

Disability Rules Expanded

Q: What are the proposed new regulations under the Americans With Disabilities Act?

A: Several months ago the Equal Employment Opportunity Commission proposed regulations that expand the definitions of several key terms and concepts used to determine whether an individual is disabled within the meaning of the Americans With Disabilities Act. Amendments to the Act effective last year essentially make it easier for individuals to establish they have a disability and gain the Act's protections. These changes will affect your organization as an employer and as a "place of public accommodation" when you sponsor meetings and events. While the EEOC is still reviewing comments received in response to its proposal, the proposal provides a strong signal of the EEOC's direction on what is a disability. In general, the EEOC's rules, if finalized, would expand the concepts of "disability" and being "regarded as" having a disability.

"DISABILITY"

In general, the Act prohibits discrimination against individuals with disabilities. The Amendments now define "disability" to more broadly encompass impairments that substantially limit a major life activity. Under the proposed regulations, "major life activities" are activities that "most people in the general population can perform with little or no difficulty." Examples include: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, reaching, speaking, breathing, learning,

thinking, working, reaching, sitting and interacting with others.

The proposed regulations also include "major bodily functions" as "major life activities." Those are such functions as the immune and musculoskeletal systems, skin, cardiovascular functions, normal cell growth, and digestive, neurological, respiratory, circulatory, endocrine and reproductive functions. For example, cancer and diabetes would qualify as impairments that substantially limit major life activities because cancer affects normal cell growth and diabetes affects the endocrine system.

"SUBSTANTIALLY LIMITS"

For an impairment to "substantially limit" a major life activity, it need not "severely" or "significantly" restrict performance of a major life activity or bodily function. Rather, under the proposed regulations, the impairment must "substantially limit" an individual's ability to perform a specific major life activity "as compared to most people in the general population," and it only needs to affect one major life activity, not each one.

Certain disabilities are considered to "consistently meet the definition of disability": deafness, blindness, intellectual disability, partially or completely missing limbs, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV/AIDS, a number of mental diseases, multiple sclerosis and muscular dystrophy.

Other impairments may be substantially limiting for some individuals, depending on the facts. Such impairments include: asthma, high blood pressure, learning disabilities, a back or leg impairment, psychiatric impairments, carpal tunnel syndrome and hyperthyroidism. Also, impairments that are "episodic or in remission" could qualify as disabilities if they would substantially limit a major life activity when active (e.g., epilepsy, asthma, cancer, major depression).

MITIGATING MEASURES

Under the proposed regulations, other

than "ordinary eyeglasses or contact lenses," mitigating measures may not be taken into account in determining whether an individual has a disability. Mitigating measures that must be disregarded include medication, assistive devices, auxiliary aids, accommodations, medical therapies and supplies.

MAJOR LIFE ACTIVITY OF "WORKING"

The proposed regulations provide that an impairment substantially limits the major life activity of "working" if it "substantially limits an individual's ability to perform, or to meet the qualifications for, the type of work at issue." "Type of work" may include jobs such as commercial truck driving, assembly line work or "job related requirements" such as repetitive bending, reaching or manual tasks, repetitive or heavy lifting, prolonged sitting or standing, extensive walking, or working irregular or excessively long shifts.

"REGARDED AS" DISABLED

An employer may not discriminate against someone "regarded as" disabled. The proposed regulations broaden what it means for an employer to regard someone as disabled. Now, when an employer takes an adverse action against an individual (e.g., failure to hire, termination) based on an actual or perceived impairment, unless the impairment is "transitory" (lasting or expected to last for six months or less) and minor, the employer has "regarded" the individual as disabled and may be subject to liability. Importantly, however, employers have no obligation to reasonably accommodate an individual who is "regarded as" disabled as compared with a person who is disabled.

CONCLUSION

The proposed regulations are expected to be finalized in July. We will keep you advised of further developments.

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.