

**THE ADA AMENDMENTS ACT AND ITS IMPACT ON EMPLOYMENT  
DISCRIMINATION CLAIMS: A NECESSARY CHANGE?**

ARTICLE

JULIÁN DÍAZ MORALES & ALEXIS J. LEBRÓN BRAYFIELD\*

Introduction.....	1211
I. The American with Disabilities Act .....	1212
II. ADA: Judicial Treatment .....	1214
A. Disability .....	1214
B. Reasonable Accommodation-Undue Hardship .....	1218
C. Qualified Individual with a Disability .....	1219
D. Evidentiary Procedure of an ADA disability claim .....	1220
III. The ADA Amendments Act.....	1220
A. Congressional Intent .....	1220
B. Discrimination on the Basis of Disability .....	1222
C. Substantially Limits and Major Life Activities .....	1222
D. Mitigating or corrective measures.....	1223
E. Regarded as having such an impairment .....	1224
F. Equal Employment Opportunity Commission .....	1226
IV. Puerto Rican Disability Anti-Discrimination Law .....	1227
V. ADAAA: Judicial Treatment .....	1229
Conclusions.....	1230

**INTRODUCTION**

**R**OSA LÓPEZ CURRENTLY WORKS IN THE PRIVATE SECTOR AND AN IMPORTANT promotion has been announced at her company. Once she files the proper documentation, the Human Resources Department informs her that she is ineligible for the position in question because she suffers from epilepsy and, according to them, cannot perform the duties set forth in the job description. She lets them know that her condition is under control with prescribed medication; however, the company maintains its position and will not offer the opportunity to her. To Ms. López, this constitutes a discriminatory

---

\* The authors are third year law students at the University of Puerto Rico Law School. We would like to thank Ana Beatriz Rivera-Beltrán's support and collaboration. Additionally, we would like to extend our gratitude to Prof. Vivian Neptune Rivera, Alice Net, Angelo Casiano, Rocío del Mar Pérez, Yanín Dieppa, and Alfonso Orona Amilivia for their constructive and insightful feedback.

action against her because of her disability, so she decides to file a claim. During trial, the judge rules that she is not disabled.

A similar scenario has happened to more employees than we would like to think. Federal courts have, over the years, created a judicial framework which disfavors positive outcomes for employees who have been discriminated against due to their medical condition. In 2008, Congress acted to abrogate these judicial practices by drafting and ratifying the Americans with Disabilities Act Amendments Act [hereinafter ADAAA]. Their purpose was to clarify the leniency of the statute in favor of qualified workers who suffer of one or more disabilities.

By carefully studying and analyzing the American with Disabilities Act (ADA) and the subsequent Amendments Act's Congressional intent, we propose to examine the effect of the new legislation in employment law litigation. We also discuss the new standard for proving discrimination on the basis of disability; the effects on local legislation; and whether the amendments were necessary in the first place.

## I. THE AMERICAN WITH DISABILITIES ACT

The American with Disabilities Act<sup>1</sup> (ADA) was signed by President George H.W. Bush on July 26, 1990 and prohibits discrimination against individuals with disabilities. Congress explained that discrimination based on a disability is a pervasive problem in our society and declared that a person with a physical or mental disability has a right to fully participate in society.<sup>2</sup> Historically, disabled individuals have been segregated and marginalized; consequently, protective legislation like the ADA has been essential to prevent such discrimination. The ADA provides four different titles for protecting disabled individuals against various forms of discrimination: Employment, Public Services, Public Accommodations, and Telecommunications. Its purposes are set forth in section 12101(b) of the ADA:

1. To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
2. To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
3. To ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and,
4. To invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to ad-

---

<sup>1</sup> 42 U.S.C. §§ 12101-12213 (2006).

<sup>2</sup> H.R. REP. No. 101-485, pt. 3, at 25 (1990).

dress the major areas of discrimination faced day-to-day by people with disabilities.<sup>3</sup>

The Committee on Labor and Human Resources presided over the study of this bill in the Senate; while in the House of Representatives, the Committee on Public Works and Transportation, the Committee on the Judiciary and the Committee on Energy and Commerce were all assigned to study the bill. The Committees thoroughly studied the three prong definition of disability with respect to an individual under the ADA. This definition includes “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) record of such an impairment; or (C) being regarded as having such an impairment.”<sup>4</sup>

This definition, as described by the Committees, should be interpreted liberally, not restrictively. The latter is seen clearly throughout the descriptions of the three prong definition in the Congressional reports. For instance, the Committees decided to utilize the same definition used in the Rehabilitation Act of 1973<sup>5</sup> and in the Fair Housing Amendments Act of 1988<sup>6</sup> because they concluded it was a difficult venture to elaborate a comprehensive specific list of all the possible conditions since new ones may be discovered in the future.<sup>7</sup> Congress decided to adopt a definition that left the door open to new scientific discoveries; however, it specified that hearing impairments, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, epilepsy, and emotional illness are some of the diseases or infections that are protected by this law.<sup>8</sup> Also, the Committee on the Judiciary broadly described a physical or mental impairment as:

This means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting on or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular, reproductive, digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, emotional or mental illness, and specific learning disabilities.<sup>9</sup>

These reports indicate that physical or mental conditions should be included when it substantially limits one or more major life activities such as walking, breathing, working, caring for one self, performing manual task, learning, seeing

---

3 42 U.S.C. § 12101(b) (2006).

4 42 U.S.C. § 12102(2) (2006).

5 29 U.S.C. § 705(7) (2006).

6 42 U.S.C. § 3602 (2006).

