

Alerts and Updates

EEOC APPROVES PROPOSED ADA REGULATIONS BROADENING DEFINITION OF DISABILITY

September 18, 2009

The long-awaited proposed regulations implementing the ADA Amendments Act of 2008 will soon be published in the *Federal Register*, according to the EEOC in a [news release](#) published this week. The EEOC's Notice of Proposed Rulemaking (NPRM) revises both the existing regulations implementing the Americans with Disabilities Act (ADA), as well as its Interpretive Guidance.

The ADA Amendments Act was signed into law in November 2008 and went into effect on January 1, 2009. The Act widely expands the definition of "disability" and, therefore, the number of individuals entitled to protection under the ADA. The Act directed the EEOC to revise its regulations consistent with Congress' expansive interpretation of "disability."

Although the NPRM has not yet been published, the EEOC released its "[Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008](#)." It reviews some of the significant provisions of the NPRM that implement Congress' efforts to reinstate the "broad scope of protection" of the ADA. For example:

- The NPRM provides a list of major life activities consistent with those set forth in the ADA Amendments Act, specifically: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. However, the NPRM proposes to add three additional major life activities: sitting, reaching and interacting with others.
- The NPRM proposes that the determination of whether an impairment substantially limits a major life activity will be based upon a "common-sense assessment," comparing an individual's ability to perform a specific major life activity with that of most people in the general population.
- The NPRM also identifies a list of impairments that will consistently meet the definition of disability, including diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy and major depression. This categorical approach to determining whether an individual is disabled is likely to be challenged by employer groups in public comments submitted to the EEOC.

- The NPRM also proposes that to be substantially limited in the major life activity of working, an individual must be unable to perform a "type of work," replacing the prior standard of needing to determine whether an individual is substantially limited from working a "class" or "broad range" of jobs.
- Although the expansive definition of disability will apply going forward, the NPRM proposes that the ADA Amendments Act will not apply retroactively, which is likely to be good news for those employers concerned that the standard would be applied to pending litigation.
- Additional provisions in the NPRM address the ADA Amendments Act's approach in: rejecting the consideration of most mitigating measures; finding that episodic conditions and conditions in remission constitute disabilities if they would be substantially limiting when active; and implementing the ADA Amendment Act's revised, expansive definition of "regarded as" disabled.

Once the NPRM is published, interested parties will have 60 days to provide public comment. Duane Morris will be preparing a more detailed analysis of the NPRM, which is expected to be published during the week of September 21, 2009.

For Further Information

If you have any questions about this Alert, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.