The ADA Amendments Act of 2008 (ADAAA) was enacted to broaden the scope of protection intended by the Americans with Disabilities Act (ADA), which had been whittled away by U.S. Supreme Court and lower court rulings. Although no courts have yet ruled under the ADAAA, the 9th Circuit (which covers Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has shed some light on how disabilities will be evaluated under the new law.

The case before the 9th Circuit involved an employee with insulin-dependent type 2 diabetes who was medically restricted from traveling overnight for a project. The company maintained that the ability to travel was an essential job function and gave him three options: 1) find another position; 2) apply for disability benefits; or 3) take early retirement. He chose to apply for disability benefits, and then sued for discrimination under the ADA. The company argued that the employee did not have a disability as defined by the ADA. A trial court agreed.

On appeal, the 9th Circuit ruled that the employee provided sufficient evidence that he was a qualified individual with a disability under the ADA and allowed his claim to proceed. It held that:

1. Eating is a major life activity, according to federal regulations.

2. The employee was substantially limited in eating when compared to the average person because he had to strictly monitor what and when he ate, and failure to follow a strict dietary regimen would aggravate his disease. (Rohr v. Salt River Project Agricultural Improvement and Power District, 9th Cir., No. 06-16527, 2009)

A Look At The ADAAA In Action

While the court reached its decision separate and apart from the ADAAA, it felt a brief discussion of the ADAAA was warranted. Court: The ADAAA clarifies Congress’s intent with respect to the term "disability" in three major ways that could affect whether ADA protections extend to persons with diabetes. These clarifications bolster its conclusions.

1. The law clearly states that eating is a major life activity. (Regulations do not have the force of law and may be disregarded by a court, but under the ADAAA, there is no question that eating is a major life activity.)

2. The law requires a change in the definition of "substantially limits" from "significantly restricted" to a lower standard, which is still to be revised by the Equal Employment Opportunity Commission. (Since the employee met the higher ADA standard, he would surely meet the lower ADAAA one.)
3. The determination of whether an impairment substantially limits a major life activity must be made without regard to mitigating measures. (In spite of his regular use of insulin, the employee was substantially limited in eating because he still had to strictly control his diet. Without using insulin, the employee's blood sugar would rise to dangerous levels.) The 9th Circuit's discussion of the ADAAA shows how significant this law will be going forward. The case could have gone the other way under the ADA, considering that the court could have concluded that eating is not a major life activity, for example. However, there is little doubt that the court would have been required to make a pro-employee ruling had the ADAAA been in effect when the case went to trial.