



The ADA Amendments Act Definition of Disability: Final EEOC Regulations

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Summary

The ADA Amendment Act (ADAAA), P.L. 110-325, was enacted in 2008 to amend the Americans with Disabilities Act (ADA) definition of disability. On March 25, 2011, the Equal Employment Opportunity Commission (EEOC) issued final regulations implementing the ADAAA. The final regulations track the statutory language of the ADA but also provide several clarifying interpretations. Several of the major regulatory interpretations are, including the operation of major bodily functions in the definition of major life activities; adding rules of construction for when an impairment substantially limits a major life activity and providing examples of impairments that will most often be found to substantially limit a major life activity; interpreting the coverage of transitory impairments; interpreting the use of mitigating measures; and interpreting the “regarded as” prong of the definition.

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Introduction

The ADA Amendment Act (ADAAA), P.L. 110-325,¹ was enacted in 2008 to amend the Americans with Disabilities Act (ADA). The Americans with Disabilities Act (ADA)² is a broad civil rights act prohibiting discrimination against individuals with disabilities. As stated in the act, its purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”³ The ADAAA reiterated this purpose, and also emphasized that it was “reinstating a broad scope of protection” for individuals with disabilities.⁴

The threshold issue in any ADA case is whether the individual alleging discrimination is an individual with a disability. Several Supreme Court decisions interpreted the definition of disability, generally limiting its application.⁵ Congress responded to these decisions by enacting the ADA Amendments Act, P.L. 110-325, which rejects the Supreme Court and lower court interpretations and amends the ADA to provide broader coverage. Two of the major changes made by the ADA Amendments Act are to expand the current interpretation of when an impairment substantially limits a major life activity (rejecting the Supreme Court’s interpretation in *Toyota*), and to require that the determination of whether an impairment substantially limits a major life activity must be made without regard to the use of mitigating measures (rejecting the Supreme Court’s decisions in *Sutton*, *Murphy*, and *Kirkingburg*). On March 25, 2011, the Equal Employment Opportunity Commission (EEOC) issued final regulations implementing the ADA Amendments Act.⁶

Statutory Provisions

The ADA Amendments Act defines the term disability with respect to an individual as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).”⁷ Paragraph (3) discusses the “regarded as” prong of the definition and provides that an individual is “regarded as” having a disability regardless of whether the impairment limits or is perceived to limit a major life activity, and that the “regarded as” prong does not apply to impairments that are transitory and minor.⁸ Although this is essentially the same statutory language as was in the original ADA, P.L. 110-325 contains new rules of construction regarding the definition of disability, which provide that

¹ For a more detailed discussion of the statute see CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by (name redacted).

² 42 U.S.C. §§12101 et seq. For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by (name redacted).

³ 42 U.S.C. §12101(b)(1).

⁴ 20 U.S.C. §12101 note.

⁵ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Kirkingburg v. Albertson’s Inc.*, 527 U.S. 555 (1999); *Toyota Motor Manufacturing v. Williams*, 534 U.S. 184 (2002).

⁶ 76 FED. REG. 16978 (March 25, 2011).

⁷ P.L. 110-325, §4(a), amending 42 U.S.C. §12102(1).

⁸ P.L. 110-325, §3(3), 42 U.S.C. §12102(3).

- the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the act;
- the term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act;
- an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;
- an impairment that is episodic or in remission is a disability if it would have substantially limited a major life activity when active; and
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, except that the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered.⁹

The findings of the ADA Amendments Act include statements indicating a determination that the Supreme Court decisions in *Sutton* and *Toyota* as well as lower court cases had narrowed and limited the ADA from what was originally intended by Congress. P.L. 110-325 specifically states that the then-current Equal Employment Opportunity Commission (EEOC) regulations defining the term “substantially limits” as “significantly restricted” are “inconsistent with congressional intent, by expressing too high a standard.”¹⁰

