

# EEOC Issues Final Regulations Implementing the ADA Amendment Act

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On March 24, 2011, the U.S. Equal Employment Opportunity Commission (EEOC) released long-awaited final regulations implementing the ADA Amendments Act (ADAAA). The ADAAA became effective on January 1, 2009. The final regulations implement the legislative intent of the ADAAA to make it easier for individuals with disabilities to obtain protection under the Americans with Disabilities Act (ADA). The ADAAA emphasizes that the primary focus in ADA cases should be on whether employers complied with their obligations under the statute and whether discrimination occurred, not whether individuals are disabled under the law. The regulations maintain this focus by retaining the broad definition of “disability.”

The term “substantially limits” is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. An impairment need not prevent or severely or significantly limit a major life activity to be “substantially limiting.” Nonetheless, not every impairment will constitute a disability. To determine whether an individual has a substantially limiting impairment, the individual’s ability to carry out a major life activity should be compared to “most people in the general population.” This standard requires a lower degree of functional limitation than the standard previously applied by the courts and should not require extensive analysis.

Except in cases of ordinary eyeglasses or contact lenses, the determination of whether an impairment substantially limits a major life activity is to be made without regard to the ameliorative (beneficial) effects of mitigating measures. Moreover, an impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment. The new regulations also provide that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Accordingly, the effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.

The new regulations provide that all impairments require an individualized assessment to determine whether they rise to the level of “disability.” Unlike the 2009 proposed regulations, which often were criticized for creating a series of “categorical” disabilities that would automatically qualify under the ADA, the final regulations eliminate these while acknowledging that certain obvious impairments “consistently” qualify—deafness,

blindness, missing limbs, cancer, diabetes, human immunodeficiency virus (HIV), multiple sclerosis and a number of other impairments.

The final regulations clarify that an individual is “regarded as” having a substantially limiting impairment if he or she is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. Individuals proceeding under the “regarded as” prong need only show that they were treated adversely because of a perceived impairment. Plaintiffs need not show how severe the covered entity thought the impairment was. The regulations state that the only kind of impairment that cannot form the basis of a “regarded as” claim is one that is “transitory and minor.” A condition is considered transitory if the impairment lasts or is expected to last less than six months. Moreover, a subjective belief that the impairment was minor is not enough. Individuals covered only under the “regarded as” prong of the definition of disability are not entitled to reasonable accommodation.

The final regulations will become effective on May 24, 2011. Employers should operate under the assumption that most employees with physical or mental impairments are now covered under the ADA, and always err on the side of caution by engaging in a good faith and well-documented interactive process with impacted employees.

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## Topics

ADA, ADAAA