

# ADAAA Regulations Alert

March 31, 2011

The EEOC has finalized regulations interpreting the 2008 Americans with Disabilities Act Amendments Act. Effective January 1, 2009, the ADAAA significantly expanded the phrase "disability" under the Americans with Disabilities Act (ADA). The regulations make clear that coverage should be construed broadly. These regulations will lead to more liability for employers. For example, the regulations identify examples of impairments that will "virtually always" be disabilities: deafness, blindness, mental retardation, missing limbs, mobility impairments, autism, cancer, diabetes, HIV infection, epilepsy, cerebral palsy, multiple sclerosis and muscular dystrophy, bipolar disorder, obsessive-compulsive disorder, schizophrenia, post-traumatic stress disorder, and major depressive disorder. This list may make class actions more attractive to plaintiffs' lawyers.

Previously, winning certification of ADA class actions was difficult because each individual needed to prove he was substantially limited by the impairment at issue. Now, pointing to this regulation, individuals who suffer from the same impairment might argue they are all presumed disabled, and thereby win class certification. The ADAAA and the final regulations define three approaches to proving "disability." First, individuals with a physical or mental impairment that substantially limits one or more major life activities are disabled. The new regulations include two new body systems that can be affected by "impairments": the immune and circulatory systems. The regulations add that the operation of "major bodily functions" is now a major life activity, including the digestive, bladder, brain, and reproductive functions, among others. Perhaps most importantly, impairments that are episodic or in remission meet the definition of disability as long as they would substantially limit a major life activity when active. Examples include epilepsy, hypertension, and asthma. Likewise, impairments are to be considered in their non-mitigated state-that is, without regard to whether the impairment could be mitigated by, for example, a hearing aid or medication. The sole exception for this is ordinary vision impairments correctable with eyeglasses or contact lenses. Under the second approach, a person who does not presently have a substantially limiting impairment is protected by the ADA if she has a "record of disability"-that is, had a disability in the past or was once misclassified as having a disability. Under the third approach, a person is protected if the employer "regards" the individual as having an impairment, unless the impairment is transitory and minor (viewed objectively). The requirement of the original ADA that the employer believe the impairment (or perceived impairment) substantially limited a major life activity has been eliminated. The question

now is simply whether the employer treated the individual as if she had a nontransitory and non-minor physical or mental ailment.

## Authored By



Allison Oasis Kahn



James R. Wiley

## Related Practices

[Labor & Employment](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.