AMERICANS WITH DISABILITIES ACT: EMPLOYMENT CLAIMS

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"The HHS Contraception Mandate and the Legal Challenges." Presented to the St. Basil Society of the University of Texas Southwestern Medical School. (March 21, 2012).

Appeared on the "Good News" radio show on KATH 910 AM to discuss the HHS contraception mandate and the lawsuits challenging it. (February 27, 2012).

"Religion in Schools: Morgan v. Swanson and Hosanna Tabor." Presented to the St. Thomas More Society (CLE). (February 2, 2012).

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"Hot Topics in Civil Rights, Local Government and Employment Law." Presented at the Ninth Annual Texas Legal Update (CLE). (November 18, 2010).

"Hot Topics in Employment Law." Presented at the Eighth Annual Texas Legal Update (CLE). (November 12, 2009).

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AMERICANS WITH DISABILITIES ACT: EMPLOYMENT CLAIMS

I. INTRODUCTION

The purpose of this paper is to explain recent and significant changes to the Americans with Disabilities Act ("ADA") which Congress implemented through the ADA Amendments Act of 2008 ("ADAAA"), as well as to review recent case law applying the ADAAA. The paper begins with a discussion of the ADA, the ADAAA, the recently completed EEOC Regulations applicable to the ADAAA, and concludes with a review of recent Texas case law and circuit court case law applying the ADAAA.

II. THE AMERICANS WITH DISABILITIES ACT

A. The ADA

The Americans with Disabilities Act ("ADA") went into effect in 1990 and prohibits private employers with more than 15 employees, as well as state and local government employers, from discriminating against qualified individuals as to hiring, job duties, compensation, training, advancement, or discharge, on the basis of the individual's perceived or actual disability. 42 U.S.C. §12101 et seq.

For the purposes of the ADA, a "disability" means: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such an impairment; or 3) being regarded as having such an impairment. Section 12102(1). A "qualified individual" is one who, with or without reasonable accommodation, can perform the essential functions of the employment position sought or held. Section 12111(8).

Generally, the ADA prohibits an employer or potential employer of a qualified individual with a disability from limiting an applicant's or employee's job opportunities or benefits on the basis of disability, using qualification standards or tests to screen out an individual with a disability, using employment tests in a manner that does not permit a disabled individual to demonstrate his full abilities, and failing to make reasonable accommodations for an otherwise qualified individual with a disability, unless such accommodations would impose an undue hardship on the employer's business operation. Section 12112(a) and (b).

A "reasonable accommodation" could include physical modifications to an existing facility, modified work schedules, or modification of equipment, training materials, policies or examinations. Section 12111(9). An "undue hardship" arises when a requested modification would impose "significant difficulty or expense" on the employer, in light of the nature and cost of the accommodation, the overall financial resources of the facility or employer, and the type of operation of the employer. Section 12111(10).

B. The ADAAA

The Americans with Disabilities Act Amendments Act of 2008 ("ADAAA") became effective on January 1, 2009. 42 U.S.C. §12101 et seq. Congress passed the ADAAA due to its belief that the Supreme Court had improperly limited application of the ADA by narrowing the definition of a "disability." EEOC Regulations Appendix §1630.2. The primary purpose of the ADAAA was to make it easier for people with disabilities to obtain protection under the ADA. EEOC Regulations Appendix §1630.1(c).

Although it retained the ADA's definition of the term "disability," the ADAAA expanded the reach of this term by introducing rules of construction explicitly favoring broad coverage of individuals and requiring an expansive definition of the term "substantially limits." Section 121002(4)(A) and (B). In the ADAAA, Congress set forth an extensive list of "major life activities" which, if "substantially limited," would give rise to a disability under the Act. This list includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A "major life activity" also includes the operation of major bodily functions such as the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. Section 12102(2). An impairment which is episodic or in remission will qualify as a disability if, when active, the impairment would substantially limit a major life activity. Section 12102(4)(D).

The ADAAA requires that the determination of whether an impairment "substantially limits" a "major life activity" must be made without considering the ameliorative effects of mitigating measures such as medication, prosthetics, hearing aids, mobility devices, other equipment, or the use of assistive technology. Section 12102(4)(E). However, the mitigating effects of eye glasses or contact lenses will be considered in determining whether an individual is substantially impaired with regard to the major life activity of seeing. Section 12102(4)(E)(ii).