7 H.R. REP. No. 101-485, pt. 3, at 27 (1990).

8 S. REP. No. 101-116, at 22 (1990). *See also* H.R. REP. No. 101-485, pt. 3, at 27 (1990).

9 H.R. REP. No. 101-485, pt. 3, at 28 (1990).

and participating in community activities.<sup>10</sup> It is important to mention that the Committees emphasized that mitigating factors such as hearing aids or reasonable accommodation should not be taken into account when determining if a person is disabled under the ADA.<sup>11</sup> This demonstrates the amplitude of the Congressional intent in regards to the definition of *disability*. It purposely discards the mitigating factors so that more people can seek protection under this law. Another example of this expansive view is Congress' adoption of the Supreme Court's decision in *School Board of Nassau County v. Airline*,<sup>12</sup> stating that when a person is treated as if he or she suffers from a condition that substantially limits one or more major life activities, that person should also be protected by the ADA.<sup>13</sup>

Additionally, the ADA intended to protect people who have their medical condition under control but still are discriminated for having that condition. For instance, a person not hired for certain job solely based on the fact that he or she suffers from epilepsy, even though the condition is controlled, was intended to be protected under the ADA.<sup>14</sup> As previously discussed, the different reports of the Committees have clearly established that the Congressional intent of the ADA was to interpret disabilities liberally, in order to favor those individuals who suffer from these medical conditions.

## II. ADA: JUDICIAL TREATMENT

### A. Disability

The uniform definition of *disability* may be found in section 12102(2) of the ADA.<sup>15</sup> Moreover, a disability may be proved through three different ways: because of an impairment substantially limiting major life activities, through a record of such, or because the person was regarded as disabled. These classifications have created numerous holdings; upfront, we can say that the hardest one to establish in court has been the *regarded as* category.

The statute, as discussed in the previous section, was too broad. Consequently, when employees filed claims alleging discrimination because of their disabilities, courts were confronted with legal queries which lacked exact answers in the Act. To any practicing attorney, this is not a new controversy. Lawyers encounter legislative loopholes that offer no clear direction on a daily basis; arguably, it is part of our democratic system. Nevertheless, the alluded demo-

---

<sup>10</sup> S. REP. No. 101-116, at 22 (1990). See also H.R. REP. No. 101-485, pt. 2, at 52 (1990).

<sup>11</sup> *Id.* at 24. See also H.R. REP. No. 101-485, pt. 3, at 28 (1990).

<sup>12</sup> 480 U.S. 273 (1987).

<sup>13</sup> S. REP. No. 101-116, at 23-24 (1990).

<sup>14</sup> *I d.* at 24 (1990).

<sup>15</sup> 42 U.S.C. § 12102(2) (2006).

cratic process can cause erosion of the initial purpose of a specific law because of judicial interpretations.

Some contend that the ADA's Congressional intent was compromised by the courts' strict and restrictive subsequent interpretation of the Act's key elements. When an individual sought to establish that he or she suffered from a disability, per the statutory text, that person had to prove that it substantially limited a major life activity and could perform the essential functions of its job with or without reasonable accommodation(s). At first glance, this seems like a simple task. However, between 1999 and 2002, the United States Supreme Court holdings turned it into a nearly impossible one.

Back in 1992, twin sisters applied for commercial pilot positions in an international airline; both suffered from severe myopia. The airline refused to interview them as soon as they found out the twins suffered from such condition. The sisters filed a claim within the Equal Employment Opportunity Commission (EEOC), which issued a right to sue,<sup>16</sup> and proceeded to file their complaint in court. Were they disabled under the ADA? Did the fact that they used eyeglasses and contact lenses affected in any way their discrimination case?

In *Sutton v. United Air Lines, Inc.*,<sup>17</sup> the United States Supreme Court studied these facts and answered some of the previous questions. The majority was apprehensive towards the Plaintiff's proposed theory that the *disability* definition had to be assessed without the corrective or mitigating measures pertaining to their condition. At the time they applied for work, the twins were not suffering from severe myopia because they had corrected it by using eyeglasses and contact lenses. Furthermore, they were not technically disabled because when wearing their lenses they had 20/20 vision acuity. On the other hand, the employer argued that the ADA could not include disabilities that were mitigated and corrected at the time of the purported discrimination. The Court held in favor of the employer, distancing its decision from the original legislator's intent which called for the evaluation disability claims without consideration of mitigating factors. This holding proved to be detrimental for many individuals who filed complaints against their employers.<sup>18</sup>

---

<sup>16</sup> 29 CFR § 1601.28 (2009).

<sup>17</sup> 527 U.S. 471 (1999).

<sup>18</sup> See Reagan S. Bissonnette, *Reasonably Accommodating Nonmitigating Plaintiffs After the ADA Amendments Act of 2008*, 50 B.C. L. REV. 859, 878-879 (2009) (footnotes omitted):

Some courts have justified the Duty to Mitigate approach by broadening the holding of *Sutton*. The holding of *Sutton* indicates that if a plaintiff uses mitigating measures, the effect of those mitigating measures must be considered when determining whether a plaintiff is "substantially limited in a major life activity." Courts following this broadening-of-*Sutton* analysis have incorrectly extended the holding of *Sutton* to stand for the proposition that if mitigating measures *could* correct the nonmitigating plaintiff's disability, the plaintiff is not *substantially limited*, and therefore not *disabled*, because the plaintiff did not use those mitigating measures. Rather than applying *Sutton* only when the

*Sutton* not only addressed section (A) of the disability definition, it also analyzed the twin sisters' case through the third prong of a disability, section (C) *regarded as having such an impairment*.

