



Improve Employment Rights of Individuals with Disabilities

Goal: The Texas law against employment discrimination should protect the same people with disabilities that the federal Americans with Disabilities Act (ADA) protect.

According to the U.S. Census Bureau, 2006 American Community Survey, There are 456,723 people in the workforce who are disabled.

Problem: Following the lead of the U.S. Supreme Court, many courts interpreted the ADA's definition of disability very narrowly, and refused to recognize as disabilities conditions such as amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, and cancer. Because the state law definition of disability is substantially the same as that in the ADA, most Texas courts followed those decisions and reached similar results, thereby excluding many people with disabilities from the protection of the state law against disability discrimination in employment, namely Chapter 21 of the Texas Labor Code.

Recommendation: The DPC recommends that the Texas Legislature needs to conform Texas law to the recent changes in the ADA Amendments Act.

Specific Recommendations for Change:

- Texas law needs to conform to the ADA as it has been clarified with bipartisan consensus, passed by unanimous consent, and having been signed into law by President George W. Bush;
- Texas law needs to continue to "provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments," as set out in Tex. Labor Code § 21.001(3);
- Texas law needs to conform to the federal consensus among stakeholders in both the disability and the business communities, including, for example, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society for Human Resource Management, the Human Resource Policy Association, the American Diabetes Association, the Epilepsy Foundation, and the National Council of Independent Living Centers, who described the ADA Amendments Act as "an appropriate balance between the needs of individuals with disabilities and those of employers."
- Texans needs to be protected from discrimination on the basis of such conditions as cancer, epilepsy, diabetes, intellectual disabilities, amputations, multiple sclerosis, and muscular dystrophy;
- Employers and employees needs to have a single legal standard that governs their conduct (rather than facing differing standards under state and federal law); and
- The Texas Workforce Commission needs to have a single legal standard applicable to their investigation of charges of disability discrimination (which among other things will simplify their continued operation as the state "fair employment practices" agency).

Improve Employment Rights of Individuals with Disabilities (continued)

Background: For many years the Texas law against employment discrimination, Chapter 21 of the Texas Labor Code, has defined disability in the same way as the term is defined in the ADA.¹ It has also been the policy of this state that Chapter 21 generally conform to ADA standards. As a result, Texas courts have for the most part followed federal law in interpreting Chapter 21.²

The problem arose when federal courts began deviating from past precedent and interpreting the definition of disability very narrowly. For example, in the *Sutton* case,³ the court held that disability must be assessed in light of the ameliorative effects of “mitigating measures,” which excluded from the ADA’s protections many people who use medicine to limit the effects of otherwise serious conditions like epilepsy, diabetes, etc.⁴ In the *Toyota Motor* case,⁵ the court held that the ADA had to be “interpreted strictly to create a demanding standard for qualifying as disabled,” and that in order to have a disability, an individual must have an impairment that prevents or “severely restricts” the individual from doing activities that are of “central importance to most people’s daily lives.”

These cases eliminated protection for many individuals whom Congress intended to protect, and as a result, lower courts have incorrectly found that people with a range of substantially limiting impairments are not people with disabilities.⁶ Because as described above, Texas courts have historically conformed state law to the ADA, this has resulted in the same problem being carried forward under state law.⁷

Justification: The United States Congress clearly recognized the severe problems with the way courts were interpreting the ADA, and adopted a carefully measured response in the ADA Amendments of 2008. Congress passed this law with bipartisan, indeed unanimous, consent last fall. Moreover, the ADA Amendments Act was the product of extensive bipartisan effort by stakeholders in both the disability and the business community, and it largely reflects a bipartisan consensus. On September 25, 2008, President George W. Bush signed the ADA Amendments Act into law, stating that the original ADA was “instrumental in allowing individuals with disabilities to fully participate in our economy and society,” and that his administration supported this effort “to enhance its protections.”

As Texas courts followed the lead of federal courts in creating the problem, the Texas Legislature should follow the lead of Congress in remedying it. Texas employment-discrimination laws need to conform with the federal ADA Amendments Act of 2008.

As the bipartisan leaders in the U.S. Senate wrote, the “ADA Amendments 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 despite the limitations imposed by their disabilities, are able to participate to the fullest possible extent in all facets of society, including the workplace.”

¹ Compare Tex. Labor Code § 21.002(6) with 42 U.S.C. § 12102(1) (ADA).

² See, e.g., *Quantum Chemical Corp. v. Toennies*, 47 S.W.3d 473, 476 (Tex. 2001) (“analogous federal statutes and the cases interpreting them guide our reading of the TCHRA”).

³ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

⁴ See, e.g., *McClure v. General Motors Corp.*, 75 Fed. Appx. 983 (5th Cir. 2003) (finding, after *Sutton*, that muscular dystrophy was not a disability); *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002) (in light of *Sutton*, person with diabetes who used insulin did not have a disability); *Todd v. Academy Corp.*, 57 F. Supp. 2d 448 (S.D. Tex. 1999) (finding that before *Sutton* “epilepsy would, without question, be considered a [disability],” but not afterwards).

⁵ *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002).

⁶ 42 U.S.C. § 12101 (Note). For examples of some of the case law explicitly rejected in the legislative history surrounding the ADA Amendments Act, see, e.g., *McClure*, *supra*, (muscular dystrophy not a disability); *Orr*, *supra* (insulin-treated diabetes not a disability); *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874 (11th Cir. 2007) (person diagnosed with “mental retardation” did not have a disability); *Pimental v. Dartmouth-Hitchcock Clinic*, 236 F. Supp. 2d 177 (D.N.H. 2002) (breast cancer not a disability).

⁷ See, e.g., *Thomann v. Lakes Regional MHMR Center*, 162 S.W.3d 788, 796 (Tex. App.—Dallas 2005, no writ) (“Federal and Texas courts have interpreted ‘substantially limits’ as ‘a demanding standard for qualifying as disabled.’”).