



LABOR BRIEF

The ADA Amendments Act

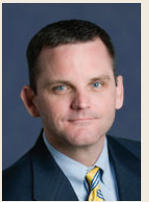
On July 26, 1990, President George H.W. Bush signed into law the landmark Americans with Disabilities Act. In a signing ceremony, President Bush noted that the ADA was “the world’s first comprehensive declaration of equality for people with disabilities.” In the years that followed, the U.S. Supreme Court, and other lower courts, interpreted the ADA fairly narrowly which prompted Congressional action. On September 25, 2008, President George W. Bush signed into law the ADA Amendments Act of 2008. The ADA Amendments Act, or “ADAAA,” became effective January 1, 2009. Through the ADAAA, Congress directed the EEOC to amend its ADA regulations to reflect changes made by the new Act. Most significantly to employers, pursuant to the ADAAA, Congress directed that the definition of a “disability” be construed in favor of broad coverage making it easier for an individual seeking coverage under the Act. On March 25, 2011, following extensive public comment and proposed rules, the EEOC published the final ADAAA regulations in the Federal Register.

The ADAAA and the final regulations define a disability, as both did before, as a physical or mental impairment that substantially limits one or more major life activities; a record of a physical or mental impairment that substantially limits one or more major life activities; or when a covered entity takes an action otherwise prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor. Although the definition of disability did not change, the interpretation of the definition of disability has expanded. The new regulations address, among other things, the definition of “impairment,” provide specific examples of “major life activities,” and discuss the nature of the limitations in question.

The regulations broadly define the term “physical or mental impairment” to include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. The definition also includes mental or psychological disorders, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The final regulations also provide a fairly lengthy, but non-exhaustive, list of examples of “major life activities.” In addition to caring for one’s self, performing manual tasks, seeing, hearing, and eating, the regulations also list as major life activities things such as concentrating, thinking, and interacting with others. Major bodily functions (such as the immune system, normal cell growth, digestive, bowel, bladder, and reproductive functions) are also recognized as major life activities. The recognition of major bodily functions as major life activities will make it easier to find that individuals with certain types of impairments have disabilities that are covered by the ADAAA.

The regulations state that to be covered under the ADAAA as a person with an actual disability, the person must be, or have been, substantially limited in performing a major life activity as compared to most people in the general population. And the determination of whether an impairment substantially limits a major life activity requires an individual assessment. Moreover, the final regulations do not require that an impairment last a particular length of time to be



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considered substantially limiting, and one of the rules of construction found in the regulations expressly states that the effects of an impairment lasting fewer than six months can be substantially limiting. Likewise, impairments that are episodic (such as epilepsy, hypertension, asthma, diabetes, major depressive disorders, and schizophrenia) or in remission (such as cancer) can be considered a disability if it would substantially limit a major life activity when active. Finally, the positive effects of any mitigating measures (with the exception of ordinary eyeglasses or contact lenses) may not be considered when determining whether someone has a disability.

Most significantly, the regulations also give examples of specific impairments that will “be easily concluded” to substantially limit a major life activity. Some of these impairments include deafness, blindness, intellectual disability, partially or completely missing limbs, autism, cancer, diabetes, epilepsy, HIV infection, muscular dystrophy, major depressive disorder, obsessive compulsive disorder, and schizophrenia. Pregnancy is not considered an impairment and, therefore, cannot be a disability. However, certain impairments resulting from pregnancy (for example, gestational diabetes) may be considered a disability if it substantially limits a major life activity or if it otherwise meets the definition of disability.

As noted above, the final regulations were published on March 25. And although there was a great deal of discussion and comment regarding the proposed regulations, the new regulations will be the subject of a great deal of analysis and discussion. Before taking any action, employers should proceed with caution and with the new regulations in mind.