Final EEOC Regulations

Overview

The EEOC issued final ADAAA regulations on March 25, 2011, which will become effective on May 24, 2011.¹¹ Proposed regulations were published in the Federal Register on September 23, 2009,¹² and the EEOC received over 600 comments and held a series of “Town Hall Listening Sessions.”¹³ In general, the final regulations streamlined the organization of the proposed regulations, and moved many examples from the regulation to the appendix. The EEOC notes that the appendix will be published in the *Code of Federal Regulations* (CFR), and “will continue to represent the Commission’s interpretation of the issues discussed in the regulations, and the Commission will be guided by it when resolving charges of employment discrimination under the ADA.”¹⁴ The final regulations track the statutory language of the ADA but also provide several clarifying interpretations. Several of the major regulatory interpretations are as follows:

- including the operation of major bodily functions in the definition of major life activities;

⁹ P.L. 110-325, §3(4), 42 U.S.C. §12102(4). Low vision devices are not included in the ordinary eyeglasses and contact lens exception.

¹⁰ P.L. 110-325, §2(a)(8); 42 U.S.C. §12101 note.

¹¹ 76 FED. REG. 16978 (March 25, 2011).

¹² 74 FED. REG. 48431 (September 23, 2009).

¹³ 76 FED. REG. 16979 (March 25, 2011).

¹⁴ *Id.*

- adding rules of construction for when an impairment substantially limits a major life activity, and providing examples of impairments that will most often be found to substantially limit a major life activity;
- interpreting the coverage of transitory impairments;
- interpreting the use of mitigating measures; and
- interpreting the “regarded as” prong of the definition.

Major Life Activities

The first prong of the statutory definition of disability, referred to by EEOC as “actual disability,” provides that an individual with “a physical or mental impairment that substantially limits one or more of the major life activities of such individual”¹⁵ is an individual with a disability. The final regulations provide a list of examples of major life activities.¹⁶ In addition to those listed in the statute (caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working),¹⁷ the EEOC includes sitting, reaching, and interacting with others.¹⁸

Major life activities also include major bodily functions.¹⁹ In addition to the statutory examples (functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions), the EEOC includes special sense organs, genitourinary, cardiovascular, hemic, lymphatic and musculoskeletal.²⁰ The final regulations also provide that the operation of a major bodily function includes the operation of an individual organ within a body system.²¹

The EEOC emphasizes that the ADAAA requires an individualized assessment but notes that because of the statute’s requirement for broad coverage, some impairments will almost always be determined to be a disability. The final regulations list impairments that fall within this category. They include deafness, blindness, an intellectual disability, missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.²² In addition, the EEOC provides that the focus when considering whether an activity is a major life activity should be on “how a major life is substantially limited, and not on what outcomes an individual can achieve.”²³ For example, the EEOC noted that an individual with a learning

¹⁵ 42 U.S.C. §12102(1).

¹⁶ The EEOC specifically states that these examples are not limiting.

¹⁷ 42 U.S.C. §12102(2)(A).

¹⁸ New 29 C.F.R. §1630.2(i)(1)(i); 76 FED. REG. 17000 (March 25, 2011).

¹⁹ 42 U.S.C. §12102(2)(B).

²⁰ New 29 C.F.R. §1630.2(i)(1)(ii); 76 FED. REG. 17000 (March 25, 2011).

²¹ *Id.*

²² New 29 C.F.R. §1630.2(j)(3)(iii); 76 FED. REG. 17001 (March 25, 2011).