There are two apparent ways in which individuals may fall within this statutory definition: (1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities. In both cases, it is necessary that a covered entity entertain misperceptions about the individual—it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting.<sup>19</sup>

At the time of determining whether they were regarded as individuals having such an impairment, the Court dismissed their *regarded as* claim by stating that “[c]onsidering the allegations of the amended complaint in tandem, petitioners have not stated a claim that respondent regards their impairment as *substantially limiting* their ability to work.”<sup>20</sup> Furthermore, the Court stated that “petitioners have failed to allege adequately that their poor eyesight is regarded as an impairment that substantially limits them in the major life activity of working.”<sup>21</sup> As a result, a person who claimed *regarded as* discrimination had to prove that the employer erroneously believed that he or she suffered from a physical or mental impairment that substantially limits a major life activity or that an actual, non-limiting impairment substantially limits a major life activity.<sup>22</sup>

Three years later, in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,<sup>23</sup> a woman working in an automobile assembly line who suffered from carpal tunnel syndrome sued her former employer because the employer failed to provide her with a reasonable accommodation. The United States Supreme Court held that the disability had to restrict a major life activity.<sup>24</sup> If she merely had a physical disability that did not meet ADA's statutory test, then she could not ask for reasonable accommodation since she was not disabled. This case sent a clear message to all employees: if one wanted to sue an employer because

---

plaintiff actually uses mitigating measures, these courts are applying *Sutton* if the nonmitigating plaintiff *could* have used effective mitigating measures. The result of this subtle, but significant, broadening of *Sutton* is that nonmitigating plaintiffs have been denied coverage under the ADA more frequently.

<sup>19</sup> *Sutton*, at 489.

<sup>20</sup> *Id.* at 491.

<sup>21</sup> *Id.* at 492-93.

<sup>22</sup> UNDERSTANDING THE NEW DISABILITY AND GENETIC DISCRIMINATION LAWS 30 (Joy Waltemath, et al. eds., 2008).

<sup>23</sup> 534 U.S. 184 (2002).

<sup>24</sup> *Toyota*, at 198.

one was disabled and suffered from discrimination, the disability had to severely restrict a major life activity. It had to affect important aspects of one's life.<sup>25</sup> Justice O'Connor interfered this time by quoting the Congressional intent and argued:

[T]hese terms need to be interpreted strictly to create a demanding standard for qualifying as disabled is confirmed by the first section of the ADA, which lays out the legislative findings and purposes that motivate the Act (citation omitted). When it enacted the ADA in 1990, Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities." (citation omitted). If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher. Cf. *Sutton v. United Air Lines, Inc.*, 527 U.S., at 487, 119 S.Ct. 2139 (finding that because more than 100 million people need corrective lenses to see properly, "[h]ad Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number [than 43 million] disabled persons in the findings").<sup>26</sup>

The Court's strict interpretation of what constitutes a major life activity barred employees who did indeed suffer a disability but did not meet the severely restricted test.

The cases discussed above had a direct effect on determining whether an individual was disabled and if he or she could ask for reasonable accommodation. They introduced a restrictive test under ADA. Afterwards, employers generally needed to prove that: the employee had recurred to corrective measures or mitigating factors; or, even if it was a disability, it did not severely restrict or prevent the employee's major life activities.

Two of the many health conditions that were adversely affected by these decisions were bipolar disorder and multiple sclerosis (MS). Indisputably, these are well known and studied diseases that affect a person's health. Nevertheless, an employee who suffered from any of these disabilities and was discriminated against in the workplace had to face an uphill battle to prove its claims because of the strict tests created by the federal courts. If a bipolar employee was on medication that controlled him or her, then they had no disability per se since they had mitigated the condition.<sup>27</sup> A person suffering from MS that could successfully perform his or her job tasks, had to prove that it severely restricted a major life activity. This is problematic because it is considerably harder for the

---

<sup>25</sup> *Id.* at 201.

<sup>26</sup> *Id.* at 197-198.

<sup>27</sup> See *Taylor v. Phoenixville Sch. Dist.*, 174 F.3d 142, 151-158 (3<sup>rd</sup> Cir. 1999). See also, *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1129-1132 (10<sup>th</sup> Cir. 2003) (Plaintiff did not meet the test of substantially limiting a major life activity even though she suffered from bipolar disorder, ADD, and hypothyroidism).

person to complete the tasks, but it did not *severely restrict or prevent an employee's major life activity*.

*B. Reasonable Accommodation-Undue Hardship*

The term *reasonable accommodation* can be found in ADA's Employment Title (I) under section 12111(9):

Reasonable Accommodation --The term *reasonable accommodation* may include--

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.<sup>28</sup>

After reading this definition, one encounters an apparent vagueness: *may include*. Congress did not proffer a detailed or precise answer. It was merely a procedural rule, a guideline. This choice of language has created voluminous, and sometimes disparate case law, which has contributed to the furtherance of the ADA's ambiguity.

Furthermore, when an employee proves that he or she suffers from a disability, he or she may be entitled to an employer's accommodation. However, if the employer proves that the disability causes undue hardship, the petition for accommodation will not prosper. Item 10 of the above mentioned section 12111 provides the definition for *undue hardship*. It must be noted that this is one of the strongest defenses for the employers against a disability claim.

Undue Hardship—

(A) In general -- The term *undue hardship* means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered -- In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include--

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

---

<sup>28</sup> 42 U.S.C. § 12111(9) (2006).

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.<sup>29</sup>

“When an accommodation is requested and denied, and the employee brings an ADA claim premised on that denial, summary judgment may be granted against the Plaintiff if the accommodation is one without which performance of an essential job function is impaired, and if the requested accommodation is unreasonable.”<sup>30</sup> In order to guarantee litigation success, an employee must allege the reasonability of the requested accommodation and that it does not fall within an essential job function (i.e. specific required tasks which qualify the employee).

### C. *Qualified Individual with a Disability*

The term *qualified individual with a disability* can be found in ADA’s Employment Title (I) under section 12111(10):

The term *qualified individual with a disability* means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.<sup>31</sup>

Whenever an employee seeks reasonable accommodation or alleges discrimination, he or she must prove that he or she is qualified for the job, besides the disability.<sup>32</sup> It is imperative to prove that they can perform the essential job functions of their positions with or without reasonable accommodation. Moreover, an employee’s claims will not prevail if they are circumscribed to what the employer hired them for in the first place, in accordance to the original job descrip-

<sup>29</sup> 42 U.S.C. § 12111(10) (2006).

