



## Final ADA AA Regulations Effective 5/24/11

The Equal Employment Opportunity Commission (EEOC) recently published final regulations for the Americans with Disabilities Act Amendment Act of 2008 (ADA AA), which will become effective 5/24/11. The final regulations expand the definition of disability; however, the regulations are intended to put the focus on whether discrimination has occurred and whether covered employers have met their obligations rather than on whether an individual actually meets the definition of disability.

**Definition of Disability:** The final regulations still define a disability as (1) a physical or mental impairment that substantially limits a major life activity, (2) record of such an impairment, or (3) being regarded as having such an impairment. Although this definition is still the same, the meaning has been significantly changed and is intended to be interpreted broadly.

Major Life Activity has been broadened to include more activities in addition to what was previously included, such as interacting with others, sitting, and reaching. Also included are major bodily functions, including the functioning of the immune, musculoskeletal, neurological, brain, genitourinary, circulatory, and reproductive systems, and all major organs. The list of major life activities provided in the regulations is not exhaustive and could be expanded.

**Substantially Limits:** Whether an impairment substantially limits a major life activity should also be interpreted broadly- an impairment does not have to “prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.” Limitations need to be evaluated without regard to mitigating measures (except for eyeglasses).

**Regarded As:** The regulations clarify that only individuals with an actual disability are entitled to reasonable accommodation. Individuals who are wrongfully regarded as disabled are not entitled to reasonable accommodations; however, they are still entitled to discrimination protections.

**Bottom Line for Employers:** The regulations are focused on ensuring that discrimination does not occur in the workplace rather than whether a disability actually exists. Therefore, whether an individual is disabled should be interpreted broadly and the focus of any policy or practice should be on preventing discrimination.

The regulations include a section of Interpretive Guidance in the appendix that provides detailed information on how to comply with the law- all employers should review these as well as the frequently asked questions published by the EEOC to ensure they have a clear understanding of the changes that were made to the ADA AA. The interpretive guidance contains information on what employers should and shouldn't do, and the FAQ's also cover the highlights and most common questions that have arisen about the regulations.

The reasonable accommodation process should still be an interactive process, with a focus on the functional limitations caused by a disability and whether a reasonable accommodation can be made. Supervisors and managers should be trained to avoid bias or discrimination throughout the workplace and the entire employment cycle from hiring to termination.

For additional information on the ADA AA:

1. The EEOC's ADA AA page [http://www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm)
2. ADA AA Interpretive Guidance <http://www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as-h-76>

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