congress, the amendments describe conditions



President George H.W. Bush signs the Americans with Disabilities Act during a ceremony on the South Lawn of the White House on July 26, 1990. Joining the president are Rev. Harold Wilke, rear left; Evan Kemp, chairman of the Equal Opportunity Employment Commission, left; Sandra Parrino, chairman of the National Council on Disability; and Justin Dart, chairman of the President's Council on Disabilities.

that are episodic or in remission as sufficiently limiting for purposes of ADA coverage.

Consistent with the congressional declaration that the ADA should be broadly construed to advance the law's important goals, the United States Equal Employment Opportunity Commission subsequently developed regulations to reinforce and even expand on the liberal approach. For example, the EEOC regulations compel interpretation of whether a condition "substantially limits" a "major life activity" so as to maximize coverage of the ADA. The EEOC regulations also add still more recognized major life activities to the illustrative list created by Congress, including sitting, reaching, and interacting with others. Moreover, the EEOC regulations mandate that a person has a record of disability such that the ADA applies when that person has a medical history of an impairment that substantially limits a major life activity.

The main impact of the amendments to the ADA has been to shift the focus of litigation from whether a given plaintiff has a disability to whether an employer's conduct violated the ADA. In other words, the recent amendments by Congress and the corresponding regulations by the



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Editor's Note:

This year marks the 25th anniversary of the Americans with Disabilities Act. It was signed on July 26, 1990, by President George H.W. Bush. It was amended effective Jan. 1, 2009, by the ADA Amendments Act of 2008. It defines disability as an impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. The ADA was overturned two Supreme Court decisions that Congress felt interpreted the law too narrowly. In *Sutton v. United Air Lines, Inc.* the court stated that impairments must be considered in their mitigated state. The second decision in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* held that the phrase "substantially impairs" must be applied to life activities in general. The new law clarified that the law should be construed in favor of broad coverage. To commemorate the anniversary of this important law, Minnesota Lawyer asked two practitioners to discuss life with the ADA and how it is working.

Justin Cummins, of Cummins & Cummins, LLP, is a MSBA board-certified labor and employment law specialist and past chair of the MSBA Labor & Employment Law Section. He generally represents plaintiffs.

Penelope Phillips is a shareholder at Felhaber Larson, where she counsels and represents employers. Grant Collins is an associate at Felhaber Larson practicing in employment law and labor law.

EEOC have shifted attention to the actual merits of the civil rights claims and away from a hyper-technical analysis of whether the ADA even applies to a plaintiff in the first instance.

This is a positive development for people with disabilities, specifically, and the rule of law, generally. Indeed, the federal Courts of Appeals and federal District Courts have

typically heeded the message from both Congress and the EEOC about returning to the original intent of the ADA: to eradicate disparate treatment based on disability status. Consequently, plaintiffs around the nation now generally experience greater success in defeating summary judgment motions and ultimately winning cases on the merits.