<sup>30</sup> *Cameron v. Comty. Aid for Retarded Children, Inc.*, 335 F.3d 60, 64 (2<sup>nd</sup> Cir. 2003).

<sup>31</sup> 42 U.S.C. § 12111(8) (2006).

<sup>32</sup> See *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d 11, 24-26 (1<sup>st</sup> Cir. 2002):

The ADA’s employment discrimination prohibitions apply only to those who are qualified to perform particular jobs. See 42 U.S.C. § 12112(a). In this context, Congress defined a *qualified individual with a disability* as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” *Id.* § 12111(8). The employee or applicant bears the burden of showing that she meets this standard.

tion. Additionally, the employer is the one who delineates the essential job functions; therefore, any written job description will be direct evidence of them.

*D. Evidentiary Procedure of an ADA disability claim*

After reviewing ADA's definitions for *disability*, *reasonable accommodation*, *undue hardship*, and a *qualified individual with a disability*, one can conclude that the juridical procedure to prove discrimination because of disability resembles that of a discrimination case under Title VII.<sup>33</sup> Using the *McDonnell Douglas Corporation v. Green*<sup>34</sup> and the *Texas Department of Community Services v. Burdine*<sup>35</sup> tests, the Plaintiff has the burden of proof to raise a *prima facie* discrimination against him or her by his or her employer. Then, the burden shifts to the employer to prove that it was not discriminatory.

Under the ADA, a qualified individual with a disability that substantially limits a major life activity but who can perform his or her essential job functions with or without reasonable accommodation has to prove that: (1) his or her employer is subject to the ADA; (2) he or she was disabled within the meaning of the ADA; (3) he or she was otherwise qualified to perform the essential functions of his or her job, with or without reasonable accommodation; and (4) he or she suffered an adverse employment action because of his or her disability.<sup>36</sup> Furthermore, an employee needs to provide proof of evidence about his or her disability, the reasonability of the accommodation, and that he or she qualifies under the ADA. The employer has the burden of proof over the undue hardship defense to explain the un-reasonability of the accommodation.

### III. THE ADA AMENDMENTS ACT

*A. Congressional Intent*

On September 25, 2008 President George W. Bush signed into law the ADA Amendments Act of 2008 (ADAAA) that became effective on January 1<sup>st</sup>, 2009. The Statement of Managers, which is included in the official version of the ADAAA, reveals the Congressional Intent behind the amendments:

The managers have introduced the ADA Amendments Act of 2008 to restore the proper balance and application of the ADA by *clarifying and broadening* the definition of disability, and to *increase eligibility* for the protections of the ADA. It is our expectation that because the bill makes the definition of disability more

---

<sup>33</sup> 42 U.S.C. §§ 2000e-2000e-17 (2006).

<sup>34</sup> 411 U.S. 792 (1973).

<sup>35</sup> 450 U.S. 248 (1981).

<sup>36</sup> *Cameron*, at page 63.

generous, some people who were not covered before will now be covered (emphasis added).<sup>37</sup>

As emphasized earlier, the purpose of this law is to clarify and strengthen the original intent of the ADA. The statutory text elaborates on this when it states “to carry out the ADA’s objectives of providing ‘a clear and comprehensive national mandate for the elimination of discrimination’ and ‘clear, strong, consistent, enforceable standards addressing discrimination’ by reinstating a broad scope of protection to be available under the ADA.”<sup>38</sup>

The ADAAA provides a clear and elaborate list of findings and purposes to guide the courts, the EEOC, and other government agencies (like the Department of Justice and the Department of Labor) when interpreting the new law.<sup>39</sup> Moreover, Congress specifically disavows two findings that supported the majority’s rationale in the *Sutton* decision, which effectively narrowed the definition of disability: “some 43,000,000 Americans have one or more physical or mental disabilities” and “individuals with disability are a discrete and insular minority.”<sup>40</sup> These findings are no longer barriers; it is now clear that the definition of disability is to be construed broadly. In its findings, Congress also expresses that the courts had failed to follow the original intent of the ADA regarding the definition of disability; which was intended to be interpreted consistently with the definition of *handicap* in the Rehabilitation Act of 1973.

Thus, the amendment emphatically rejects the United States Supreme Court’s restrictive interpretation of the law which has left numerous disabled individuals at risk of being discriminated against.<sup>41</sup> United States Senator Tom Harkin, Chief Sponsor of the Act, described the issue bluntly: “When I try to explain to people what the Supreme Court has done, they are shocked. Impairments that the Court says are not to be considered disabilities under the law – at least in some cases – include amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, cancer and others.”<sup>42</sup> Furthermore, the ADAAA intends to protect the disabled veterans that have courageously served in the United States’ armed forces. Specifically, the ADAAA:

The ADA Amendment Act renews our commitment to ensuring that all Americans with disabilities, including a new generation of disabled veterans who are just beginning to grapple with the challenge of living to their full potential de-

<sup>37</sup> 154 CONG. REC. S8345 (2008).

<sup>38</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b)(1), 122 Stat. 3553, 3554 (2008) (to be codified at 42 U.S.C. § 12101).

<sup>39</sup> UNDERSTANDING THE NEW DISABILITY AND GENETIC DISCRIMINATION LAWS, *supra* note 22, at 157.

<sup>40</sup> *Id.*

<sup>41</sup> For an in-depth analysis of the situation before the ADAAA see NATIONAL COUNCIL ON DISABILITIES, IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT: CHALLENGES, BEST PRACTICES, AND NEW OPPORTUNITIES FOR SUCCESS (2007).

<sup>42</sup> 154 CONG. REC. S8349 (2008).

spite the limitations imposed by their disabilities, are able to participate to the fullest extent in all facets of society, including the workplace.<sup>43</sup>

Veterans will no longer be denied protection of their civil rights because of mitigating factors. The use of prosthetics, medication, assistive technology, or mitigating measures will no longer trump a disabled veteran's right to not be discriminated because of a disability.<sup>44</sup>

### B. *Discrimination on the Basis of Disability*

The ADAAA also makes a significant change to the ADA: it situates a disability claim to emulate the structure of any other nondiscrimination provision of the Title VII of the Civil Rights Act of 1964. It does this because it specifically amends section 12112(a) and rewords the section by explicitly prohibiting discrimination against a qualified individual "on the basis of the disability of such individual" rather than prohibiting discrimination "because of the disability of such individual."<sup>45</sup> This change is favorable for the person with a disability since it focuses on the query whether or not the person was a victim of discrimination instead of the restrictive and unnecessary burden of answering the question of whether the person is disabled or not.<sup>46</sup>

### C. *Substantially Limits and Major Life Activities*

As previously discussed, a *disability* has to substantially limit one or more major life activities. *Toyota* established that in order to *substantially limit*, it had to prevent or severely restrict a major life activity. Prior to the Supreme Court's ruling in *Toyota*, the EEOC proceeded to alter its regulations regarding the ADA. Therefore, the negative impact on employees with disabilities was present within judicial proceedings as well as in the administrative arena.

The amendments categorically reject the Court and EEOC's restrictive test. As of January 2009, an employee need not prove that his or her disability prevents or severely restricts a major life activity. It will be dealt with in an inarguably broader manner.<sup>47</sup>

---

<sup>43</sup> *Id.* at S8345.

<sup>44</sup> *Id.* at S8351.

<sup>45</sup> 42 U.S.C. § 12112(a) (2006) states: "General Rule. No covered entity shall discriminate against a qualified individual because of the disability of such individual in regard to job application, procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

<sup>46</sup> 154 CONG. REC. S8347 (2008).

<sup>47</sup> See Alex B. Long, *Introducing the New and Improved Americans with Disabilities Act: Assessing the ADA Amendments Act of 2008*, 103 NW. U. L. REV. COLLOQUY 217, 221-223 (2008).

The ADA did not itself define what a *major life activity* encompassed. This was applied judicially through the *Toyota* decision. According to *Toyota* *major life activities* include those activities that are of central importance to daily life. In order for performing manual tasks to fit into this category, a category that includes such basic abilities as walking, seeing, and hearing, the manual tasks in question must be central to daily life.<sup>48</sup> The amendments now provide a non-exhaustive list of *major life activities*.

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.<sup>49</sup>

The definitional change and list of *major life activities* and *major bodily functions* are intended to restore coverage for many individuals who have been interpreted by the courts to not be disabled under the ADA.<sup>50</sup> Congress now specifies that and impairment which substantially limits one major life activity need not limit other major life activities to be considered a disability under the ADA.<sup>51</sup>

*D. Mitigating or corrective measures*

After *Sutton*, all devices or pharmaceuticals were considered in order to determine whether an individual had a disability serving as mitigation or correction of a particular condition. However, Congress legislated to effectively overturn this decision and reverse its negative impact on people who use medication or assisting devices to ameliorate their disability.<sup>52</sup>

<sup>48</sup> *Toyota*, at 197.

<sup>49</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 4, 122 Stat. 3553, 3555 (2008) (to be codified at 42 U.S.C. § 12102).

<sup>50</sup> UNDERSTANDING THE NEW DISABILITY AND GENETIC DISCRIMINATION LAWS, *supra* note 22, at 31.

<sup>51</sup> *Id.*

<sup>52</sup> See Robert R. Niccolini & Nina Basu, *Disability and Accommodation in the Healthcare Workplace*, 2 J. HEALTH & LIFE SCI. L. 93, 98 (2009):

The ADAA requires employers and others to ascertain the disability status of an individual before accounting for mitigating measures, thus specifically rejecting *Sutton*. The ADAA judges disability ‘without regard to the ameliorative effects of mitigating measures.’ Mitigating measures are defined to include both artificial measures and adaptive behavior. Under the ADAA, any individual who is sub-

(E)(i) The determination of whether an impairment *substantially limits a major life activity* shall be made without regard to the ameliorative effects of mitigating measures such as--

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) *The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity* (emphasis added).

(iii) As used in this subparagraph--

(I) the term *ordinary eyeglasses or contact lenses* means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term *low-vision devices* means devices that magnify, enhance, or otherwise augment a visual image.<sup>53</sup>

We would like to bring special attention to subsection (ii) regarding eyeglasses or contact lenses. After reading this amendment, one finds that Congress agreed partially with the Court's determination in *Sutton* that eyeglasses and contact lenses are in fact mitigating measures which have to be considered when deciding if a person suffers from a disability. Interestingly, if the same facts were to arise in court after the Amendments Act, *Sutton's* ruling would not change (at least in regards to the first prong of the *disability* definition). Nevertheless, we acknowledge that what Congress intended to change were the wide variety of decisions that limited the original Congressional intent. Their main concern was not to alter the Court's pronouncements regarding eyeglasses and contact lenses; what legislators sought to correct was the inclusion of mitigating measures within the determination process regarding the *existence* of a disability.<sup>54</sup>

#### *E. Regarded as having such an impairment*

The third prong of the disability definition was also discussed in *Sutton*. Through the Amendments Act, Congress changed the Court's reasoning about the covered entity misbelieving that a person had an impairment that substantially limits a major life activity. Even if an employee has no substantially limit-

---

stantially impaired in a major life activity before accounting for medications, physical supports, or other mitigating measures will be considered disabled, even if the mitigating measures remove the substantial limitation.

