

# Employer LINC™

LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS

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## ***THEY'RE HERE!*** **EEOC issues final rules for ADA Amendments Act of 2008**

More than two years after the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) became effective, the Equal Employment Opportunity Commission (EEOC) has issued its final regulations regarding its implementation and interpretation of the Act.

### BACKGROUND

Effective January 1, 2009, the ADAAA further expanded the definition of “disability,” thereby offering a much broader scope of protection to workers and significantly altering the landscape of disability law in the employment context.

The EEOC’s final regulations, which implement Congress’ mandate that the definition of “disability” be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA, were published on March 24, 2011, and will become effective on May 24, 2011.

The following are a few highlights from the regulations:

- **Focus shifted away from disabilities, and instead on employer obligations**  
The EEOC’s final regulations make it clear that the new focus of the ADAAA is now on the employer and whether the business or organization complies with its obligations under the law.
- **Disability**  
The new regulations and the ADAAA define the term “disability” as:
  - » A physical or mental impairment that substantially limits one or more major life activities (“actual disability”)
  - » A record of a physical or mental impairment that substantially limited a major life activity (“record of”)
  - » When an individual has an actual or perceived impairment (“regarded as”)

Consistent with the ADAAA’s mandate, however, the regulations implement significant changes regarding how those terms should be interpreted and applied.

- **“Substantial Limitation”**

The term “substantially limits” now requires a lower degree of functional limitation than the former standard. An impairment does not need to prevent, or severely or significantly restrict a major life activity in order to be considered “substantially limiting.” The regulations also provide “rules of construction” regarding whether an individual is substantially limited in a major life activity.

- **Individual Assessments**

The new regulations confirm one of the principle hallmarks of the ADA – that all impairments require an individualized assessment to determine whether they rise to the level of “disability.” This assessment should not require extensive analysis and should not ordinarily require scientific, medical or statistical evidence, especially in certain categories of disabilities identified as impairments that “consistently” qualify as disabilities, such as deafness, blindness, autism, cancer and schizophrenia.

- **“Regarded As”**

By shifting the focus to how a person is treated, as opposed to what the employer may have believed, the regulations make it easier for individuals to establish coverage under the ADAAA under the “regarded as” part of the definition of disability. On the other hand, the regulations clarify that an individual must have an “actual disability” or a “record of disability” in order to qualify for a reasonable accommodation.

## IMPACT ON EMPLOYERS

Even before the final regulations were published, the EEOC received 17 percent more charges pursuant to the ADA in 2010 than in 2009. By explaining and clarifying the ADAAA’s expanded definition of disability, these regulations are likely to result in a continued increase in claims and lawsuits brought against employers.

## WHAT YOU SHOULD DO NOW

The EEOC will undoubtedly actively enforce this new legislation. Employers should continue to assume that most employees with physical or mental impairments are covered under the ADA, and should always err on the side of caution by engaging in a good faith and well-documented interactive accommodation process with impacted employees.

For more information, or if you need further guidance about ADAAA compliance, please contact our Labor & Employment attorneys.

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*This employment law update has been provided for information of clients and friends of McAfee & Taft. It does not provide legal advice, and it is not intended to create a lawyer-client relationship. Readers should not act upon the information in this newsletter without seeking professional counsel.*

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