An individual can seek recovery under the ADAAA even without an impairment that substantially limits a major life activity. Under the "regarded as impaired" prong of the ADAAA definition of disability, an individual can seek recovery if he can demonstrate that he has been subjected to an action prohibited by the ADA because of a perceived impairment whether or not the impairment limits or is perceived to limit a major life activity, so long as the

perceived impairment is not transitory and minor. Section 12102(3). A transitory impairment has a duration of six months or less. Section 12102(3)(B).

The ADAAA does not apply retroactively, so any alleged discrimination that took place before January 1, 2009 falls under the prior rules and case law. Case law construing the ADAAA is relatively recent and still developing. *Carmona v. Sw. Airlines Co*., 604 F.3d 848, 857 (5th Cir. 2010).

C. The EEOC Regulations

The final EEOC regulations for the ADAAA were approved on March 25, 2011 and became effective on May 24, 2011.

In these regulations, the EEOC clarified that the ADAAA created a shift in focus for lawsuits brought under the ADA. Pursuant to the regulations, the new focus should be on whether employers have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. Given the broadened definition of disability under the ADAAA, the question of whether an individual meets the definition of disability should not demand extensive analysis. 29 CFR §1630.1(4).

The EEOC points out that although an individual may proceed under any of the three subsections of the "disability" definition, that is, having an actual impairment, having a record of an impairment, or being regarded as having an impairment, the ADA does not require employers to make reasonable accommodations for individuals who are merely regarded as having an impairment. However, an individual claiming disability status based on being regarded as impaired need not demonstrate an impairment which substantially limits a major life activity. Therefore, unless an individual seeks to recover based on an employer's failure to provide reasonable accommodations, it is generally advantageous for an individual to proceed under the "regarded as impaired" prong in order to avoid the necessity of demonstrating substantial impairment of a major life activity. 29 CFR §1630.2(g)(iii).

The EEOC provides a broad definition of "physical or mental impairment" which includes, "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems" as well as any mental or psychological disorders, emotional illness, and learning disabilities. 29 CFR §1630.2(h).

Similarly, the EEOC indicates that the term "major" as applied to "major life activities" is not to be interpreted strictly to create a demanding standard for identifying a disability and should not be determined by reference to whether an activity is of central importance to daily life. 29 CFR §1630.2(i)(2).

Nine rules of construction apply for determining whether an impairment "substantially limits" a major life activity:

1) the term shall be construed broadly in favor of expansive coverage and is not meant to be a demanding standard;
2) the term requires a comparison between the individual and most people in the general population and need not prevent or severely restrict the major life activity for the individual;
3) the question should not demand extensive analysis because the primary questions under the ADAAA should be whether the employer complied with its obligations and whether discrimination occurred, not whether the individual's impairment substantially limited a major life activity;
4) the assessment must be done on an individualized basis but must apply a lower standard than previously applied under the ADA;
5) this analysis usually will not require scientific, medical, or statistical analysis;
6) the analysis must be made without consideration of the ameliorative effects of mitigating measures with the exception of regular eyeglasses or contact lenses;
7) an impairment which is episodic or in remission will qualify if it would substantially limit a major life activity when active;
8) an impairment will qualify if it only limits one major life activity;
9) an impairment lasting for less than six months may substantially limit a major life activity.

29 CFR §1630.2(j)(1)(i-ix).

Additionally, the EEOC provided a list of sixteen impairments which, given their inherent nature, will virtually always be found to impose a substantial limitation on a major life activity. These include: deafness; blindness; an intellectual disability (formerly termed mental retardation); partially or completely missing limbs or mobility impairments requiring the use of a wheelchair; autism, cancer, cerebral palsy; diabetes; epilepsy; HIV infection; multiple sclerosis; muscular dystrophy; major depressive disorder; bipolar disorder; post-traumatic stress disorder; obsessive compulsive disorder; and schizophrenia. 29 CFR §1630.2(j)(3)(iii).

