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EEOC's Recently Published Final Rule Implementing ADA Amendments Act of 2008 Takes Effect on May 24

The Equal Employment Opportunity Commission ("EEOC") recently published its final rule revising the existing Americans with Disabilities Act ("ADA") regulations and interpretive guidance in light of the ADA Amendments Act of 2008 ("ADAAA"). The new regulations take effect on May 24, 2011.

The ADAAA significantly changed the legal landscape under the ADA by overturning a series of court decisions narrowly interpreting the definition of a disability. Its effect has been to expand the reach of the ADA, making it easier for individuals to establish the existence of a covered disability.

As directed by Congress, the EEOC undertook the regulation revision, publishing a Notice of Proposed Rulemaking ("NPRM") in September 2009. We previously summarized those proposed regulations in a labor and employment news e-lert, which can be accessed [here](#).

During the public comment period on the proposed regulations, the EEOC and the Department of Justice's Civil Rights Division held four full-day town hall sessions to obtain input from employers and disability rights organizations. By the close of the public comment period, the EEOC received more than 600 comments. The EEOC then spent more than a year reviewing the comments and revising the regulations to put them in final format.

The full-text of the final rule can be accessed [here](#). The EEOC also published a question and answer guide on the final rule, which can be found [here](#), and a fact sheet on the final regulations, which can be accessed [here](#).

Key Differences Between The Final Rule And The NPRM

In response to the comments it received, the EEOC revised the proposed regulations in several significant respects. Key differences in the final regulations include:

- adding that major bodily functions include the operation of an individual organ within the body;
- deleting certain examples and moving other examples to the appendix;
- delineating nine rules of construction that apply when determining whether an impairment substantially limits an individual in a major life activity;
- retaining the list of impairments that will be consistently found to be disabilities but clarifying that individualized assessments are still required;
- deleting the list of impairments that might be considered to be disabilities as well as the list of impairments that normally would not be considered disabilities;
- deleting the reference to "surgical intervention" as a mitigating measure that generally cannot be considered in determining whether an impairment substantially limits a major life activity;
- adding psychotherapy, behavioral therapy, and physical therapy to the non-exhaustive list of examples of mitigating measures;
- deleting the proposed "type of work" standard and retaining the existing "class of jobs or broad range of jobs" standard for the major life activity of working;
- restoring the concept of "condition, manner, and duration" in determining whether an impairment substantially limits a major life activity, but noting that these concepts may not be needed for impairments that could easily be deemed to be disabilities; and
- deleting the application of "regarded as" to symptoms of an impairment.

Recommendations For Employers

Because of the changes arising from the ADAAA and now the EEOC's final regulations, employers should review and revise, if necessary, their ADA policies, procedures, and practices, especially as they relate to hiring, reasonable accommodation, medical leaves of absence, and workers' compensation. Employers should develop and implement a process for handling reasonable accommodation requests, taking extra caution to ensure legal compliance. Lastly, and most important, employers should train supervisors and managers at all levels on the expanded scope of the ADA, as well as how to recognize and respond to requests for accommodations or other situations where accommodations may be appropriate.

If you have questions regarding the EEOC's final regulations or need assistance in implementing ADA-compliant policies and procedures, you are invited to contact the authors or their colleagues in [Venable's Labor and Employment practice group](#).

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