<sup>53</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 4, 122 Stat. 3553, 3556 (2008) (to be codified at 42 U.S.C. § 12102).

<sup>54</sup> H.R. REP. No. 101-485, pt. 3, at 28

ing disability, the fact that his or her employer believes so may represent discrimination. Even though *regarded as* is still the third definition of *disability*, a major sign of progress is the fact that it is defined outside of the disability scope.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of being *regarded as having such an impairment* if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.<sup>55</sup>

The Congressional intent was to return to *School Board of Nassau County v. Airline*,<sup>56</sup> a case in which a teacher was fired from school because of her susceptibility for tuberculosis. She alleged the action violated the Rehabilitation Act.<sup>57</sup>

To begin with, Congress' recognition that an individual may be handicapped under the Act solely by reason of the reactions of others in no way demonstrates that, for the purposes of interpreting the Act, the reactions of others to the condition cannot be considered separately from the effect of the condition on the claimant.<sup>58</sup>

In order to qualify under the *regarded as* prong, the person merely has to be perceived as having a physical or mental impairment, which does not necessarily have to be perceived as limiting a major life activity. Clearly, after the Amendments Act the parameters for the *regarded as* definition of disability have widened. An employee has to prove that his or her employer regarded him or her as having an impairment, regardless of whether the impairment actually limits or is perceived to limit a *major life activity*.<sup>59</sup> Notwithstanding, there are two specific limitations: it does not apply to transitory conditions (those with a duration of six months or less) and reasonable accommodation will not be granted to *regarded as* employees since they do not suffer from a substantially limiting disability (in accordance with the statutory text<sup>60</sup>).<sup>61</sup>

---

<sup>55</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 4, 122 Stat. 3553, 3555 (2008) (to be codified at 42 U.S.C. § 12102).

<sup>56</sup> 480 U.S. 273 (1987).

<sup>57</sup> 29 U.S.C. §§ 701-718 (2006).

<sup>58</sup> *Nassau County*, at 292.

<sup>59</sup> UNDERSTANDING THE NEW DISABILITY AND GENETIC DISCRIMINATION LAWS, *supra* note 22, at 30.

<sup>60</sup> 42 U.S.C. § 12111(9) (2006).

<sup>61</sup> UNDERSTANDING THE NEW DISABILITY AND GENETIC DISCRIMINATION LAWS, *supra* note 22, at 30.

Employers are cautioned, however, that according to the text of the ADAA, the ADA applies any time an employer regards an employee as impaired. An employer who mistakenly thinks an employee has a disease, ranging from the flu to AIDS, and takes action based on that mistaken assumption, could be found to unlawfully discriminate on the basis of disability--regardless of whether the employer considers the impairment substantial or minor. The employer need only believe that the employee is impaired under this section of the ADAA. Given the low threshold for regarding an employee as disabled, an employer who makes decisions based on a perceived impairment, even one as minor as allergies or a cold, runs the risk of violating the ADA.<sup>62</sup>

#### F. Equal Employment Opportunity Commission

In its findings, Congress explicitly states that, "the current Equal Employment Opportunity Commission ADA Regulations defining the term *substantially limits* as *significantly restrictive* are inconsistent with the congressional intent, by expressing too high a standard."<sup>63</sup> The definition of *substantially limits* set forth by the *Toyota*<sup>64</sup> decision and included in the EEOC interpretation has the effect of establishing a burden contrary to the ADA's purpose. Consequently, this amendment explicitly commands the EEOC to "revise that portion of its current regulation that defines the term *substantially limits* as *significantly restrictive* to be consistent with this Act, including the amendment made by this act."<sup>65</sup> The reason behind the latter is to make it easier for an individual to claim that he or she has a disability within the meaning of the ADA.

As a reaction to the mandate of the ADAAA, on September 23, 2009 the EEOC published a Notice of Proposed Rulemaking (N.P.R.M.)<sup>66</sup> in the Federal Register. The N.P.R.M. proposes changes to the ADA regulation and the Interpretative Guidance of the original ADA. It was created to elaborate a clear guide on how to interpret the ADA after the ADAAA. There is a sixty day period during which the public can comment on the proposed rulemaking. Other agencies will also have the opportunity to evaluate the proposal before the final regulation is published in the Federal Register.<sup>67</sup>

Summarizing, the ADAAA not only changed the definition of the term *substantially limits* but it also altered the definition of *major life activities*. It did so by including a non-exhaustive list which expanded the EEOC list of major life

---

<sup>62</sup> Niccolini, *supra* note 52, at 101.

<sup>63</sup> 154 CONG. REC. S8342 (2008).

<sup>64</sup> *Toyota*, at 184.

<sup>65</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b)(6), 122 Stat. 3553, 3554 (2008) (to be codified at 42 U.S.C. § 12101).

<sup>66</sup> The final regulation has not been published.

<sup>67</sup> THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, QUESTION AND ANSWER ON THE NOTICE OF PROPOSED RULEMAKING FOR THE ADA AMENDMENTS ACT OF 2008 (2009), available at: [http://www.eeoc.gov/policy/docs/qanda\\_adaaa\\_nprm.pdf](http://www.eeoc.gov/policy/docs/qanda_adaaa_nprm.pdf).

activities adding ones that were not previously recognized by the EEOC, such as bending, reading, communicating. Moreover, it included another non-exhaustive list of major bodily functions, for example, circulatory, normal cell growth, neurological, endocrine, bladder or reproductive functions. This list makes it easier for an individual with a specific or localized condition to prove that he or she has a disability. On the other hand, although it does not define the terms *physical impairment* or *mental impairment*, the bill encourages and expects the EEOC, the Department of Justice, and the Department of Education Office of Civil Rights to maintain their current definitions.