According to the EEOC, an individual has a record of a disability if he has a history of or has been misclassified as having an impairment that substantially limits a major life activity. 29 CFR

§1630.2 (k)(1). A person with a record of impairment may require reasonable accommodations relating to his past disability, such as scheduling modifications for follow-up medical appointments for a prior impairment. 29 CFR §1630.2 (k)(3).

D. The Appendix to the EEOC Regulations

The Appendix to the regulations explains important aspects of the legislative history behind the ADA and the ADAAA. Congress patterned the ADA definition of a disability after the definition of "handicap" found in the Rehabilitation Act of 1973 and intended that the relevant case law developed under the Rehabilitation Act would apply to the term "disability" used in the ADA. However, the EEOC's 1991 regulations and several Supreme Court cases sharply narrowed the scope of protection available under the ADA by restricting the meaning of the terms "substantially limits," "major life activity," and "regarded as disabled." Congress amended the ADA in order to broaden the scope of its protections.

Unless expressly stated otherwise, the standards applied in the ADA are intended to provide at least as much protection as the standards applied under the Rehabilitation Act of 1973. Appendix §1630.1(c).

Unless a claimant is seeking redress for failure to provide an accommodation, the claimant is expected to use the "regarded as disabled" prong of the definition of disability, because this removes the need for the claimant to prove the severity of his impairment. Appendix §1630.2.

The following do not constitute "impairments" within the meaning of the ADA: physical characteristics such as left-handedness, height, weight, muscle tone which are within the "normal range and are not the result of a physiological disorder; characteristic predisposition to illness or disease; pregnancy; personality traits such as poor judgment or a quick temper when these do not result from a mental or psychological disorder; and environmental, cultural, or economic disadvantages. Appendix §1630.2.

In determining whether an individual is "substantially limited in a major life activity" due to an impairment, the court must compare the individual's ability to perform the major life activity with that of most people in the general population. Thus, the comparison group is the general population, not similarly situated people. For example, the court should compare an amputee's ability to walk with that of the general population, not against other amputees. Appendix §1630.2.

An individual with an impairment that substantially limits the function of a body system organ need not also show substantial limitation in use of that organ or body system. For example, a person with lung cancer need not show substantial limitation in breathing because his lung cancer itself substantially limits the person's normal cell growth. Appendix §1630.2.

An impairment which lasts less than six months may qualify as a disability under the actual impairment prong of the definition as long as it is sufficiently severe, however, the duration of the impairment will affect the determination of whether it substantially limits a major life activity. Appendix §1630.2.

Under the ADAAA, most previous cases that identified the ability to work as the major life activity substantially limited by an individual's impairment are now easier to analyze because an impairment that limits an individual's ability to work will almost always also limit a major bodily function. The ADAAA therefore largely renders moot the complicated analysis of questions of whether the ability to work is a major life activity. Appendix §1630.2.

E. Recent Texas Cases Applying the ADAAA

1. Employing a Broad Definition of Disability

a. Mercer v. Arbor E&T, No. 4:11-cv-3600, 2012 U.S. Dist. LEXIS 57314 (S.D. TX. April 21, 2012).

Plaintiff, who suffered from a severe anxiety disorder which manifested itself intermittently in panic attacks, memory loss, and difficulty concentrating and breathing, claimed disability discrimination but failed to properly plead facts establishing that she fell within the definition of a person with a disability under the ADA. Her claim was dismissed without prejudice, and she was given an opportunity to amend her complaint to comply with the ADA. Plaintiff filed an amended complaint claiming that she falls within all three prongs of the ADA's definition of disability due to her severe anxiety disorder.

b. *Sechler v. Modular Space Corp.*, No. 4:10-CV-5177, 2012 U.S. Dist. LEXIS 54478 (S.D. TX., April 18, 2012).

An alcoholic employee was terminated after he refused to take a for-cause drug and alcohol screening test pursuant to the company's policy and to the return-to-work agreement he signed after having taken leave in order to seek treatment for alcohol abuse.

The court found Plaintiff's testimony that he had difficulty thinking, concentrating, communicating, and interacting sufficient to create a genuine issue of material fact as to whether he had a disability under the ADA, even absent testimony comparing Plaintiff's difficulties in these areas from those of the general public. However, the court found that because Modular had a legitimate reason for terminating Sechler, and Sechler did not establish that Modular's reason was pretextual, Modular did not violate the ADA. The court granted Modular's motion for summary judgment.

