

## EEOC Issues Final Regulations Interpreting the ADAAA

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The wait is over. A year and a half after issuing proposed regulations to the ADA Amendments Act (“ADAAA”), the U.S. Equal Employment Opportunity Commission (“EEOC”) published its final regulations implementing the ADAAA on March 24, 2011. The effect of the regulations is to require greater focus on “reasonable accommodation,” rather than on whether an individual is “disabled.”

The ADAAA went into effect on January 1, 2009. In September 2009, the EEOC issued proposed regulations to conform its existing Americans with Disabilities Act (“ADA”) regulations with the ADAAA. The long awaited final regulations will take effect on May 24, 2011.

Congress intended the ADAAA to expand the ADA’s definition of disability. Although the exact definition of “disability” remains unchanged under ADAAA, the ADAAA and the final regulations substantially alter the interpretation of that definition, making it easier for an individual to qualify as disabled. For example, some of the more significant provisions in the regulations include:

- The term “substantially limits” is to be construed broadly in favor of expansive coverage. The regulations provide “rules of construction” to guide this analysis. For example, an impairment no longer needs to prevent or severely restrict a major life activity to be considered “substantially limiting.”

Unfortunately, the EEOC did not provide an affirmative definition of “substantially limits,” apparently leaving it to the courts to resolve in future litigation.

- An individualized assessment as to whether an impairment is substantially limiting needs to be performed. However, the final regulations indicate that some impairments, such as cancer, cerebral palsy, diabetes, and epilepsy, “will virtually always result in a determination of disability.”
- The use of mitigating measures, other than ordinary eyeglasses or contact lenses, cannot be considered in assessing whether an individual has a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Thus, conditions like multiple sclerosis are more likely to be considered “disabilities” at earlier stages.
- The nonexhaustive list of major life activities has been significantly expanded to include activities such as bending, reading, and sitting.
- The definition of “regarded as” disabled no longer requires a showing that an employer perceived the individual to be substantially limited in a major life activity. Instead, the focus for establishing “regarded as” disabled

coverage will now be on how a person has been treated because of a physical or mental impairment (that is not transitory and minor).

- Individuals covered only under the “regarded as” prong are not entitled to reasonable accommodation.

As a result of negative feedback from employers and employer representatives, the final regulations modify some of the more confusing portions of the proposed regulations by:

- Deleting or moving to the appendix a number of examples

that were included in the proposed regulations.

- Restoring a more employer-friendly definition of the major life activity of “working.”
- Eliminating language that referred to “symptoms” of an impairment as a possible basis for a “regarded as” disabled claim.

The EEOC has provided helpful information for employers on its website ([www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm)), including a regulations fact sheet and a ADAAA questions and answers sheet.

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