

EEOC Releases Final Regulations Implementing ADAAA

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On March 24, the Equal Employment Opportunity Commission (EEOC) released its final regulations implementing the Americans with Disabilities Amendments Act of 2008 (ADAAA). The ADAAA, which went into effect on January 1, 2009, was intended to expand coverage of the Americans with Disabilities Act and overturn several U.S. Supreme Court decisions that Congress believed interpreted the concept of "disability" too narrowly. The EEOC issued proposed regulations in September, 2009 but postponed issuing final regulations while newly appointed Commissioners reviewed the regulations and considered public comments.

In particular, the new regulations:

- Reaffirm that in determining whether an individual has a substantially limiting impairment, there must be an individualized determination, which may take into account the condition, manner or duration on how the person performs the activity. However, the regulations note that there will be some conditions that almost always will be substantially limiting impairments (e.g., deafness, blindness, missing limbs, epilepsy, diabetes, cancer, HIV infection, and bipolar disorder).
- Include "the operation of a major bodily function" within the definition of major life activities. Among others, major bodily functions include functions of the immune system; special sense organs and skin; normal cell growth; digestive, bowel, bladder brain, respiratory, circulatory, cardiovascular and reproductive functions.
- Provide rules of construction to be applied when determining whether an impairment "substantially limits" a major life activity – including:
 - The term "substantially limits" requires a lower degree of functional limitation than the standard previously applied by the courts . An impairment does not need to prevent or severely or significantly restrict a major life activity to be "substantially limiting." However, not every impairment will constitute a disability.
 - The term "substantially limits" is to be construed broadly in favor of expansive coverage.
 - With one exception ("ordinary eyeglasses or contact lenses"), the determination of whether an impairment substantially limits a major life activity is to be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.
 - An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- Retain certain fundamental ADA concepts, such as when determining whether an individual is substantially limited in the major life activity of "working," the focus is on whether the individual is limited in performing a class or broad range of jobs.

- Make it easier for individuals to establish that they are "regarded as" having a disability. Under the ADAAA, the focus is on how a person has been treated because of a physical or mental impairment (that is not transitory and minor), regardless of whether that impairment is believed to be substantially limiting.
- Clarify that only individuals with an actual disability or those with a record of a disability are entitled to reasonable accommodation.

The new regulations take effect 60 days after publication in the *Federal Register*. The EEOC also released two Question-and-Answer documents about the regulations to aid the public and employers in understanding the law and new regulations. They are available on the EEOC web site at www.eeoc.gov.

As we have previously advised, the ADAAA requires employers to focus more on their reasonable accommodation obligations and to engage in an interactive process with the individual to determine what accommodation is being sought and whether it can be provided. Employers should also train supervisors and managers so that they understand their role in the ADA process, and to help prevent supervisors and managers from creating "regarded as" claims under the Act. We will be providing more guidance on the EEOC's new regulations in upcoming newsletters and at our Human Resources seminar on May 25, 2011. In the mean-time, should you have questions, please contact any member of our Labor and Employment Law Practice Group.