#### IV. PUERTO RICAN DISABILITY ANTI-DISCRIMINATION LAW

Puerto Rico Law No. 44 of July 2, 1985 [hereinafter Law No. 44] prohibits discrimination by any juridical or natural person, whom by himself or herself or through someone else excludes a person because he or she suffers a physical, mental or sensorial disability.<sup>68</sup> This legislation was adopted to eliminate discrimination against individuals with disabilities within the Puerto Rican society; it strives to guarantee that they participate and compete in the labor market as an even playing field.<sup>69</sup> Law No. 44 prohibits discrimination in hiring, recruitment, training, marginal benefits, and other terms and conditions of employment at public and private institutions on the basis of a person's disability.<sup>70</sup> A *disabled person* is defined as one who has physical, mental, or sensorial disabilities that limit the person's ability to work, study, or enjoy life at its fullest, but is capable of conducting the basic functions of a job with or without reasonable accommodation.<sup>71</sup>

Currently, a person in Puerto Rico who has been discriminated against because he or she has a disability can seek protection at the state level under Law 44 or at the federal level under the ADA. Law No. 44 provides the same remedies, faculties, and procedures established in the Antidiscrimination Public Law No. 100 of June 30, 1959 [hereinafter Law No. 100].<sup>72</sup> Hence, the Plaintiff may pursue a legal remedy under either Law No. 44 or Law No. 100. The Puerto Rico Supreme Court recently mentioned that the double penalty provided by article 1 of Law No. 100 is available as one of the remedies Law No. 44 offers to its Plain-

---

<sup>68</sup> P.R. LAWS ANN. tit. 1, §§ 502-511b (2005).

<sup>69</sup> *Ríos v. Cidra Mfg.*, 145 DPR 746, 749 (1998).

<sup>70</sup> ALBERTO ACEVEDO & MARÍA C. RAMOS, *LEGISLACIÓN SOCIAL DEL TRABAJO COMENTADA* 275 (2005).

<sup>71</sup> *Id.* at 274. *See also*, P.R. LAWS ANN. tit. 1, § 501(b) (2005).

<sup>72</sup> P.R. LAWS ANN. tit. 29, § 146 (2005).

tiffs.<sup>73</sup> Also, it emphasized that the government as an employer is subject to this penalty by virtue of article 13 of Law No. 44.<sup>74</sup>

In order to qualify as an employer under this law, the employers of private and public institutions need to have fifteen employees or more since July 26, 1994 or twenty five employees or more since July 26, 1992.<sup>75</sup> The term *employer* includes the Commonwealth of Puerto Rico as well as its agencies, instrumentalities, and subsidiaries. The municipalities, their agencies and instrumentalities are also included in the definition of employer. These institutions, as defined in section 501(h), are required to carry out reasonable accommodations in the workplace in order to ensure that qualified disabled persons are allowed to work effectively and to the maximum of their productivity, except when the employer is able to prove that such reasonable accommodations would represent an extremely onerous financial burden.<sup>76</sup>

An employee may present a complaint to the Puerto Rico Department of Labor and Human Resources (P.R.D.L.H.R.) which has jurisdiction over private employers and public corporations. He or she may also file a complaint with the local Office of the Advocate for Disabled Persons, which has jurisdiction of all remaining government agencies. In contrast to the ADA, the Plaintiff is not compelled to exhaust all administrative remedies before seeking a judicial redress. The Plaintiff has the choice of seeking direct relief at the judicial level without having to turn to the P.R.D.L.H.R.<sup>77</sup> The United States First Circuit Court of Appeals mentioned in *Ruiz Rivera v. Pfizer Pharmaceuticals*,<sup>78</sup> that Public Law No. 44 and the ADA are very similar. Additionally, it described Law No. 44 as analogous to the ADA. Moreover, it established that Law No. 44 and the ADA are coterminous.<sup>79</sup>

Originally, this law differed from the ADA because it only applied to public and private institutions that received funding from the Puerto Rican government. Nonetheless, this changed when the Legislature amended Law No. 44 with Public Law No. 105 of December 20, 1991<sup>80</sup> to include any private or public institution regardless of whether it received government funding. Therefore, the amendment had the effect of leveling the local law to the ADA.

Slight differences arose in 2004 when Law No. 44 was amended once again to specify that, in Puerto Rico, the law should be interpreted more favorably, as

---

<sup>73</sup> *Guardiola Álvarez v. Dept. de la Familia*, 2009 TSPR 41, at 22, 175 DPR \_\_\_\_ (2009). *See also*, *Rivera Flores v. Compañía ABC H/N/C McGaw of P.R. Inc.*, 138 DPR 1, 5 (1995).

<sup>74</sup> *Guardiola Álvarez*, at 25-26.

<sup>75</sup> P.R. LAWS ANN. tit. 1, § 501(h)(2) (2005).

<sup>76</sup> P.R. LAWS ANN. tit. 1, § 507(a) (2005).

<sup>77</sup> *Rivera Flores*, at 3.

<sup>78</sup> 521 F.3d 76 (1st Cir. 2008).

<sup>79</sup> *Id.* at 87. *See also*, *González v. El Día, Inc.*, 304 F.3d 63, 74 n. 8 (1st Cir. 2002).

