

EEOC Issues Draft Regulations Interpreting (and Expanding) the ADA
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On June 17, 2009, the EEOC approved a notice of proposed rulemaking under the Americans With Disabilities Amendments Act (“ADAAA”), and sent the proposed regulations to the White House Office of Management and Budget (“OMB”) for review.

President Bush signed the ADA Amendments Act on September 25, 2008. EEOC previously attempted to approve proposed regulations under the ADAAA in December, 2008, at the end of the Bush Administration, but that effort failed. The new proposed regulations are substantially different both from those formerly proposed and from the pre-ADAAA regulations currently in effect. The articulated intent of the new regulations is to carry out what the Commission views as Congressional intent in the ADAAA to shift from legal fights over who is “disabled” to consideration of whether disability discrimination has occurred. The lone Republican Commissioner has said that parts of the proposed regulations have no support in either the ADA or its legislative history.

Some of the proposed changes to existing regulations include: (1) adding to the examples of “major life activities” in the Act additional activities, which include reaching, sitting and interacting with others; (2) adding to the examples of “major bodily functions” in the Act additional functions, which include hemic (blood), lymphatic and musculoskeletal systems. In addition the proposed changes significantly lower the standard for a covered disability with its new definition of “substantially limits.” The proposed regulations state explicitly that in order to be “substantially limiting” an impairment need *not* severely restrict or significantly restrict performance of a major life activity. Further, they state that an impairment that substantially limits one major life activity need not limit other major life activity to be substantially limiting. Thus, they explain, someone with diabetes (whose endocrinal function is substantially limited) need not also show that he or she is substantially limited in eating or any other major life activity.

After clearance by OMB the proposed regulations will be published in the Federal Register for public comment, which could lead to further revision before they become final.

A summary of the proposed regulations forwarded to OMB can be found at:
<http://www.eeoc.gov/abouteeoc/meetings/6-17-09/kuczynski.html>.