



New Regulations Help Explain the New Americans with Disabilities Act Amendments Act

June 2, 2011

This article comes from our Summer 2011 Water Cooler Newsletter

[View or print the entire Newsletter](#)

The Equal Employment Opportunity Commission (EEOC) recently issued its long-awaited [final regulations](#) interpreting the 2009 Americans with Disabilities Act Amendments Act (ADAAA). The final regulations went into effect on March 25, 2011, and adopt “rules of construction” to outline predictable and consistent standards of interpreting the ADAAA in several significant areas, including: (1) the definition of major life activities; (2) impairments that will virtually always be treated as disabilities; (3) consideration of mitigating factors, episodic/dormant conditions, and minor/transitory conditions; and (4) individual coverage under the “regarded as” prong.

The new regulations implement the Americans with Disabilities Act amendments, which aimed to negate U.S. Supreme Court decisions that interpreted disability too narrowly. The amendments will most certainly increase the number of individuals who qualify as disabled, and will also result in more workers requesting a reasonable accommodation.

Major Life Activities

The ADAAA continues to define “disability” as an impairment that “substantially limits one or more major life activities of an individual.” In turn, a “major life activity” is defined to include (without limitation) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

The final regulations expand the definition of a major life activity to include sitting, reaching and interacting with others. In addition, the regulations also include “major bodily function” as a new category of “major life activity.” This category includes normal cell growth and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal

and reproductive functions. Examples of major bodily functions include kidney disease, cancer, diabetes, epilepsy, sickle cell anemia and rheumatoid arthritis.

It is important to note that these lists are illustrative in nature and nonexhaustive. Thus, the fact that a particular life activity or major bodily function is not listed does not necessarily exclude some other activity or function from the definition of “major life activity.” The analysis of what constitutes “major” must not be interpreted strictly, nor create a demanding standard for determining disability.

List of Disabilities

The final regulations also include a list of impairments that will “virtually always” meet the definition of a disability, including autism, intellectual disability (formerly mental retardation), deafness, blindness, partially or completely missing limbs, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, major depression, bipolar disorder, post-traumatic stress disorder and schizophrenia.

Mitigating Factors

The regulations instruct employers to evaluate potential disabilities without taking into account “mitigating factors,” including medications used to control conditions. If the person’s condition would qualify without those aids, employers should consider them to have a protected disability. Eyeglasses and contact lenses are the only exceptions.

Episodic or Dormant Conditions

Employees with conditions that are episodic or dormant must be evaluated based on the condition in its active state. For example, an employee in remission from cancer must be evaluated as though his or her cancer is active.

Minor and Transitory Conditions

The regulations make clear that impairments lasting less than six months may be deemed “substantially limiting” under the definition of disability. Thus, employers must provide reasonable accommodation for a condition, albeit temporary, that is sufficiently limiting enough to be deemed a “disability” under the ADA.

“Regarded As” Disabled

The ADA continues to define as disabled someone who is “regarded as” having a disability, even though that person may not have an actual impairment that substantially limits one or more major life activities. The regulations make it easier for an individual to establish disability under the “regarded as” prong as long as the condition is not minor and transitory. The focus is now on how the individual is treated rather than on what the employer believed. Whether an individual’s impairment “substantially limits” a major life activity is not relevant when the individual is claiming to have been “regarded as” disabled.

It is anticipated that the ADAAA and the new regulations will increase the number of EEOC charges and lawsuits filed. In fact, this prediction is already proving true as the number of disability claims received by the EEOC increased 30 percent from 2008 to 2010, a number that had remained steady for the previous 10 years.

Employers would be well-served to review employee handbooks and company policies to ensure that they comply with the new regulations. The ADAAA and its final regulations encourage employers to stop engaging in an extensive analysis on what is a disability and focus instead on providing reasonable accommodations to individuals who are otherwise qualified to perform the essential functions of their job.