Note, however, that the court seems to have misstated the standard of proof under the ADAAA concerning the "regarded as impaired" prong of the definition of disability. The court stated that 42 U.S.C. §12102(1) requires proof that a plaintiff was regarded as having a physical or mental impairment that substantially limits one or more major life activities. *Id*. at *28. In fact, the ADA now states that an individual meets the "regarded as impaired" prong, "whether or not the impairment limits or is perceived to limit a major life activity." 42 U.S.C. §12102(3)(A); *see also*, 29 CFR §1630.2(g)(iii).

In this case the court appears to have implemented congressional intent that lawyers and judges focus on the question of whether prohibited discrimination took place rather than expending significant resources on the threshold question of whether a claimant is disabled.

c. *Holland v. Shinseki*, 25 Am. Disabilities Cas. (BNA) 1869, 2012 U.S. Dist. LEXIS 6788 (N.D. TX. January 18, 2012).

A nurse developed symptoms of major depression, panic, anxiety, and a stress disorder after confrontations with her supervisor. After taking medical leave, Holland requested accommodations in the workplace in response to her difficulties with anxiety and insomnia. Because the Holland was a federal employee, the court applied ADA analysis to a claim under the Rehabilitation Act.

Although most of the incidents occurred prior to the ADAAA's effective date, the court applied the ADAAA's broadened standard in order to find that a genuine issue of material fact existed as to whether Holland suffered from a disability. In this case, evidence from Holland's doctor and Holland's own deposition testimony to the effect that she could not sleep for more than one hour a night even when taking medication was sufficient to defeat summary judgment on the issue of disability. Note, however, that Holland's deposition testimony that she suffered a loss of concentration was not sufficient to establish that she suffered from a disability because she offered no evidence comparing her ability to focus or concentrate with that of the general public. *Id*. at *21.

Ultimately, the court found that Holland failed to demonstrate that her employer failed to reasonably accommodate her needs and granted the employers motion for summary judgment.

d. *Hardin v. Christus Health*, No. 1:10-CV-596, 2012 U.S. Dist. LEXIS 31444 (E.D. TX., January 6, 2012).

A nurse who was diagnosed with Hepatitis C presented his employer with a letter from his doctor stating that he should be permitted to use marijuana medically. After Hardin admitted to having smoked marijuana the previous weekend and failed a drug screening test, Christus terminated his employment. The court granted Christus' motion for summary judgment.

Hardin testified that his Hepatitis C, which had gone into and out of remission since 1993, caused nausea, dumping syndrome, and malaise and that he requested sick leave when these symptoms became aggravated during acute episodes. The court found that this evidence at the very least established a genuine fact question as to whether Hardin had a disability within the meaning of the ADA.

The court also found, however, that Hardin was not entitled to recover under the ADA because he had admitted to illegal drug use close enough in time to his dismissal from Christus. The court noted that the ADA expressly exempts current illegal drug users from the definition of a "qualified individual" when an employer acts on the basis of such drug use. *Id*. at *17. Additionally, Christus identified a legitimate, non-discriminatory reason for terminating Hardin due to his illegal drug use and the note from his doctor indicating that his illegal drug use would be likely to continue.

e. *Molina v. DSI Renal Inc.*, No. EP-11-CA-28-FM, 2011 U.S. Dist. LEXIS 139889 (W.D. TX., December 5, 2011).

A medical technician, with recurring back problems causing severe pain and restricting her ability to lift weights, was placed on involuntary medical leave and terminated when that leave expired. The court applied ADA analysis to this TCHRA case and denied DSI's motions for summary judgment, except as to Molina's failure to accommodate claims. In denying the motions, the court found that Molina had raised a fact question under ADAAA analysis as to whether she suffered a disability.

The court noted that DSI's argument that Molina was not disabled because she was able to function while experiencing pain was not availing under the ADAAA. In determining whether a claimant is substantially limited in a major life activity under the ADAAA, the focus should not be on the outcomes the claimant can achieve, but rather on a comparison of the manner or condition under which the claimant performs the major life activity with the manner or condition under which the general public performs that activity. Therefore, the fact that a claimant has learned to work through her pain does not preclude her from being considered disabled under the ADAAA. *Id*. at *19.

