



## Legal Alert: EEOC Revises ADA Regulations

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On March 25, 2011, the Equal Employment Opportunity Commission (EEOC) issued its final revised Americans with Disabilities Act regulations, implementing the changes brought about by the ADA Amendments Act of 2008 (the ADAAA). The final regulations become effective on May 24, 2011.

Like the ADAAA, the final regulations retain the 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, the final regulation modifies the terms underlying the definition – "impairment," "major life activities," "substantially limits," etc. – in favor of "broad coverage to the maximum extent permitted by the terms of the ADA as amended." Furthermore, the stated goal of the final regulations (like that of the ADAAA) is to limit "extensive analysis" into whether an individual has a disability, and instead focus on whether employers have "complied with their obligations and whether discrimination has occurred."

Several notable changes include:

- Adding the following activities to the non-exhaustive list of "major life activities": eating; sleeping; walking; standing; sitting; reaching; lifting; bending; reading; concentrating; thinking; communicating; and interacting with others;
- In addition to supplementing the non-exhaustive list of "major life activities," the regulation redefines "major life activities" to include the "operation of a major bodily function," such as digestive, neurological, respiratory, cardiovascular, endocrine, musculoskeletal, and reproductive functions, among others.
- The regulation provides nine new "rules of construction" to determine whether an impairment "substantially limits" an individual in a major life activity, including:
  - The regulation explicitly states that the impairment does not have to "prevent" or "significantly or severely restrict" the individual from performing a major life activity. The impairment need only substantially limit "the ability of an individual to perform a major life activity *as compared to most people in the general population*";
- The effects of an impairment lasting or expected to last fewer than six months *can* be substantially limiting under the new regulations;

- With the exception of eyeglasses or contact lenses, mitigating measures such as medication, etc., cannot be considered when making a determination of whether an impairment substantially limits a major life activity.
- The regulation provides, as an example, a list of impairments that will "virtually" always be disabilities, including: deafness; blindness; intellectual disability; missing limbs; autism, cerebral palsy; diabetes; epilepsy; HIV infection; multiple sclerosis, muscular dystrophy; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.
- Although the EEOC had proposed altering the definition of the major life activity of "working," the final regulation keeps the current definition intact (*i.e.*, "class of jobs or broad range of jobs"). The EEOC had also proposed protections for individuals with "symptoms" of an impairment, but that language was not included in the final regulation.

**Employers' Bottom Line:**

As expected, the final regulations further advance the ADAAA's goal of expansive coverage and, as a result, a greater number of employees will be covered under federal disability law. For this reason, and because the ADAAA and final regulations call for courts to focus primarily on whether an employer has met its obligations under the law (rather than whether an employee is disabled), employers should reevaluate their hiring, attendance, and other personnel policies and procedures to ensure compliance with the final regulations.

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