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CLIENT ALERT

EEOC Issues Notice of Proposed Rule Revising ADA Regulations and Guidance

Today the Equal Employment Opportunity Commission (“EEOC”) published in the Federal Register its previously announced Notice of Proposed Rulemaking to revise its Americans with Disabilities Act (“ADA”) regulations that implement the ADA Amendments Act of 2008. The ADA Amendments Act was signed into law by President George W. Bush on September 25, 2008, and went into effect on January 1, 2009. (See Client Alert dated September 29, 2008 at www.putneylaw.com/clients_updates.html). The ADA Amendments Act broadened the scope of the ADA to protect many more employees from discrimination in the workplace by expanding the definition of “disability.”

While the ADA Amendments Act retained the ADA’s basic definition of “disability” as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment, it changed the way these terms should be interpreted. The EEOC’s proposed rule revises the existing regulations and interpretive guidance to clarify compliance obligations with the ADA, as amended. The more salient points of the proposed rule are as follows:

- The proposed rule provides that the definition of “disability” shall be interpreted broadly. It also revises the definition of “substantially limits” by providing that a limitation need not “significantly” or “severely” restrict a major life activity in order to meet the standard.
- The proposed rule expands the definition of “major life activities” by setting forth two non-exhaustive lists. The first list includes many activities that the EEOC has recognized (*e.g.*, walking) as well as activities that the EEOC has not specifically recognized (*e.g.*, reading, bending, communicating). The second list includes major bodily functions (*e.g.*, functions of the immune system, normal cell growth, digestive, bowel,

bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions). The proposed rule provides that mitigating measures other than “ordinary eyeglasses and contact lenses” are not to be considered in assessing whether an individual has a disability. It also provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

- The proposed rule provides that the definition of “regarded as” no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity. Instead, the applicant or employee who is subjected to an action prohibited by the ADA because of an actual or perceived impairment will meet the “regarded as” definition of disability, unless the impairment is both transitory and minor. The proposed rule also states that individuals covered only under the “regarded as” prong are not entitled to reasonable accommodation.

The full text of the EEOC’s Notice of Proposed Rulemaking is available at <http://edocket.access.gpo.gov/2009/pdf/E9-22840.pdf>.

The public has 60 days after publication of the Notice of Proposed Rulemaking to submit comments to the EEOC about the proposed rule. At the end of this period, the EEOC will evaluate the comments, may make revisions to the proposed rule in response to those comments, and then submit a proposed final regulation. It is anticipated that the final regulation will be substantially similar to the proposed rule set forth above.

* * *

Covered employers should confirm that their existing internal policies and procedures reflect the broader definition of disability under the ADA Amendments Act, and should be prepared to comply with the EEOC’s final regulation.

If you should have any questions regarding the proposed regulation and interpretive guidance, please contact us.

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