

## EEOC Sets Path for Adoption of Much Awaited Regulations Under the ADA Amendments Act

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On June 17, 2009, the Equal Employment Opportunity Commission (EEOC) approved a notice of proposed rulemaking under the ADA Amendments Act of 2008 (ADAAA), allowing proposed regulations to be sent to the White House Office of Management and Budget (OMB). Once the proposed regulations are cleared by OMB, the regulations would be published in the Federal Register for public review and comment before they become final.

Although awaiting clearance from OMB, the proposed regulations are already spurring discussion and debate within the human resources community. Among the areas covered in the proposed regulations are the following:

**1. Addition of Major Life Activities:** The proposed regulations would add the major life activities listed in the ADAAA, plus three additional ones not specifically mentioned in the ADAAA: bending, reading, and communicating. The proposed regulations also would add to the ADAAA's listing of major bodily functions, those functions involving the hemic, lymphatic, and musculoskeletal systems.

**2. Treatment of "Substantially Limits":** Congress instructed the EEOC to remove the requirement that a condition "significantly restricts" a major life activity because it imposed too high a standard under the Americans With Disabilities Act (ADA). As such, this phrase does not appear in the proposed regulations. Further, under the proposed regulations, an individual need only show that his/her condition "substantially limits" him/her in one major life activity. However, the proposed regulations do note that temporary, non-chronic impairments such as colds, seasonal influenza, or a sprained joint or broken bone that is expected to soon heal would not be considered substantially limiting.

**3. Presumptive Coverage of Certain Conditions:** The proposed regulations have generated controversy in that they identify impairments that are presumptively disabilities. Among the list of impairments presumed to be covered disabilities under the ADA would be cancer, diabetes, HIV/AIDS, major depression, post-traumatic stress disorder, blindness, deafness, intellectual and developmental disabilities, partially or completely missing limbs, autism, cerebral palsy, multiple sclerosis, and schizophrenia. The proposed regulations also identify other types of impairments that may be covered disabilities under the ADA, including asthma, high blood pressure, coronary artery disease, learning disabilities, back and leg impairments, carpal tunnel syndrome, hyperthyroidism, panic attacks, anxiety disorder, and mild depression.

**4. Working as a Major Life Activity:** The proposed regulations also revise the standard for determining when an individual is substantially limited in the major life activity of working. The proposed regulations would no longer look to a class or broad range of jobs in making this determination, but instead would analyze the types of jobs at issue, e.g. assembly line jobs.

As noted, the proposed regulations are subject to public comment when they are published in the Federal Register. As such, they may undergo changes from the current format. However, in their current form they foreshadow what awaits employers in the future, which is a shift in focus from a painstaking analysis of disability coverage (because the definition of disability under the ADAAA and the proposed regulations has significantly expanded and provides for broader coverage) to an emphasis on the reasonable accommodation of disabled individuals and the good faith interactive process.

The attorneys in our Employment Law Group regularly assist employers in developing ADA policies, provide advice and counseling on ADA coverage and accommodation issues, and provide representation in disability discrimination lawsuits. We will continue to keep our clients apprised of the proposed regulations as they move to final adoption. Stay tuned

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