

EEOC Issues Final Regulations to Americans with Disabilities Act Amendments Act

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New rules lower the threshold, allowing more people to qualify as disabled.

On March 24, 2011, the Equal Employment Opportunity Commission (“EEOC”) issued final regulations implementing the Americans with Disabilities Act Amendments Act (“ADAAA”). The ADAAA, which became effective January 1, 2009, rejected a series of Supreme Court decisions that had narrowly construed the term “disability.” Although the ADAAA did not redefine the meaning of disability, it expanded the number of people who could qualify as being disabled by, among other things, lowering the threshold for establishing that an impairment “substantially limits” a major life activity.

The EEOC regulations confirm that the purpose of the ADAAA is “to make it easier for people with disabilities to obtain protection under the ADA.” To this end, the definition of “disability” is to be “construed broadly in favor of expansive coverage,” and “[t]he question of whether an individual meets the definition of disability ... should not demand extensive analysis.” The key concepts are:

A new approach to the concept of “substantially limits.” In a marked departure from prior case law, which narrowly interpreted the ADA, the regulations provide that “[a]n impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.” In assessing whether an impairment substantially limits a major life activity, not only can episodic impairments count as disabilities, but mitigating measures other than eyeglasses and contact lenses cannot be taken into account.

Certain conditions trigger the status of disability in “virtually all cases.” Generally, an individualized assessment is required to determine whether an impairment substantially limits a major life activity. However, the regulations acknowledge that certain impairments will, “in virtually all cases,” substantially limit an individual in a major life activity. The list of such conditions includes autism, cancer, epilepsy, HIV infection, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and diabetes.

An expanded definition of “major life activity.” The regulations broaden the scope of the term “major life activity” in three significant ways. First, they add sitting, reaching, bending, lifting and interacting with others to the ADAAA’s non-exhaustive list of activities. Second, the regulations now define “major life activity” to include the operation of a “major bodily function,” as well as the operation of a specific organ within a major bodily system. The regulations add special sense organs and skin, genitourinary, cardiovascular, hemic, lymphatic and musculoskeletal to the list of major bodily functions. Finally, in declaring that a “major life activity” need not be of “central importance to daily life,” the regulations expressly reject the Supreme Court’s ruling in *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2002).

Being “regarded as” disabled is now easier to meet. In bringing a disability claim under the “regarded as” prong, a plaintiff now need only establish that the employer believed the employee had an impairment and on that basis discriminated against the plaintiff. The regulations, however, do provide employers with an affirmative defense if the employer can show that the impairment is objectively transitory and minor. In addition, the regulations provide that employers have no duty to provide reasonable accommodations to those employees who meet the definition of disability solely because they are regarded as disabled.

Given the clarity the regulations provide with respect to the ADAAA, employers should take this opportunity to further review their disability-related policies to ensure compliance with the ADAAA. In addition, employers should be prepared to receive more accommodation requests from employees. In this regard, employers should train all managers, supervisors and Human Resources staff on company disability practices and how to handle accommodation requests. Further, in order to facilitate the accommodation process, employers should review and update job descriptions to ensure that all of the essential functions of a job are included. Keep in mind, however, that an employee seeking reasonable accommodation is still required to provide supporting documents from a health care professional describing the impairment and the particular accompanying limitations.

Hughes Hubbard's Labor and Employment Department has extensive experience counseling employers on disability issues and would look forward to working with you to ensure compliance with the ADAAA and its implementing regulations.

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