

## The Final ADAAA Regulations Issued By The EEOC

### What Every Employer Needs To Know

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The ADA Amendments Act of 2008 (ADAAA) required the Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations. The final regulations were just published on March 25, 2011. There is no doubt that the Act and final regulations offer protection to a much broader group of individuals which an unsuspecting employer might not consider to be disabled. Employers need to be alert and consider every formal and informal work restriction as a potential request for an accommodation.

For several years under the ADA, employers have successfully defended disability lawsuits by arguing that the employees with work restrictions were not covered by the ADA because they did not have disabilities. The ADA required employees to show that they were disabled and otherwise qualified for a position, with or without reasonable accommodation. An employee was considered disabled if they could meet one of three criteria. The employee had to show that he or she (1) has a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; (2) has a record of such impairment; or (3) is regarded as having such impairment.

The Courts interpreted the language "substantially limits" and "major life activities" to mean what the average person would think: a significant restriction on an activity that is of central importance to most people's daily lives. The Courts routinely found that moderate restrictions were not disabilities and that even significant restrictions on activities that were important to the average person's daily life did not rise to the level of a disability. Thus, 10 to 15 pound lifting restrictions, temporary impairments or restrictions, or impairments that could be alleviated through medication or other aides simply were not disabilities.

The final regulations clarify that the words no longer mean what they used to from the average employer's perspective. For example, the EEOC's final regulations take the position that a person with a "20-pound lifting restriction that lasts or is expected to last for several months" is to be considered disabled. In fact, the regulations go farther and say that such a person does not even need to show that the lifting restriction makes him "unable to perform activities of daily living that require lifting in order to be considered substantially limited in lifting."

With the exception of ordinary glasses or contacts, it is also irrelevant that the effects of an impairment are completely resolved by medication or other aides. Thus, a person can have an impairment that is completely controlled through medication and not actually have any limitations on life activities as a result. Still, the person is to be deemed disabled under the regulations. Moreover, an impairment can be of short duration, intermittent, or episodic and still qualify as a disability.

Although the regulations state that not every impairment qualifies as a disability, the bounds of the new definitions will have to be tested through litigation. For those employers who would prefer not to be the test case, the key is to be alert to formal and informal work restrictions that employees present in the workplace and be proactive. Engage employees. If an employee has a work restriction (whether it is written, oral, or observed) meet with the employee to discuss what is needed to accommodate the work restriction. If an employee or applicant demonstrates a physical or mental impairment that would limit his or her ability to request an accommodation, initiate an informal interactive process to accommodate the employee. As always, keep detailed records of requests made, and accommodations granted or denied, along with some evidentiary back-up for the rationale behind the decisions

Finally, employers should review their policies and practices governing the interactive process set forth in the ADA and focus on their reasonable accommodation procedures, as well as review and update the essential functions and qualifications of jobs in the workplace.

The final regulations and the EEOC's guidance materials on the ADAA are available [HERE](#).