



## New ADA Employment Regulations Finalized

Effective May 24, 2011

The Equal Employment Opportunity Commission "EEOC" issued its final revised Americans with Disabilities Act "ADA" regulations and accompanying interpretive guidance, the ADA Amendments Act "ADAAA", which will become effective on May 24, 2011. The expanded regulations were designed to simplify the determination as to when employees qualify as disabled.

The Amendments Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the prior regulations and interpretive guidance.

Based on the statutory requirements, the regulations set forth a list of principles to guide the determination of whether a person has a disability. For example, the principles provide that an impairment need not prevent or severely or significantly restrict performance of a major life activity to be considered a disability. Additionally, some short-term impairments may qualify as a disability if they substantially limit major life activities.

"Major life activity" is now defined under the rules to encompass not only those activities formerly included (caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working), but several more such as "interacting with others." Inclusion of the activity of "interacting with others" will pose a continuing challenge for employers confronted with claims that problematic employee conduct caused by mental disabilities is protected.

The ADAAA also added the operation of a major bodily function as a major life activity, and the EEOC added to the statutory definitions to include virtually every physiological function. Thus, major life activities now include the functioning of the immune, musculoskeletal, neurological, brain, genitourinary, circulatory, and reproductive systems, and all major organs.

Whether an impairment is a disability should be construed broadly, to the maximum extent allowable under the law. The principles also provide that, with one exception (ordinary eyeglasses or contact lenses), "mitigating measures," such as medication and assisting devices like hearing aids, must not be considered when determining whether someone has a disability. Furthermore, impairments that are episodic (such as epilepsy) or in remission (such as cancer) are disabilities if they would be substantially limiting when active.

The regulations also make clear that, as under the old ADA, not every impairment will constitute a disability. The regulations include a list of various conditions that "in virtually all cases" meet the definition of disability based on certain characteristics associated with these impairments. The list includes autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia. This includes workers who previously had the conditions and don't show evidence now.



Businesses with 15 or more employees have to comply and must make reasonable accommodations for disabled employees unless such steps would pose an undue hardship. Accommodations can include restructuring a job, part-time schedules or granting leaves of absence, and making work areas more accessible. Although these regulations do not apply to the employment practices of businesses with fewer than 15 employees, such businesses, if they are considered places of public accommodation, are required to comply with the ADAAA's changes to the definition of disability with respect to the goods and services they provide to the public.



*Clients who have any further questions or concerns about the information contained in this Advisory should not hesitate to contact us.*

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