

EEOC proposes ADA regulations

On September 23, 2009, the Equal Employment Opportunity Commission published proposed regulations to implement the ADA Amendments Act which passed Congress and was signed by President Bush in late 2008, with an effective date of January 1, 2009. Click on the below hyperlink for the proposed regulations.

<http://edocket.access.gpo.gov/2009/E9-22840.htm>

The stated purpose of the ADA Amendments Act was to reverse the holding of certain decisions of the United States Supreme Court interpreting the ADA, decisions which were generally seen as employer friendly decisions. The amendments spoke directly to two such decisions, in particular the 1999 decision in Sutton v. United Airlines, Inc. (which limited the ADA's protection when a person's disability could be "mitigated" by such measures as medication, treatment, or other assistive devices) and the 2002 decision in Toyota Manufacturing v. Williams (which tightened the standards by which individuals were found to be "disabled," or not).

The ADA Amendments Act specifically stated that it was the intent of Congress that the ADA, passed into law in 1990, was to be interpreted broadly so as to provide protection and coverage to more affected employees. This particular provision, perhaps more than any other, dramatically changes the ADA's impact on employers.

The proposed regulations list specific types of physical and mental impairments that will qualify as disabilities under the ADA, such as deafness, blindness, missing limbs, cancer, cerebral palsy, epilepsy, HIV/AIDS, and severe mental disorders such as bipolar disorder or schizophrenia. In addition, the proposed regulations:

- clarify what it means for an impairment to "substantially limit" a major life activity or major bodily function;



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- explain how to evaluate impairments when mitigating measures are used;
- list a number of specific impairments that affect major bodily functions, such as diabetes, cancer, and sickle cell disease;
- list various types of impairments that may be disabling for some but not for others;
- discuss disabilities that are episodic or in remission, such as epilepsy, cancer, and many kinds of psychiatric impairments;
- provide detailed information regarding the types of actions that will or will not constitute “regarded as” discrimination;
- explain how to determine whether impermanent impairments are disabilities; and
- clarify how to determine whether an individual is substantially impaired in the major life activity of “working.”

Written comments on the proposed regulations may be submitted to the EEOC on or before November 23, 2009.

Though the regulations are not final, they currently impact employers because the EEOC intends for the final regulations to be applied by employers and courts retroactively to January 1, 2009. In addition, it is unlikely that the EEOC will change the proposed regulations significantly.

For more information concerning the EEOC’s proposed ADA regulations, and their potential impact on a variety of work place issues please contact a member of our Labor and Employment law practice group at (419) 244-6788:

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