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DISABILITIES ACT REGULATIONS REVISED

The ADA Amendments Act (ADAAA) was signed into law on September 25, 2008. Among other things, the ADAAA overturned several court decisions that Congress believed had interpreted the definition of “disability” under the original Americans with Disabilities Act (ADA) too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes or epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals. The U.S. Equal Employment Opportunity Commission’s (EEOC) has issued final regulations to implement those provisions.

The ADAAA and the final regulations keep the ADA’s definition of the term “disability” as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability.

The regulations set forth a list of principles to guide the

determination of whether a person has a disability. For example, the principles provide that an impairment need not prevent or severely or significantly restrict performance of a major life activity to be considered a disability. The principles also provide that, with one exception (ordinary eyeglasses or contact lenses), “mitigating measures,” such as medication and assistive devices like hearing aids, must not be considered when determining whether someone has a disability.

Furthermore, impairments that are episodic (such as epilepsy) or in remission (such as cancer) are disabilities if they would be substantially limiting when active.

The regulations clarify that the term “major life activities” includes “major bodily functions,” such as functions of the immune system, normal cell growth, and brain, neurological, and endocrine functions.

The regulations also clarify how individuals might establish coverage under the “regarded as” part of the definition of “disability.” The focus is on how the person was treated rather than on what an employer believes about the nature of the person’s impairment.

The ADAAA regulations, Question and Answer documents, and a fact sheet are available on the EEOC website at www.eeoc.gov/laws/statutes/adaaa_info.cfm

The employee threshold for compliance is the same as for the Americans with Disabilities Act, which is 15 or more employee, for each working day in each of 20 or more calendar weeks in the same calendar year as, or in the calendar year prior to when, the alleged discrimination occurred. An employer is covered if it has an employment relationship with the requisite number of employees for the relevant number of weeks, regardless of the daily work schedules of the individual employees. For example, an employee who only works on Mondays and Wednesdays is counted as an employee for the entire week because she continues to have an employment relationship with the employer throughout the week. An individual is counted as an employee for each working day after hire and until employment terminates.