

November 2008 - Article Published in Lifestyles Magazine

## **New Law Provides for Significant Expansion of The Americans With Disabilities Act**

by: Joette S. Doran, J.D.

On September 25, 2008, the President Bush signed the Americans with Disabilities Act (ADA) Amendments Act of 2008 ("Act") which becomes effective January 1, 2009. The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of Equal Employment Opportunities Commission's (EEOC) ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act directs EEOC to revise that portion of its regulations defining the term "substantially limits and expands the definition of "major life activities" by including two non-exhaustive lists; the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating); the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions"). The amendments also provide that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability and clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. The new amendments provide that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor. Significantly, the Act emphasizes that the definition of "disability" should be interpreted broadly. For additional employment information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ALL ILLINOIS FEDERAL COURTS AND IS A MEMBER OF THE FEDERAL TRIAL BAR. SHE IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION, A PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN AND A MEMBER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION.