

Alert: Deadline to Submit Comments on the Revised ADA Regulations Approaching

November 11, 2009

Effective January 1, 2009, ADA Amendments Act of 2008 (ADAAA) was enacted to overturn a series of Supreme Court decisions that interpreted the Americans with Disabilities Act (ADA) in a manner that narrowed the scope of ADA coverage.

The Equal Employment Opportunity Commission (EEOC) recently published its proposed revisions to the ADA regulations so that businesses and courts can properly implement the ADAAA. The public has until November 23, 2009, to submit comments.

Most importantly, the proposed regulations emphasize that:

- The definition of a disability shall be interpreted broadly.
- Conditions, including but not limited to deafness, blindness, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, multiple sclerosis, muscular dystrophy, major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia will “consistently meet the definition of a disability.”
- Meeting the burden of proving that a condition “substantially limits” a “major life activity” to constitute a disability under the ADA, no longer requires a showing that the condition “significantly” or “severely” restricts that activity.
- The definition of “major life activities,” which previously included activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, was broadened to include eating, sleeping, standing, sitting, reaching, lifting, bending, reading, concentrating, thinking, communicating, and interacting with others. The definition of “major life activities” was also expanded to include “major bodily functions” of the skin, cells and immune, sensory, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal and reproductive systems.
- To show that a condition affects the “major life activity” of working, an individual need only show that the impairment “substantially limits the ability to perform, or meet the qualifications for, the type of work at issue.” This significantly broadens the old regulations that required an individual to demonstrate they were excluded from a “class or broad range of jobs.”

- An impairment that is episodic or in remission, such as epilepsy, cancer, and many kinds of psychiatric impairments, is considered a disability if it would “substantially limit” a “major life activity” when active.
- Adverse actions taken against an individual based on an impairment include actions based on symptoms of that impairment.
- The “regarded as” definition of a disability no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity. The new regulations instead provide that an individual who is subjected to an adverse action because of an actual or perceived impairment will meet the definition, unless that impairment is temporary and minor.
- An individual only covered by the “regarded as” definition of a disability is not entitled to reasonable accommodation.
- Mitigating measures, such as medications and devices that a person uses to reduce or eliminate the effects of an impairment, shall not be assessed when determining whether that individual is disabled.

At the conclusion of the comment period, the regulations will become final. Covered employers will need to update their existing internal policies to reflect the broader definition of disability and train personnel to ensure appropriate compliance. For more information on the ADAAA and the proposed regulations, please contact a McGlinchey Stafford Labor and Employment attorney.