The court also discussed whether Molina posed a safety risk to herself or others due to her inability to lift objects beyond a certain weight. The court denied summary judgment on this point and noted that in the Fifth Circuit it is currently unclear which party bears the burden of proof regarding whether an employee's

disability poses a danger to herself or others. Id. at *36, n. 145 (*citing Rizzo v. Children's World Learning Ctrs., Inc*., 213 F.3d 209, 213 n.4 (5th Cir. 2000)).

f. *Garner v. Chevron Phillips Chem. Co.*, No. H-10-138, 2011 U.S. Dist. LEXIS 136962 (S.D. TX., November 29, 2011).

A lab technician who suffered from panic disorder and agoraphobia made out a prima facie case of disability discrimination under both the ADA and the ADAAA when she was terminated after informing her employer of a worsening of her symptoms.

The court granted Chevron's motion for summary judgment as to Garner's failure to accommodate claim because she had never requested accommodations.

Because some of the incidents forming the bases of Garner's claims occurred before the effective date of the ADAAA, the court provides a valuable review of the changes engendered by the ADAAA, demonstrating how their analysis would differ under the ADA and under the ADAAA. Note, however, that for purposes of its motion for summary judgment, Chevron conceded that Garner had a disability, so the ADA and the ADAAA's different analyses of the term "disability" did not impact the court's decision in this case.

g. *Carbaugh v. Unisoft Int'l, Inc.*, No. H-10-0670, 2011 U.S. Dist. LEXIS 131551 (S.D. TX., November 15, 2011).

A software design consultant who suffered from relapsing remitting multiple sclerosis was unable to make out a prima facie case of disability discrimination under the ADA or under TCHRA because he could not prove that he was terminated due to his disability and because he presented no evidence of having requested accommodations for his disability.

Unisoft argued, under pre-ADAAA case law specifically including cases involving individuals suffering from MS, that Carbaugh's MS did not qualify as a disability because Carbaugh did not show that he suffered substantial limitations in a major life activity. The court rejected Unisoft's argument, noting that the pre-ADAAA cases Unisoft cited carry no precedential weight with the respect to whether Carbaugh met the ADAAA definition of disabled. *Id*. at *23. Instead, the court found that Carbaugh's evidence concerning the effect of his MS when it was active was sufficient to raise a fact issue as to whether he was disabled within the meaning of the ADA. *Id*. at *24. The court also noted that the Fifth Circuit has found a plaintiff's own description of the symptoms he suffers to be sufficient to raise a genuine issue of material fact for trial as to whether he is disabled under the ADA. Id. at *25 (*citing Cutrera v. Bd. of Supervisors of Louisiana State Univ*., 429 F3d 108, 112 (5th Cir. 2005)).

The court acknowledged that the law governing claims under the ADA and the TCHRA is identical. *Id*. at *8.

h. Meinelt v. P.F. Chang's China Bistro, Inc., 787 F. Supp. 2d 643 (S.D. TX. 2011).

A restaurant manager who was terminated three days after telling his supervisor that he needed time off for surgery to remove a brain tumor survived P.F. Chang's motion for summary judgment.

P.F. Chang's argued that Meinelt's brain tumor could not provide the basis for an ADA claim because it did not substantially limit a major life activity. The court rejected P.F. Chang's arguments in reliance on pre-ADAAA case law, explaining that under the ADAAA's more expansive definition of a disability, a "major life activity" includes the operation of a major bodily function, including normal cell growth and brain functions. *Id*. at 651.

i. Norton v. Assisted Living Concepts, Inc., 786 F.Supp. 2d 1173 (E.D. TX. 2011).

A sales manager who was fired a month after returning to work following medical leave for surgery to remove a cancerous tumor on his kidney brought suit against his former employer charging disability discrimination.

ALC argued that Norton did not have a disability within the meaning of the ADA. After reviewing the changes the ADAAA implemented, specifically, the expansion of the definition of disability and the shift in focus from the question of whether a claimant is disabled to whether the employer complied with its obligations, the court denied ALC's motion. The court found that Norton's renal cancer is capable of qualifying as a disability under the ADA because, when active, it substantially limits the major life activity of normal cell growth. The fact that Norton may have been in remission when he was fired made no difference as to whether he was disabled under the ADA. The court noted further that the EEOC regulations recognize that cancer of any sort is an impairment which, in virtually all cases will result in a finding of coverage under the actual disability prong of the ADA. *Id*. at 1185.

