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NEW ADAAM REGULATIONS BECOME EFFECTIVE MAY 24, 2011

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On March 25, 2011, the Equal Employment Opportunity Commission ("EEOC") released its long awaited final amended regulations concerning the Americans with Disabilities Act Amendments Act ("ADAAA"). These regulations put into practice the legislative intent of the ADAAA - to move the discussion away from "Does the employee have a disability?" to "Can the employer provide a reasonable accommodation?" Congress enacted the ADAAA on September 25, 2008, in response to several Supreme Court decisions perceived by many to construe the Americans with Disabilities Act's ("ADA") definition of disability too narrowly. The new amended regulations become effective sixty (60) days from their publication, on May 24, 2011.

The principal purpose of the ADAAA and the amended regulations is to lower the burden on individuals seeking to prove that they have a disability. To that end, the ADAAA retains the basic definition of a disability as an impairment that substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment. The ADAAA, however, emphasizes that the term disability must be given broad and liberal interpretation. The new amended regulations contain nine (9) rules of construction drawn from the language of the ADAAA itself and the Congressional record to effectuate this purpose.

In part, these rules of construction instruct that the term disability is to be broadly applied in favor of expansive coverage and is not meant to be a "demanding standard." Further, an impairment is now considered a disability if such impairment substantially limits an individual's ability to perform a major life activity in comparison to the general population's ability to perform the same major life activity. Impairments no longer need to completely restrict the individual from performing a major life activity in order to be classified as substantially limiting. For example, if an employee has a shoulder injury which restricts that employee from lifting more than 15 pounds, that employee is substantially impaired in a major life activity, lifting, and therefore has a disability under the ADAAA even though the employee can lift less than 15 pounds.

Another important rule of construction is likely to affect employers' concerns about impairments of short duration. Previously, impairments of short duration or those that were episodic or intermittent did not classify as disabilities. Now, under the ADAAA and amended regulations, impairments of a short duration as well as chronic conditions are considered disabilities if the impairment substantially limits a major life activity while the person is active. This change alone will significantly increase the number of individuals considered to have a disability. For example, the following episodic impairments will likely classify as disabilities even when in remission: hypertension,



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diabetes, asthma, major depressive disorder, bipolar disorder, and schizophrenia.

Perhaps most importantly, the amended regulations caution employers and the courts from engaging in a nuanced analysis of whether an employee has a disability. Instead, when faced with an individual claiming a disability, the amended regulations instruct that the primary focus should be centered upon whether an individual was discriminated against on the basis of such disability and whether the employer met its obligations under the ADA to accommodate the disability.

While this new analytical framework is not a broad departure from previous regulations and closely tracks the changes to the ADA in the ADAAA, employers should take measures to ensure their policies are in compliance with the new law and regulations and be prepared to discuss accommodations. Examples of typical accommodation requests include physical alterations to workspaces such as larger monitors or height-adjustable desks. Reasonable accommodations also often include modifications to an individual's work schedule or job reassignment.

For additional information on the amended regulations concerning the ADAAA, please contact the author, [Elliot Fitzgerald](#), or [Betsy Davis](#), Head of the [Spotts Fain Employment Law Group](#).
