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EEOC Issues Final ADAAA Regulations

More than two years after the ADA Amendments Act of 2008 (ADAAA) went into effect and a year and a half after issuing proposed regulations, the EEOC finalized the regulations implementing the expansive changes brought about by the ADAAA. The regulations, published March 25, 2011, become effective May 24, 2011.

When enacting the ADAAA, effective January 1, 2009, Congress made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute, in effect overturning several Supreme Court decisions. Under the ADAAA, disability is defined as (1) an actual disability (defined as a physical or mental impairment that substantially limits a major life activity), (2) record of disability or (3) being regarded as disabled. The ADAAA states that the definition should be interpreted in favor of broad coverage for individuals.

FINAL REGULATIONS EXPAND DISABILITY DEFINITIONS

Consistent with the ADAAA, the EEOC's final regulations require employers and courts to interpret the definitions of disability under the ADAAA more broadly. The regulations further expand the list of "major life activities" to include three activities not included in the statute: sitting, reaching and interacting with others. The regulations similarly expand the list of major bodily systems.

The EEOC notes that the term "substantially limits" should be construed broadly, and that an impairment "need not prevent, or significantly or severely restrict" performance of a major life activity to be substantially limiting. While reference to the "condition, manner, or duration," of an impairment was noticeably missing from the proposed regulations, the final regulations state that consideration of facts such as the condition, manner or duration of an individual's performance of major life activities may be useful. The EEOC regulations provide examples such as "the difficulty, effort, or time required to perform a major life activity, pain experienced when performing a major life activity, the length of time a major life activity can be performed, and the way an impairment affects the operation of a major bodily function."

While an individualized assessment is still technically required, the final regulations include a list of impairments that will "in virtually all cases" result in a finding that an impairment substantially limits a major life activity, such as deafness, blindness, intellectual disability (formerly "mental retardation"), partially or completely missing limbs, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV, multiple sclerosis, muscular dystrophy and a number of mental diseases.



The EEOC regulations provide that even more employees should meet the definition of disability under the expanded protections of the ADAAA without reliance upon the major life activity of working. While the final regulations still provide that an individual is substantially limited in the major life activity of working if substantially limited in the ability to perform a “class of jobs or broad range of jobs,” the EEOC cautions that employers and courts are to interpret “class of jobs” more broadly than prior to the ADAAA. In fact, the EEOC has in effect expanded the definition of the major life activity of working by stating that a class of jobs may be determined by looking at the “nature of the work” performed, such as commercial truck driving or assembly line jobs, or by reference to “job-related requirements,” such as repetitive or heavy lifting or prolonged standing or sitting. Under the final regulations, an employee may be substantially limited from a class of jobs if the employee has a physical impairment that substantially limits his or her ability to perform a single job requirement, such as repetitive lifting.

CLARIFICATIONS IN FINAL REGULATIONS

The EEOC responded to some comments on its proposed regulations, and the final regulations provide clarification to employers trying to navigate the sweeping changes brought by the ADAAA. For example, while the use of mitigating measures cannot be considered in determining whether a person has a disability, the final regulations clarify that an employee’s use or non-use of such measures may be relevant in determining whether the individual is qualified or poses a direct threat to safety.

In addition, the final regulations clarify that while medical or statistical evidence will not normally be required in comparing whether an individual is substantially limited in a major life activity as compared to the general population, such medical or statistical evidence is not prohibited and may be used where appropriate. The EEOC also notes that employers are still permitted to request medical documentation from an employee when the disability and need for accommodation are not obvious.

Additionally, while the ADAAA expands protection for being “regarded as” disabled, the final regulations clarify that an employer is not required to provide reasonable accommodation to an employee who meets the definition of disability **solely** under the “regarded as” prong.

FOR MORE INFORMATION

Please contact any member of our **Labor & Employment** practice group for more information.

SAVE THE DATE: Thompson Hine will host a free webinar on **May 9, 2011** to discuss the ADAAA and the EEOC’s final regulations. More information and registration for the webinar will be made available in late April.



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