



ATTORNEYS AT LAW

May 13, 2011

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FINALIZES
REGULATIONS IMPLEMENTING THE AMERICANS WITH DISABILITIES
AMENDMENTS ACT OF 2008**

On March 25, 2011, the Equal Employment Opportunity Commission issued its long-awaited regulations that implement the Americans with Disabilities Amendments Act of 2008 (the "ADAAA"). The Americans with Disability Act (the "ADA") prohibits employers from discriminating against employees on the basis of a disability. The primary purpose behind the ADAAA was to expand the scope of people covered by the ADA.

The regulations, which will go into effect on May 24, 2011, implement the ADAAA's explanation of what conditions will qualify as a "disability." Thus, while a "disability" is defined as: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a past history of such an impairment, or (3) being regarded as having a disability, the regulations interpret the definition so expansively that numerous conditions previously not found to be disabilities, now may be. The new regulations provide that an individual has a "disability" even if the impairment occurs periodically or is in remission, as long as the impairment is physical or mental and substantially limits one or more major life activities when it is active. The regulations also clarify that "major life activities" include major bodily functions, such as the immune system and brain functions.

Another change is that under the regulations, it will likely be easier for an individual to prove that he was "regarded as" having a disability by his employer. Under the new regulations, an employee must only show that his employer treated him like he had a disability. Prior to the enactment of the ADAAA and the new regulations, to establish that an individual was "regarded as" having a disability, he had the more strenuous burden of proving the employer's belief about the nature of his impairment.

As additional guidance, the regulations list specific examples of impairments that fall within the definition of a “disability.” These examples include:

- Autism
- Bipolar disorder
- Cancer
- Cerebral palsy
- Diabetes
- Epilepsy
- HIV infection
- Major depressive disorder
- Multiple sclerosis
- Muscular dystrophy
- Post-traumatic stress disorder
- Obsessive compulsive disorder
- Schizophrenia

Because the new regulations are aimed at implementing and clarifying the ADA and ADAAA, they explain the existing law with greater specificity, rather than implement new law. The specificity in the regulations provides helpful guidance to employers and employees about compliance with the ADA and ADAAA. It is recommended that all employers review the regulations to ensure that their general employment practices comply with the regulations. In light of Congress’ and the EEOC’s policy that favors a broad definition of a “disability,” employers are urged to be cautious in making the difficult determination of whether an individual has a disability covered by the ADA and the ADAAA.

The regulations can be accessed on the Federal Register’s website at: <http://www.federalregister.gov/articles/2011/03/25/2011-6056/regulations-to-implement-the-equal-employment-provisions-of-the-americans-with-disabilities-act-as>. Please contact Denis Jacobson (336) 271-5242 or Brandy Mills (336) 271-5212 in the dispute resolution and litigation practice group if you have any questions concerning your compliance with the ADA and the ADAAA.