



**THOMPSON  
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**CONGRESS ENACTS  
SWEEPING AMENDMENTS  
TO THE ADA**

While most of the country has been focused on the candidates and the race for the presidency, Congress was drafting new legislation that will drastically amend the Americans with Disabilities Act (ADA). The ADA Restoration Act (H.R. 3195/S.R. 3406), if enacted, will amend the ADA for the first time in 18 years, and will have far-reaching effects on employers located well beyond the Capital Beltway. The House overwhelmingly passed the bill on June 26, 2008. On September 11, just a week after Congress reconvened from its summer break, the Senate unanimously passed its own version of the Restoration Act. The Act has bipartisan support and, while clearly well-intentioned, will seriously impact employers who have a workforce of more than 15 employees when it is signed into law by President Bush, as anticipated.

The ADA Restoration Act is a direct response to several Supreme Court holdings that favored employers by restrictively interpreting the ADA. In recent years, the Supreme Court issued rulings making it harder for employees to establish a disability within the meaning of the ADA. In one case, the Supreme Court held that the ADA does not cover impairments that are largely corrected through the use of mitigating measures or medications. For example, individuals with impaired vision are not “disabled” under the ADA if their vision is nearly 20/20 when they wear glasses.

The ADA Restoration Act is intended to reverse the courts’ restrictive interpretation of the ADA. The ADA Restoration Act: (1) expands the coverage of the ADA to a broader group of individuals claiming disability; (2) extends coverage to individuals who have disabling conditions that are episodic or in remission, if those conditions would be substantially limiting when active; (3) prohibits employers from considering mitigating measures or medications when determining if an individual is disabled; and (4) makes it more challenging for an employer to prove that it took a personnel action without regard to an employee’s disability.

The practical implications of the ADA Restoration Act are that most employers must take an employee’s declaration that they are disabled at face value and that employees with many common conditions, such as impaired vision or high blood pressure, can now claim status as disabled, even if their conditions are controlled. Furthermore, the ADA Restoration Act will make it harder for employers to obtain dismissal of disability lawsuits before trial, as certain burdens that the employee was once required to prove will now be shifted to the employer. Since the ADA Restoration Act creates a heightened burden for an employer to demonstrate that its actions were unrelated to the employee’s disability, employers will need to reevaluate policies and practices to ensure that there is no “disparate impact” on disabled persons in the workforce. While this has always been sound personnel practice and is a fair and impartial way of making a personnel decision, the legal impact will be that employers must document a significant amount of information regarding the job, the employee and the workforce.



The Senate version of the ADA Restoration Act has been submitted to the House for full approval. All indications are that the current version of the proposed legislation will pass the House and be endorsed by President Bush. The ADA Restoration Act, if enacted, is scheduled to go into effect on January 1, 2009.

#### **FOR MORE INFORMATION**

For more information on the ADA Restoration Act, or if you would like to be advised on the progress of the legislation, please contact JC Miller at [JC.Miller@ThompsonHine.com](mailto:JC.Miller@ThompsonHine.com) or 202.263.4154. Ms. Miller sits on the U.S. Chamber of Commerce Labor Relations Committee and provided advice to Congress about the ADA Restoration Act on behalf of employers.

Alternatively, you may contact your primary Thompson Hine Labor & Employment lawyer or go to [www.ThompsonHine.com/practices/Labor\\_Employment/lawyers/](http://www.ThompsonHine.com/practices/Labor_Employment/lawyers/) to view a listing of our Labor & Employment lawyers.

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