

EEOC Issues Final Regulations Implementing the ADA Amendments Act

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Last week, the Equal Employment Opportunity Commission (EEOC) published its final regulations implementing the Americans with Disabilities Act Amendments Act (ADAAA). The regulations, which will become effective May 24, 2011, enforce the broadened scope of coverage as provided by the ADAA, and offer more specific guidance as to what types of impairments constitute “disabilities” under the law.

The ADAAA, which became effective January 1, 2009, broadens the scope of what is a “disability” under the ADA. Rejecting three Supreme Court decisions that had narrowed the definition of “disability,” the statute provides that (a) an impairment that substantially limits one major life activity need not limit any other major life activities to qualify as a “disability”; (b) an impairment may be episodic or in remission yet qualify as a “disability”; and (c) the determination of whether an impairment substantially limits a major life activity shall not consider the ameliorative effects of mitigating measures such as medication or accommodation. The statute expressly called for the EEOC to revise its regulations to be consistent with the ADAAA.

The EEOC first issued proposed regulations in September 2009. Following an extensive notice and comment period, the EEOC published the final revised regulations on March 25, 2011. The final regulations provide that an impairment does not need to prevent or severely or significantly restrict performance of a major life activity to be considered a disability. Additionally, the regulations set forth a list of principles to guide the determination of whether a person has a disability. Based on these principles, the regulations state that approximately 15 conditions – many of which have multiple permutations – constitute protected disabilities “in virtually all cases.” These conditions include autism, cancer, epilepsy, HIV and psychiatric disorders.

In addition, the regulations extend ADA protection to individuals with temporary impairments, stating that the “effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.” Lastly, the regulations further Congress’s goal of expanding coverage for individuals that are “regarded as” having a disability by changing the legal inquiry away from what the employer believes about the nature of the impairment and instead focusing on how the person was treated by the employer. Under the new regulations, an individual need not prove that the employer believed that the individual’s impairment, or perceived impairment, was a “disability”; the individual need only show that he or she was subject to adverse action based on the impairment or perceived impairment. However, an employer may rebut a claim under this “regarded as” prong by showing that the impairment or perceived impairment is both transitory and minor.

At bottom, both the ADAAA and the regulations make it easier for an employee to claim to be disabled. This has the effect of shifting the focus under the statute to how the employer treats disabled employees, instead of whether an employee is covered by the law.