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Legislative Updates

Shiwali Patel

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LEGISLATIVE UPDATES

By Shiwali Patel

S. 3406 “ADA Amendments Act of 2008” Introduced by Senator Thomas Harkin (D-IA)

This Act amends the Americans with Disabilities Act (“ADA”) of 1990 to make it more inclusive by redefining the term *disability*, and defining the phrases “major life activities” and “being regarded as having such an impairment.” It broadly construes disability as an impairment that substantially limits one major life activity, is episodic, or is in remission if it would substantially limit a major life activity when active. Whether an impairment “substantially limits a major life activity” will be determined without regard to how individuals function with mitigating measures, such as medications or hearing aids. Furthermore, this Act prohibits employment discrimination against individuals on the basis of their disability and only allows qualification standards, tests, or other selection criteria for employment that are related to the position and is consistent with the needs of the company.

In introducing this legislation, Congress intended to restore the original goal of the ADA, which has been hampered due to U.S. Supreme Court cases *Sutton v. United Air Lines, Inc.*¹ and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,² both of which have narrowed the scope of protection for persons with disabilities. By reestablishing the original intent of the ADA, the amendments should fulfill its goal of promoting equal opportunity, economic independence, and full participation in American society, particularly in employment.³

Senator Thomas Harkin from Iowa introduced this Act in July 2008 with 77 co-sponsors. In September 2008, the Senate and the House passed the ADA Amendments Act of 2008, and it was signed into law by the President on September 25, 2008.

H.R. 5950 “Immigrant Detainee Basic Medical Care Act of 2008” Introduced by Representative Zoe Lofgren (D-CA)

This Act requires the Secretary of Homeland Security to establish procedures for providing mental and medical health care to all immigrant detainees in the custody of the Department of Homeland Security. These procedures must meet all of the detainees’ various medical needs including primary care, emergency care, chronic care, prenatal care, dental care, eye care, mental health care, medical dietary needs, and other specialized care. The Act also sets forth an administrative appeals process for denials of health care to ensure that the Secretary explains the reasons for the denial and to allow the onsite medical provider and detainee to appeal a denial or failure to provide health care.

Supporters of the bill have described it as long overdue given the many deaths of immigrants in detention facilities, and the many other detainees who were not provided proper care while in custody. In the past ten years, the use of detention facilities for holding undocumented immigrants has skyrocketed from a daily immigration detention capacity of 8,279 in 1996 to

a daily average of 33,000 detainees in 2007.⁴ Instead of providing better health care, officials have been slow in reacting and defensive about criticisms of their inadequate services. Yet, it is hard to ignore the eighty-three immigrants who died in the last five years and the many others who have suffered because a loved one was denied basic care.⁵

Representative Zoe Lofgren from California introduced the Immigrant Detainee Basic Medical Care Act of 2008 with twenty-two co-sponsors.

S. 1315 Title IV “Veteran’s Benefits Enhancement Act of 2007 Filipino WW2 Veteran’s Matters” Introduced by Senator Daniel Akaka (D-HI)

Title IV of this Act honors Filipino and Filipino-American World War II veterans by qualifying them for veteran’s benefits through the United States Department of Veterans Affairs. This Act also entitles children of Filipino and Filipino-American veterans to the same educational assistance as children of other veterans. In 1941, when President Franklin Roosevelt conscripted Filipino men and boys into the U.S. Army, he promised them full U.S. veteran benefits. After the war ended however, U.S. Congress went back on the promise, thereby disqualifying many Filipino veterans from benefits that were promised to them.⁶ In an effort to rectify the situation, this Act will reward more than 18,000 Filipinos for their service to the United States during World War II, through benefits and other financial awards.⁷

Senator Daniel Akaka from Hawaii introduced this Act in May 2007 and it has passed both in the Senate and the House.

H.R. 3686 “To Prohibit Employment Discrimination Based on Gender Identity” Introduced by Representative Barney Frank (D-MA)

This Act purports to eliminate employment discrimination on the basis of actual or perceived gender identity and allows individuals to bring disparate treatment claims to remedy discrimination. Under this Act, employers cannot refuse to hire, discharge, or discriminate against an individual with respect to benefits and conditions of employment because of their actual or perceived gender identity. The Act applies to employers’ enforcements of rules and policies, sexual harassment, access to facilities that are consistent with the employee’s gender identity, construction of new or additional facilities, and dress and grooming standards. It authorizes the Equal Employment Opportunity Commission, the Librarian of Congress, the Attorney General, and United States courts the same enforcement powers as they have under the Civil Rights Act of 1964, the Government Employees Act of 1991, and other specified laws.

