

Bringing your organization into compliance with the ADA Amendments Act

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Employers should highlight May 24, 2011 on their calendars, as this is the date that the final regulations implementing the ADA Amendments Act of 2008 become effective. With this date quickly approaching, employers have a limited timeframe to gain an understanding of the regulations and initiate plans for compliance.

The ADAAA and subsequent regulations made significant changes in the definition of the term “disability.” As a result, it will be easier for individuals seeking the law’s protection to demonstrate that they meet this definition than it was under the Americans with Disabilities Act of 1990.

These legislative and regulatory changes also reinforce employers’ responsibilities to provide reasonable accommodations, refrain from discrimination and maintain up-to-date policies and procedures.

The following provide a number of reminders and new considerations for employers in developing plans for compliance. Sources of comprehensive information include legal counsel, human resource professionals and the Equal Employment Commission’s website, www.eeoc.gov.

1. Which employers must comply with these regulations? Covered entities include all private, state and local government employers with 15 or more employees and employment agencies, labor organizations and joint labor-management committees. Section 501 of the Rehabilitation Act applies to federal executive branch agencies regardless of the number of employees.
2. How is a disability defined? The following three-pronged approach is used to define a disability: 1. A physical or mental impairment that substantially limits one or more major life activities (“actual disability”), or 2. A record of a physical or mental impairment that substantially limited a major life activity (“record of” a disability), or 3. When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor (“regarded as” having a disability).
3. When is a reasonable accommodation required? An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not

impose an undue hardship on the operation of the organization. A reasonable accommodation is not required if an individual only meets the “regarded as” definition of a disability.

4. How are determinations made regarding whether an applicant or employee has an impairment that substantially limits the individual in performing a major life activity? The regulations provide nine “rules of construction” to use in making this determination. A number of the rules are included in the examples and questions that follow. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to “most people in the general population.” A disability does not have to prevent or severely or significantly restrict a major life activity to be considered substantially limiting. The determination of disability should not require extensive analysis. It does require an individualized assessment.

5. How do the regulations define an impairment? An impairment includes any physiological disorder or condition, cosmetic disfigurement, anatomical loss affecting one or more body systems, and any mental or psychological disorder. The regulations added immune and circulatory systems to the previous list of body systems.

6. What is included in “major life activities?” The regulations provide an expanded and non-exhaustive list of examples of major life activities. Additionally, they state that major life activities include the operation of major bodily functions. As a result, it will be easier to find that individuals with certain types of impairments (affecting major bodily functions) have disabilities.

7. Do the regulations provide examples of impairments that will easily be concluded to substantially limit a major life activity? Yes. Examples include blindness, obsessive-compulsive disorder, cancer, intellectual disability (mental retardation), post-traumatic stress disorder, and mobility impairments requiring the use of wheelchairs.

8. Does an impairment have to last a specific length of time to be substantially limiting? No. An impairment lasting less than six months can be substantially limiting with the exception of transitory and minor impairments under the “regarded as” definition.

9. Can an impairment that does not affect someone all the time be considered a disability? Yes. An impairment that is “episodic or in remission” meets the definition of a disability if it would substantially limit a major life activity when active. Examples include asthma, diabetes, bipolar disorder, hypertension and epilepsy. Impairments that are in remission but have the potential to return in a substantially limiting form are also considered to be disabilities.

10. Can mitigating measures be considered in determining whether an individual has a disability? With the exception of ordinary eyeglasses or contact lenses, “mitigating measures,” such as medication and assistive devices, should not be considered. The determination should be focused on whether the individual would be substantially limited in performing a major life activity without the mitigating measure.

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