

June 2011

FREEMAN, FREEMAN & SMILEY, LLP EMPLOYMENT LAW BULLETIN

EEOC Issues Final Regulations for ADA Amendments Act – Expansion of “Disability”

On March 25, 2011, the Equal Employment Opportunity Commission (“EEOC”) issued its final regulations regarding how employers should interpret the ADA Amendments Act of 2008 (“Act”). These regulations went into effect on May 24, 2011 and serve to assist with interpretation of the Act. The Act and its regulations apply to all private employers with 15 or more employees. The clear impact of the regulations is that many more employees will be covered under the law.

The regulations were intended to make it easier for individuals to establish that they qualify for protection under the Act and expand the definition of “disability” to broaden the population of individuals receiving protection. The Act overturned several U.S. Supreme Court decisions that Congress believed interpreted the definition of a “disability” far too narrowly.

Some significant aspects of the regulations include the following:

- The definition of “disability” is still characterized as an individual who (1) has an impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded by the covered entity as an individual with a disability. However, the interpretation of these terms has changed.
 - An individual must be substantially limited in performing a major life activity. Whether an impairment substantially limits a major life activity is made without considering if that limitation can be ameliorated with medication or assistive devices.¹ (There is, however, an exception for poor vision mitigated by corrective lenses.) The impairment does not need to prevent or even significantly restrict a major life activity. An impairment that is episodic (like epilepsy) or in remission (like cancer) is still a disability if it would substantially limit a major life activity when active.
 - Major life activities are defined as activities that “most people in the general population can perform with little or no difficulty.” The Act provides a non-exhaustive list of examples, such as caring for oneself, performing manual tasks, walking, speaking, learning, interacting with others, and working. The regulations also provide that major life activities include major bodily functions, including functions of the immune system, sensory organs and skin, cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive

¹ However, ameliorating factors can be considered when determining the need for reasonable accommodation.

functions. They also include the operation of an individual organ within a body system, such as the operation of the kidney, liver, or pancreas.

- The “regarded as” prong is much easier to satisfy than previously. The focus for establishing coverage is on how a person has been *treated* because of an impairment, rather than on what an employer may have believed about the nature of that impairment. Thus, an individual needs only to demonstrate that he or she was subjected to a prohibited act because of the employer’s actual or perceived impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity.
- Even a short-term impairment constitutes a “disability” if it is substantially limiting.

Note that the Act does not apply retroactively. The Act applies only to denials of reasonable accommodation requests or alleged discriminatory acts that occurred January 1, 2009 or after.

These regulations will likely result in an increase of employee requests for workplace accommodations and an increase in disability discrimination claims, especially “regarded as” claims. Employers should be proactive to minimize such claims by educating supervisory personnel and human resources personnel with training to fully understand the regulations. Document the interactive process. Employers should ensure that their policies and procedures reflect the updated regulations and should review their job qualification standards to ensure that they do not discriminate unnecessarily against persons with disabilities.

For additional information regarding how these new regulations may affect your business, please contact:

Bradley D. Ross, specializing in Employment Law and Business Litigation, Telephone: (310) 255-6180, E-mail: bdr@ffslaw.com

Tal Korn, specializing in Employment Law and Business Litigation, Telephone: (310) 255-6192, E-mail: tk@ffslaw.com