

Employment Practice Update

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New ADA Regulations Take Effect May 24, 2011

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On March 25, 2011, the Equal Employment Opportunity Commission ("EEOC") published its long awaited final regulations implementing the Americans With Disabilities Amendments Act of 2008 ("ADAA"). The [final regulations](#) went into effect this week and facilitate Congress's preference for broad coverage under the ADA. Like the law they implement, the regulations make important changes to the definition of the term "disability," and greatly expand the reach of the ADA.

The regulations retain the pre-ADAA definition of "disability" as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. The expansion in scope, however, comes from the definition and interpretation of these terms.

For instance, the EEOC has defined the term "major life activities" to incorporate familiar activities such as seeing, hearing and walking, while expanding the list to include things such as "concentrating," "thinking," "interacting with others," and the operation of "major bodily functions." Unlike the old law, an activity does not need to be of "central importance to daily life" to be deemed "major."

The regulations similarly expand the term "substantially limited" by providing that a limitation need not "significantly" or "severely" restrict a major life activity in order to satisfy the standard. Coverage is extended to episodic impairments or conditions in remission and, significantly, the regulations reject any durational minimum, such that an impairment lasting only a few months may now qualify as "substantially limiting."

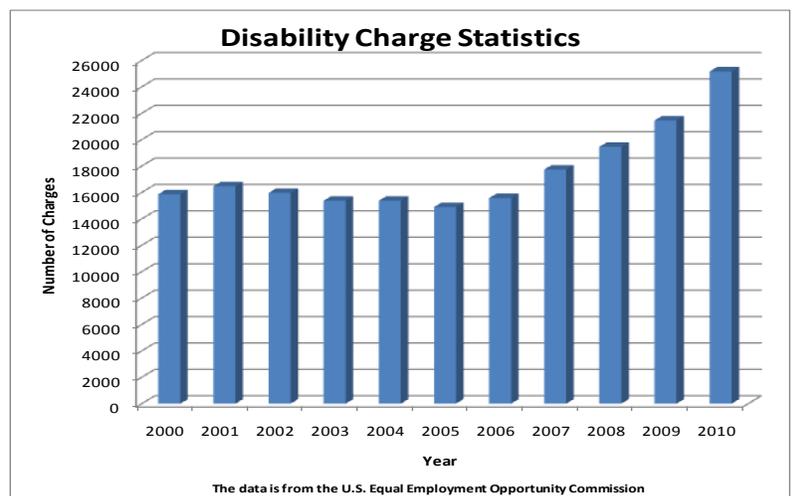
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The regulations represent a significant adjustment in how the EEOC will view disabilities and implement Congress's intent to broaden the ADA. For example, in addition to liberalizing the definition of "major life activities" and "substantially limited," the

This article is meant to provide a brief overview and points of discussion regarding employment and labor law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.

new regulations effectively establish per se disabilities and broaden the definition of "regarded as," making it easier for employees to pursue and prevail in claims alleging that the employer "regarded" them as being disabled. Over the next several weeks, we will provide updates regarding these sweeping changes and the various implications of the new law.

Given this expansion in coverage, it is not surprising that allegations of disability discrimination have steadily increased since the ADAA was passed in 2008, with a significant 17 percent jump in fiscal year 2010. In 2010, the EEOC received over 25,000 charges of disability discrimination. These charges accounted for more than a quarter of all complaints received by the EEOC last year. One can expect ADA claims to continue to rise, and the new regulations will lead to that result.



Given that more conditions will qualify as a "disability," the question now becomes which job duties are essential and whether a reasonable accommodation is available. Employers may wish to revisit their written job descriptions to ensure that all "essential functions" are labeled as such and included in the description. No doubt, the written job description will become a very important document as all employers confront this new landscape. If you have any questions regarding the ADAA or the recent EEOC regulations, please contact our office at (850) 425-6654.



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