²³ New 29 C.F.R. §1630.2(j)(4)(iii); 76 FED. REG. 17001 (March 25, 2011).

disability my achieve a high level of academic success but may be substantially limited in the major life activity of learning.²⁴

Substantially Limits a Major Life Activity

The final regulations provide rules of construction to assist in determining whether an impairment substantially limits an individual in a major life activity.²⁵ Generally, the regulations provide that not every impairment is a disability but an impairment does not have to prevent or severely limit a major life activity to be considered substantially limiting. The term substantially limits is to be broadly construed to provide expansive coverage,²⁶ and requires an individualized determination.²⁷

Transitory Impairments

The ADAAA specifically provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.²⁸ In its appendix to the regulations, the EEOC states that “[t]he fact that the periods during which an episodic impairments is active and substantially limits a major life activity may be brief or occur infrequently is no longer relevant to determining whether an impairment substantially limits a major life activity.”²⁹ For example, the EEOC notes that an individual with post-traumatic stress disorder who has intermittent flashbacks is substantially limited in brain function and thinking.³⁰

Mitigating Measures

A mitigating measure, for example, a wheelchair or medication, eliminates or reduces the symptoms or impact of an impairment. The ADAAA provided that when determining when an impairment substantially limits a major life activity, the ameliorative effects of mitigating measures shall not be used.³¹ However, ordinary eyeglasses and contact lenses may be considered.³² The EEOC final regulations track the statutory language, and also provide that the negative side effects of a mitigating measure may be taken into account in determining whether an individual is an individual with a disability.³³ Although the EEOC would not allow a covered entity to require the use of a mitigating measure, if an individual does not use a mitigating measure, this may affect whether an individual is qualified for a job or poses a direct threat.³⁴

²⁴ *Id.*

²⁵ New 29 C.F.R. §1630.2(j)(1); 76 FED. REG. 17000 (March 25, 2011).

²⁶ New 29 C.F.R. §1630.2(j)(1)(i); 76 FED. REG. 17000 (March 25, 2011).

²⁷ New 29 C.F.R. §1630.2(j)(1)(iv); 76 FED. REG. 17000 (March 25, 2011).

²⁸ 42 U.S.C. §12102(4)(D).

²⁹ 76 FED. REG. 17011 (March 25, 2011).

³⁰ *Id.*

³¹ 42 U.S.C. §12102(4)(E).

³² *Id.*

³³ New 29 C.F.R. §1630.2(j)(4)(ii); 76 FED. REG. 17001 (March 25, 2011).

³⁴ 76 FED. REG. 17010 (March 25, 2011).

Regarded As Having an Impairment

The third prong of the statutory definition of disability is “being regarded as having an impairment.”³⁵ The ADAAA further describes being regarded as having an impairment by stating that an individual meets this prong of the definition “if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.”³⁶ The statute also provides that the “regarded as” prong does not apply to transitory or minor impairments, and a transitory impairment is defined as an impairment with an actual or expected duration of six months or less.³⁷

The EEOC final regulations echo the statutory language, and encourage the use of the “regarded as” prong when reasonable accommodation is not at issue.³⁸ The EEOC emphasizes that even if an individual is regarded as having a disability, there is no violation of the ADA unless a covered entity takes a prohibited action, such as not hiring a qualified individual because he or she is regarded as having a disability.³⁹ A covered entity may challenge a claim under the “regarded as” prong by showing that the impairment is both transitory and minor,⁴⁰ or by showing that the individual is not qualified or would pose a direct threat. However, it should be noted that the defense that an impairment is transitory and minor is only available under the “regarded as” prong. The rules of construction discussed previously concerning the first or actual prong specifically state that the effects of an impairment lasting fewer than six months can be substantially limiting.⁴¹

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³⁵ 42 U.S.C. §12102(1)(C).

³⁶ 42 U.S.C. §12102(3)(A).

³⁷ 42 U.S.C. §12102(3)(B).

³⁸ New 29 C.F.R. §1630.2(g)(3); 76 FED. REG. 17000 (March 25, 2011).

³⁹ New 29 C.F.R. §1630.2(l); 76 FED. REG. 17002 (March 25, 2011).

⁴⁰ New 29 C.F.R. §1630.15(f); 76 FED. REG. 17003 (March 25, 2011).

⁴¹ New 29 C.F.R. §1630.2(j)(1)(ix); 76 FED. REG. 17000 (March 25, 2011).

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