<sup>80</sup> P.R. LAWS ANN. tit. 1, § 501(h)(2). *See also*, *Guardiola Álvarez*, at 21.

to benefit persons with disabilities.<sup>81</sup> This clearly differs from the restrictive interpretation the Supreme Court of the United States had ascribed to the ADA. This amendment added article 14 which specifically notes that a liberal non-restrictive interpretation most favorable to the person with a disability should be used by all branches of the government when interpreting this law.<sup>82</sup> In addition, this amendment incorporated article 15 mandating a liberal interpretation of the statutes related to the rights of persons with disabilities to be consistent with the Bill of Rights of the Commonwealth of Puerto Rico<sup>83</sup> and the social responsibility of protecting such rights of persons with disabilities.<sup>84</sup>

The ADAAA encapsulates Law No. 44's expansive view because it expressly rejected and overturned the requirements enunciated by the Supreme Court in the *Sutton v. United Airlines*<sup>85</sup> and *Toyota Manufacturing Kentucky Inc. v. Williams*<sup>86</sup> decisions. This demonstrates that the ADAAA did not bring about any drastic change to Law No. 44, in as much as five years earlier the latter was amended to reject the restrictive interpretations of the courts.

## V. ADAAA: JUDICIAL TREATMENT

Since the amendments officially took effect in January 2009, courts have not issued any significant ruling. At the moment, Plaintiffs have tried to assert their discrimination claims under the ADAAA. Uniformly, the courts have had the same answer to all of them: the legislation is not retroactive because it does not explicitly say so. In *Lytes v. D.C. Water and Sewer Authority*<sup>87</sup> the Court of Appeals for the District of Columbia stated that:

We agree with the Authority's principal point: By delaying the effective date of the ADAA, the Congress clearly indicated the statute would apply only from January 1, 2009 forward. If the Congress intended merely to *clarify* the ADA, then its decision to delay the effective date would make no sense; it would needlessly have left the ADA unclear for the more than three months between enactment of the ADAA on September 25, 2008 and its going into effect on January 1, 2009. Nothing on the face of the statute indicates the Congress intended this peculiar scenario. If, in contrast, the Congress intended the Amendments to have a purely prospective effect, then its decision to delay the effective date of the ADAA makes sense. Indeed, we can imagine no reason for the Congress to

---

<sup>81</sup> P.R. LAWS ANN. tit. 1, §§ 511(a), 511(b) (2008).

<sup>82</sup> P.R. LAWS ANN. tit. 1, § 511(a) (2005).

<sup>83</sup> P.R. CONST. art. II.

<sup>84</sup> P.R. LAWS ANN. tit. 1, § 511(b) (2005).

<sup>85</sup> *Sutton*, at 471.

<sup>86</sup> *Toyota*, at 184.

<sup>87</sup> 572 F.3d 936, 939-942 (D.C. Cir. 2009).

have delayed the effective date other than to give fair warning of the Amendments to affected parties and to protect settled expectations.<sup>88</sup>

Other Circuits have followed *Lytes*, therefore determining the non-retroactivity of the ADAAA.<sup>89</sup> The District Courts have also adopted this practice. Specifically, the case of *Richardson v. Honda Manufacturing of Alabama, LLC* gave the judge the opportunity to evaluate the retroactivity of the act.<sup>90</sup>

Comparable to the analysis surrounding Congress' 1991 amendment to §1981 in *Rivers*, there is no provision within the ADAAA that clearly shows an intent by Congress to make it applicable to *preenactment conduct*. Therefore, this court agrees with *Agro* and holds, based upon the principles outlined in *Rivers*, that it is appropriate to analyze the viability of Richardson's disability claim under the ADA as opposed to the ADAAA.<sup>91</sup>

After reviewing the latest case law regarding the amendments of the ADA, we find that the sole controversy pertaining to the amendments revolves around its applicability on or before January 1, 2009. However, "[e]ven when Congress intends to supersede a rule of law embodied in one of our decisions with what it views as a better rule established in earlier decisions, its intent to reach conduct preceding the *corrective* amendment must clearly appear."<sup>92</sup> We agree with this assertion; without Congress' express retroactive command, the statute applies prospectively.

## CONCLUSIONS

The approval and implementation of the ADAAA has significantly changed the litigation practice of discrimination cases *on the basis of disability*. Now, employers are legitimately wary of the new improved status because of the broadening of the ADA provisions. Beforehand, they had solid Supreme Court precedent that favored a restrictive interpretation of employees' discrimination claims. At the moment, if confronted with an employee alleging a disability and an adverse action because of it, the employer must turn to a thorough analysis of his or her actions. The available defenses will be limited by a broad interpretation of the ADA.

---

<sup>88</sup> *Lytes*, at 940.

<sup>89</sup> See *Fredricksen v. U.P.S., Inc.*, 581 F.3d 516, n.1 (7<sup>th</sup> Cir. 2009), *EEOC v. Agro Distribution LLC*, 555 F.3d 462, n. 8 (5<sup>th</sup> Cir. 2009), *Filkes v. Wal-Mart, Inc.*, 322 F. App'x. 882, n. 1 (11<sup>th</sup> Cir. 2009).

<sup>90</sup> 635 F. Supp. 2d 1261 (N.D. Al. 2009).

<sup>91</sup> *Id.*, at 1272. See also, *Marshall v. Potter*, 634 F. Supp. 2d 66, n. 4 (D.C. 2009); *Fournier v. Payco Foods Corp.*, 611 F. Supp. 2d 120, n. 8 (D.P.R. 2009): "The Court need not concern itself with the ADAAA, however, because the amendments do not apply retroactively."

<sup>92</sup> *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 313 (1994).

On the other hand, employees have greatly benefited from the Amendments Act. After carefully studying the Congressional intent behind the amendments, the pertinent case law seems completely disproportional to what Congress wanted to create back in 1990. Even though the original ADA had countless unanswered issues, it was not meant to be read as a prohibitive piece of law. Today, employees have in their favor a progressive employment statute. One could argue that it was progressive in 1990, an idea we fully support. Nevertheless, since courts misinterpreted the statute and elaborated tests based on such erroneous construction, employees were deprived of ADA's protection. Finally, we now turn to answer the focal point of our study; the amendments were not only necessary, but indeed crucial. Now Rosa Lopez will at least have a possibility of obtaining the promotion or a remedy in court.