

THE 2008 DISABILITY POLICY SEMINAR

THE ARC, AAIDD, AUUCD,
UCP AND NACDD

FACT SHEET

AMERICANS WITH DISABILITIES (ADA) RESTORATION ACT

Background

Unfair discrimination harms all Americans, and it significantly harms those with disabilities who want to work and not have to completely rely on public assistance to live.

The Americans with Disabilities Act of 1990 (ADA) was passed with overwhelming bipartisan support and signed by President George H.W. Bush in order to give people with disabilities a chance to be judged fairly in the hiring process and in being treated fairly on the job.

The ADA is a civil rights law, and just as other civil rights laws prohibit employers from basing decisions on characteristics like race or sex, Congress wanted the ADA to stop employers from making decisions based on disability. The ADA was designed to create a level playing field so that everyone who wants a job has an equal opportunity to work.

But this is not happening for many people with disabilities!

- The employment rate of people with disabilities has not improved since the passage of the ADA.
- Two-thirds of people with disabilities who do not have jobs indicate they would work if they could find employment.

The courts have created an absurd Catch-22!

Court rulings have allowed employers to say a person is “too disabled” to do the job but “not disabled enough” to be protected by the law. The case is then thrown out of court, and the individual is never given the chance to do the job.

People with conditions like epilepsy, diabetes, HIV, cancer, hearing loss and mental illness who manage their disabilities with medication, prosthetics, hearing aids, etc. are frequently viewed as “too functional” to have a disability and are denied the ADA’s protection from employment discrimination. Recently the courts concluded that it was “unclear if thinking, communicating and social interaction were considered major life activities under the ADA” when refusing to hear the case of a man with “mental retardation” because he was “not disabled.”

Action Taken by Congress and the Administration

On July 26, 2007, the anniversary of the ADA, House Majority Leader Steny Hoyer (D-MD) and Representative James Sensenbrenner (R-WI) introduced the ADA Restoration Act of 2007 (H.R. 3195) in the House with more than 125 co-sponsors. Bi-partisan support of the bill has continued to crescendo, now reaching 245 co-sponsors with hearings already held by the Education and Labor and Judiciary Committees. Mark-ups are anticipated to occur soon.

Senators Tom Harkin (D-IA) and Arlen Specter (R-PA) introduced a nearly identical bill (S. 1881) also on July 26, 2007. Co-sponsorship in the Senate has been less forthcoming than the House. Currently two Republican and two Democrats have signed on. The Health, Education, Labor and Pensions Committee held a hearing in November. No further activity has been scheduled.

The ADA Restoration Act of 2007 would add new language to the ADA to prohibit discrimination “on the basis of a disability”, focusing on the discrimination that people experience rather than focusing on their ability to prove they have a disability. This would bring the ADA in line with other civil rights laws that prohibit discrimination “on the basis of race, color, religion, national origin, and sex.”

Recommendations

- The Congress should enact legislation to restore the coverage and the protections lost under the ADA due to court decisions limiting who is protected;
- The Congress should reject any amendments to the ADA or new legislation that would weaken protections under the law; and
- The Congress should appropriate adequate funds for enforcement of the ADA by all responsible federal agencies.

Relevant Committees

Senate Health, Education, Labor and Pensions (HELP) Committee

House Judiciary Committee

House Committee on Education and Labor

House Committee on Energy and Commerce

House Committee on Transportation and Infrastructure

For more information, please contact The Arc and United Cerebral Palsy Disability Policy Collaboration (202) 783-2229, Association of University Centers on Disability (301) 588-8252, American Association on Intellectual and Developmental Disabilities (202) 387-1968 or the National Association of Councils on Developmental Disabilities (703) 739-4400.

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