

EEOC issues Final ADAAA Regulations

On March 25, 2011, the Equal Employment Opportunity Commission (EEOC) published the long-awaited final regulations interpreting the Americans with Disabilities Act Amendments Act (ADAAA). The final regulations, which went into effect on May 24, 2011, provide employers and employees with guidance on how to interpret the ADAAA and reaffirm the ADAAA's intended purpose of expanding coverage under the Americans with Disabilities Act (ADA). Some of the more significant provisions of the regulations are discussed below.

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Interpretation of "Substantially Limits"

The ADA prohibits covered employers from discriminating against qualified individuals with disabilities. The ADAAA defines "disability" as (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such impairment; or (3) being regarded as having such an impairment.

The regulations provide new rules on how to interpret "substantially limits." Specifically, the regulations provide "rules of construction" for determining whether an individual is "substantially limited" in performing a major life activity, including the following:

- "Substantially limits" should be construed "broadly in favor of expansive coverage."
- In determining whether an impairment is a disability, an individual's ability to perform a major life activity must be compared to most other people in the general population.
- Whether a substantial limitation exists must be determined without consideration of the beneficial effects of mitigating measures (e.g., medication), except for eyeglasses and contact lenses.
- Impairments that are episodic or in remission (e.g., cancer) are disabilities if they would substantially limit a major life activity when active.
- Short-term and episodic conditions may also substantially limit a major life activity and, therefore, may be a disability.

Conditions That Generally Satisfy the Definition of Disability

The regulations explain that individualized analysis is required with regard to all conditions. However, the new regulations provide a list of conditions that "in virtually all cases" will satisfy the definition of disability: 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. The regulations explain that the individualized analysis as to these conditions "should be particularly simple and straightforward."

"Regarded As" Disabled

The regulations broaden the "regarded as" prong of the definition of disability. Specifically, they prohibit discrimination based on an employer's alleged perception of an impairment, even if the impairment is not perceived to be one that substantially limits a major life activity. The regulations explain, however, that there is no duty to accommodate individuals who are "regarded as" disabled. Given this expanded definition, an individual may assert a "regarded as" claim if (1) he was perceived to have an impairment (regardless of whether he actually has the perceived impairment); and (2) the employer discriminated against him because of the impairment. In "regarded as" claims, employers can use the defense that the impairment is "transitory and minor." The regulations define "transitory" as a condition that lasts less than six months.

Expansion of Major Life Activities

The regulations expand the list of "major life activities" to include the operation of major bodily functions, as well as various bodily functions such as cardiovascular, genitourinary, lymphatic and musculoskeletal functions. The final regulations provide that a "major life activity" does not need to be "of central importance to daily life." Utilizing the pre-ADAAA standard, the regulations explain that an individual must be substantially limited in performing either a "class or broad range of jobs in various classes in order to establish that he/she is substantially limited in the major life activity of 'working.'" It is not sufficient for an individual to merely show that he is substantially limited in performing specific aspects of a single job.

Recommendations

The final regulations have several significant effects:

- First, since the regulations increase the number of individuals who will be able to establish that they are "disabled" under the ADAAA, employers will have to provide accommodations to more employees. To minimize liability under the ADAAA, employers may need to assume that a broader group of workers is

"disabled" and attempt to provide an accommodation.

- Second, employers should ensure that they have a disability policy consistent with the new regulations, including an interactive accommodation process. Employers should not ask for any more medical information than is necessary to fulfill their obligations under the ADAAA.
- Finally, covered Wisconsin employers must ensure that they are complying not only with the requirements of the ADAAA, but also with the disability provisions contained in the Wisconsin Fair Employment Act.

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