

HOUSE OF REPRESENTATIVES PASSES ADA AMENDMENTS ACT

In an unusual show of bipartisanship, the U.S. House of Representatives recently passed the ADA Amendments Act by a vote of 402-17. Similar legislation is expected to be considered by the Senate. It looks likely that some form of the legislation will be enacted later this year.

Background

The original Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush in 1993. Over the years, as lawsuits made their way through the federal courts, a number of issues repeatedly arose regarding exactly what type of disability a person must have to be protected by the law's discrimination provisions. Some of those issues eventually made their way to the U.S. Supreme Court, where the ADA didn't fare very well. The result is that few individuals can now actually qualify as "disabled" within the narrow interpretation of that term adopted by the Court.

Perhaps the Court's most controversial decision states that a person who suffers from a physical

or mental impairment may not be disabled if the effects of the impairment are reduced or controlled through the use of medications, prosthetics, or other medical devices. For example, if a diabetic is able to control her disease with insulin, she isn't disabled within the meaning of the ADA. Similarly, a person who has a hearing impairment may not be considered disabled if he's able to hear with the help of a cochlear implant or hearing aid.

Disability advocates understandably have a problem with that interpretation. As many have pointed out, it places disabled individuals in a Catch-22 of choosing between reducing their impairment and being protected from discrimination on the basis of their disability.

As many have pointed out, this approach ignores the fact that people who suffer from a disability are still subjected to discrimination even if their impairment is currently under control. A prime example of that would be an individual who suffers from bipolar disorder or some other serious mental disease. Even if their disease is currently being controlled with medication, they could easily encounter discrimination purely on the basis of their underlying mental condition.

Bill's Provisions

The intent of the ADA Amendments Act is to restore the broad remedial

nature of the ADA. To accomplish that, the legislation includes the following key provisions:

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- The definition of disability is to be construed broadly.
- The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication; medical supplies, equipment, or appliances; low-vision devices (not including ordinary eyeglasses or contact lenses); prosthetics; hearing aids and other hearing devices; mobility devices; and a variety of other types of medical assistance or therapy.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- The term “substantially limits” means materially restricts (compared to the current standard of “prevents or severely restricts”).
- An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.
- The definition of a “major life activity” includes a wide array of activities, many of which courts have previously concluded don’t qualify for ADA protection. They include caring for oneself; performing manual tasks; seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, and breathing; learning, reading, concentrating, thinking, communicating, and working; and major bodily functions such as the immune system, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- Under the ADA’s “regarded as being disabled” provisions, an individual doesn’t have to establish that his impairment limits or is perceived to limit a major life activity. Interestingly, the bill’s co-sponsors have pointed out that in discrimination cases (as opposed to accommodation cases), the employee or job applicant should proceed under this section alone. The significance is that in discrimination cases, the individual wouldn’t have to make any sort of minimal showing with regard to the severity of his impairment.

Future Prospects For The Bill

Senator Tom Harkin – who authored the original ADA as well as the Senate version of the ADA Amendments Act – has announced that he is looking forward to passing the companion bill in the near future. Although the legislation enjoys substantial support in the Senate and has received a generally favorable response from the White House, there are a few provisions that may yet be modified. We will keep you posted on its outcome.

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RISK SERVICES

An Annual Reminder

The NDIRF has two services we believe provide additional value to our members. They are our Video DVD Safety Library and our Defensive Driving Classes. Both are free to our members.

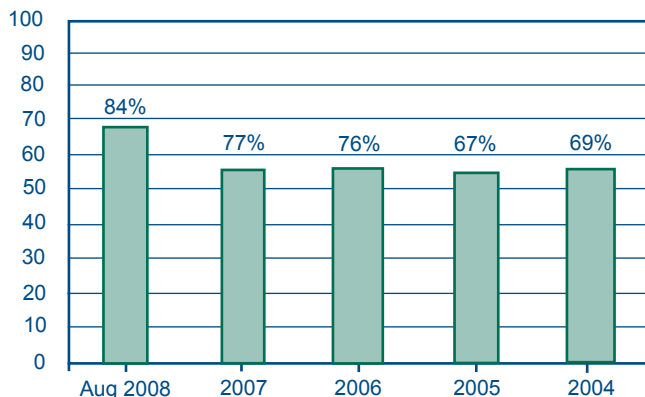
Our Safety Library can be found at the NDIRF web site: www.ndirf.com. Just log in using your entity's user name and password and click on the video library under the member info tab. Over 150 risk management and safety titles are available for your use.

The NDIRF has two highly qualified defensive driving instructors on staff. We can provide this National Safety Council four-hour defensive driving class to our member entities at no cost. Your only requirement is to have a minimum of 10 participants in the class. The class is available to your elected officials, your employees, volunteers to your entity and their family members. In addition to improving driving skills; completion of the class will qualify the participants for a reduction in their personal insurance costs from most insurance companies. Also, 3 points can be removed from a poor driving record.

If there are questions on the Video/DVD Library or you would like to schedule a defensive driving course, please contact our office. ■

FINANCIAL INSIGHTS

COMBINED RATIO



The operating ratio is the sum of the company's loss ratio and expense ratio and indicates the profitability of NDIRF's operations without investment income. A ratio greater than 100% means that losses and expenses exceed premium income. Regulatory guidelines state that a company's combined ratio should be less than 96%. As the graph shows, NDIRF's combined ratio has been consistently below that guideline. ■

FROM THE CEO

Isn't October already scary enough, what with Halloween staring at us from the end of it and all? Do we really need threats of financial panic, recession or depression to get us in the mood for a jittery good time on All Hallows Eve? Well, the bulls and bears of Wall Street have, at least for now, turned into ghosts and ghouls – putting us all into a high stakes version of “trick or treat”.

I don't believe panic is ever the right reaction to a problem, but if one isn't thinking over events in the financial markets these past few days, weeks and months, well, one probably just isn't paying attention. As this is written, it appears Congress and the Bush Administration have reached agreement on a “bailout deal” – with no particulars yet available and, of course, no assurance it will do the trick, so to speak.

The NDIRF, of course, is more than a disinterested bystander in all of this. The Fund has always invested in the financial markets in a way that makes sense for our operation and continues to do so. I believe the NDIRF is appropriately positioned in this regard but can also offer the assurance that we are, indeed, paying attention. ■

RISK SERVICES

Liability Memorandum of Coverage Changes Effective November 1, 2008

A number of changes have been made to the NDIRF Liability Memorandum of Coverage. These changes are effective on Liability Memorandums of Coverage with an effective date on or after November 1, 2008. The changes are:

1. A number of typographical corrections were made. These will not be itemized here. There was no change in coverage intent with these corrections.
2. On page 6 of 15 under J. 3. b. “or property of emergency services organizations” was included to better communicate the intent of the coverage provided for property of others taken for use in an emergency situation.
3. Four new definitions were added. They include definition for Employee, Leased Worker, Temporary Worker, and Volunteer. These definitions are included to stay abreast of current insurance industry coverage forms. ■

Mark Your CALENDAR

Nov

14-15: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

Dec

11: NDIRF Board of Directors
Meeting,
NDIRF offices, Bismarck

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