2. Applying the "Regarded as Impaired" Prong

a. *Dube v. Texas Health and Human Serv. Comm'n*, 25 Am. Disabilities Cas. (BNA) 326, 2011 U.S. Dist. LEXIS 99680 (W.D. TX., September 6, 2011).

The court denied Defendant's motion to dismiss Dube's discrimination disability claim in which she argued that she was terminated due to HHSC having regarded her as disabled.

Relying on pre-ADAAA case law, HHSC argued that Dube failed to state a claim because she only alleged that she had a temporary condition rather than a

disability. The court rejected this argument, explaining that although it may be a defense to a charge of discrimination by an individual claiming coverage under the ADAAA's "regarded as impaired" prong of the definition of disability that the impairment is transitory and minor, HHSC bore the burden of proving that Dube's impairment was transitory and minor. *Id*. at *11, *12. It was appropriate to grant a motion to dismiss under Rule 12(b)(6) on this basis only if it was apparent from the face of the complaint that Plaintiff's impairment lasted less than six months or was otherwise transitory or minor. *Id*. at *12.

F. Recent Circuit Court Case Applying the ADAAA

Because the provisions of the ADAAA do not apply retroactively, most disability discrimination cases being hear by the circuit courts are still applying pre-ADAAA case law to situations involving discrimination alleged to have occurred before the ADAAA's effective date. However, the Tenth Circuit recently heard an ADAAA case.

a. *Allen v. Southcrest Hosp.*, 455 Fed. Appx. 827 (10th Cir. 2011).

A medical technician who suffered from intermittent migraines when working for a particular doctor sought recovery for failure to accommodate and for her employer's refusal to permit Allen to rescind her resignation. The court upheld the district court's grant of summary judgment for Southcrest finding that Allen had not met her burden of proof on the question of whether she was disabled under the ADA.

The court found that it was uncontested that Allen's migraines constituted an impairment under the ADA, but it found that Allen did not demonstrate that this impairment substantially limited her as to a major life activity. Allen claimed that she was substantially limited in the major life activities of caring for herself and of working. The court held that although Allen presented evidence to show that Allen's migraine medication interfered with her ability to care for herself in the evenings, Allen failed to meet her burden to show that she was substantially limited in caring for herself as compared to the average person in the general population. *Id*. at 832-833.

Allen argued that as to the question of whether she was substantially limited in the major life activity of working, the ADAAA permitted her to meet this standard by demonstrating that she was substantially limited in her ability to perform a single job. She acknowledged that, prior to their 2011 revision for the ADAAA, the EEOC regulations for the ADA provided that, with respect to the major life activity of working, the term "substantially limits" means an individual is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities, and that the regulations formerly stated that the inability to perform a single, particular job does not constitute a substantial limitation. However, Allen argued that because the EEOC regulations for the ADAAA eliminated that language, she was now able to meet her burden on the basis of evidence showing a substantial limitation in her ability to perform a single job. *Id*. at 834-835.

The court disagreed, noting that in their updated regulations published in 2011, the EEOC explained that it had removed that language in order to be consistent with its treatment of other categories of major life activities. Further, the court noted that the EEOC, in its Interpretive Guidance explained that the "broad class of jobs" restriction remains in place even under the ADAAA in determining whether an individual is substantially limited in the major life activity of working. *Id*. at 835.

III. CONCLUSION

The ADAAA has already resulted in an increase in disability discrimination claims and will likely continue to do so. Though the ADAAA's broadened definition of disability will likely result in fewer cases being disposed of through summary judgment or motions to dismiss, not all ADA cases need to go to trial. Federal courts in Texas have been willing to grant summary judgment when employers demonstrate that they have met their obligations under the ADA. These early cases applying the ADAAA show that Congress has succeeded in its intention to shift the focus of ADA lawsuits from the issue of whether an individual is disabled under the law to the issue of whether the covered entity complied with the law in its treatment of the individual.