Advocates state that employees risk being discriminatorily dismissed regardless of their qualifications or prior history when

disclosing their transgender status or when attempting to transition while working.⁸ Though many states and employers have adopted laws and policies banning workplace discrimination based on gender identity, these laws are inadequate to remedy discrimination in jurisdictions without protections for workers who are fired or harassed because of their gender identity.⁹ Title VII of the Civil Rights Act also does not provide a sufficient remedy for transgender workers. Although many civil rights advocates support the view that discrimination against someone for changing their sex is sex discrimination qualifying for Title VII protection, most courts have rejected that view.¹⁰ Therefore, H.R. 3686 seeks to remedy these shortcomings in the law through finally legislating against employment discrimination based on gender identity.

Representative Barney Frank from Massachusetts introduced this Act in September 2007 and it has yet to be scheduled for debate or a vote in the House and the Senate.

S. 3245 “Justice Integrity Act of 2008” Introduced by Senator Joe Biden (D-DE)

The purpose of this Act is to address racial and ethnic disparities in the criminal process, including subconscious bias

that influences decisions to criminalize persons based on race. The Act creates a pilot program in ten United States Districts to promote fairness in the criminal justice system. Under this Act, a United States attorney is designated to each District to implement a pilot program with an advisory group of judges, prosecutors, defense attorneys and other members of the criminal justice system. Each group would collect data on the race and ethnicity of defendants in each stage of the criminal justice process to determine the cause of the racial disparity. Essentially, this Act requires United States attorneys to oversee the criminal justice system in an attempt to reduce the racial and ethnic disparities that pervade the system.

Studies and reports show that extreme racial disparities in all processes of the criminal justice system exist, including arrests, charges, plea bargains, jury selection, convictions, and sentencing.¹¹ In prisons, racial minorities comprise two-thirds of persons convicted by state and federal courts.¹² Such inequality has decreased public trust in the criminal justice system. According to Senator Joe Biden, who introduced the Act, the Justice Integrity Act will ensure equal protection of the laws by addressing the subtle forms of racism that continue to plague the system.

Senator Joe Biden from Delaware introduced the Justice Integrity Act of 2008 in July 2008 with five co-sponsors.

ENDNOTES

¹ See 527 U.S. 471, 493 (1999) (holding that whether an impairment substantially limits a major life activity will be determined by the ameliorative effects of mitigating measures).

² See 534 U.S. 184, 197 (2002) (holding that ‘substantially’ and ‘major’ under the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and to be substantially limited in performing a major life activity “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”).

³ ACLU Praises House Passage of ADA Amendments Act of 2008 (Sept. 17, 2008), <http://www.aclu.org/disability/gen/36823prs20080917/html>.

⁴ *Problems with Immigration Detainee Medical Care: Hearing on the Detainee Basic Medical Care Act of 2008 Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec. & Int’l Law of the H. Comm. on the Judiciary*, 110th Cong. (2008) (testimony of Mary M. McCarthy, Executive Director, National Immigrant Justice Center).

⁵ *Id.*

⁶ See William Mann, *House Passes Bill to Reward Filipino WWII Vets*, WASHINGTON POST, Sept. 23, 2008 (describing that Congress reversed President Roosevelt’s promise to provide full benefits through the Recissions Acts of 1946).

⁷ *Id.*

⁸ *An Examination of Discrimination Against Transgender Americans in the Workplace: Hearing on H.R. 3686 Before the Subcomm. on Health, Educ., Labor and Pensions of the H. Comm. on Educ. and Labor*, 110th Cong. 4 (2008) (statement of Shannon P. Minter, Legal Director, National Center for Lesbian Rights).

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Sen. Joe Biden Introduces Justice Integrity Act, Establishes Program to Study Racial Disparities in the Criminal Justice System*, THE SENTENCING PROJECT, July 10, 2008, <http://www.sentencingproject.org/NewsDetails.aspx?NewsID=659>.

¹² *Id.*

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