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## Employers Must Prepare for the Americans With Disability Act Amended Regulations

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As of May 24, 2011, employers with fifteen or more employees must be prepared to comply with the amended regulations under the Americans with Disabilities Act (ADA). These regulations implement the statutory amendments to Title I of the ADA effective in 2009. Title I prohibits discrimination in the terms and conditions of employment based upon a qualifying disability. The amended regulations address several topics, the two most important of which are the expansion of the terms disability and major life activity under the statute.

Employers should be familiar with the ADA's three part definition of a disability. That is, an impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment. Although prior United States Supreme Court cases (*i.e.*, *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002)) interpreted the statute to require the impairment severely or significantly restricted a major life activity in order to be considered substantially limiting, the new regulations specifically reject either of those requirements. Instead, the EEOC wrote that the substantially limits test is a much lower burden than the prior standard. With the new regulations, the EEOC has provided nine rules of construction to be applied in determining whether an impairment substantially limits a major life activity set forth in 29 C.F.R. 1630.2(j).

The EEOC also modified the regarded as disability category. This category involves

situations where the employer merely perceives the person as having a disability and refuses to hire or takes some other adverse employment action because of that perception. Under the new regulations, the person is not required to show that the employer perceived her to be substantially limited in a major life activity. Instead, subject to a transitory and minor exception, liability can be based upon the adverse employment action taken because of the perceived disability alone. An individual, however, with only a regarded as disability is not entitled to a reasonable accommodation under the statute.

The EEOC has also expressly rejected the *Toyota Motor* standard of major life activity, which required an activity be of central importance to most peoples daily lives. The EEOC has added to the regulations two non-exhaustive lists at 29 C.F.R. 1630.2(i), which are intended to expand the meaning of major life activity. Most disability discrimination cases present unique factual scenarios that often times result in differing results from one jurisdiction to the next and even within the same courthouse. These new lists may provide employers, employees, and the courts some guidance and consistency.

There were several other amendments to the ADAs regulations in addition to those set forth above. All in-house counsel and employees responsible for making employment related decisions ranging from interviewing and hiring decisions, to disciplinary and termination decisions, should be aware of the expansion of the ADA under these new regulations.

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