



EEO FOCUS

News You Can Use



Americans with Disabilities Act (ADA) Amendments Act of 2008 ADAAA Regulations, Finally!

More than two years after the ADA Amendments Act (ADAAA) went into effect, the Equal Employment Opportunity Commission (EEOC) has issued final regulations to help us understand just how broad the definition of disability now is. The overarching message of the regulations is that determining who has a disability should not be a drawn-out, complicated assessment, but for those of you who are not convinced, the regulations provide a lot of information to help convince you. Let's take a look at some of the highlights.

What is Substantially Limits?

As you may know, the definition of disability is the same as it always was – an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having an impairment. What changed was the meaning and application of the terms "substantially limits" and "major life activities." In the ADAAA itself, the term "major life activity" was clearly defined – the regulations added a few things, but did not make any major changes. However, the term "substantially limits" was not defined in the Act and although the regulations still do not define the term, they do provide nine rules of construction to help us understand how to determine whether a person is substantially limited. And in the accompanying appendix, the EEOC provides additional information and examples. For many people, these examples are the most useful part. (See page 2)

Virtually Always Covered Impairments:

Taking the nine rules of construction that apply to the term substantially limits, the EEOC provides examples of impairments that will virtually always meet the definition of disability. These impairments are: deafness, blindness, intellectual disability (formerly termed mental retardation), partially or completely missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, Human Immunodeficiency Virus (HIV) infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia disorder. The regulations emphasize that the determination of disability is still done on a case by case basis, but the inherent nature of these impairments will in virtually all cases give rise to a substantial limitation of a major life activity.

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**"No pessimist ever discovered the secret of the stars, or sailed to an uncharted land, or opened a new doorway for the human spirit."
Helen Keller**

Condition, Manner, and Duration:

For other impairments a bit more analysis may be needed. The regulations suggest that for people with these types of impairments, when determining whether the person is substantially limited, it may sometimes be useful to consider (as compared to most people in the general population) the condition under which the person performs the major life activity; the manner in which the person performs the major life activity; and/or the duration of time it takes the person to perform the major life activity, or for which the person can perform the major life activity.

Think about these "Nine" Rules of Construction when Determining if an Individual is Substantially Limited:

1. The term should be construed "broadly in favor of expansive coverage." It is "not meant to be a demanding standard."
2. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability.
3. The primary focus should be whether the employer complied with its obligations and whether discrimination occurred, not whether an individual is substantially limited in a major life activity. Therefore, this determination should not require extensive analysis.
4. The individualized assessment to determine if someone is substantially limited should require a degree of functional limitation that is "lower" than the standard prior to the enactment of the ADAAA.
5. The analysis of whether an individual's performance of a major life activity as compared to most people in the general population usually will not require scientific, medical, or statistical analysis.
6. The determination of whether a substantial limitation exists shall be made without regard to the ameliorative effects of mitigating measures (except for ordinary eyeglasses or contact lenses).
7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
8. An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered substantially limiting.
9. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting. Therefore, even conditions of short duration (e.g., a few months) can meet this definition.

The long-awaited regulations are here and for those of you who want to read more about them, see http://www.eoc.gov/laws/statutes/adaaa_info.cfm and watch the JAN Website for updates! (www.askjan.org)

Extracted from JAN e-newsletter, article by Linda Carter Batiste, J.D., Principal Consultant, Job Accommodation Network and Morgan and Lewis, Labor and Employment Law Flash, second Qtr 2011, 29 March 2011.



Communicating Expectations is Critical



People would generally agree that it is unreasonable to hold someone accountable for something they don't know they were responsible for. Most employees don't like to hear that their work performance is not up to par but if it's not what you expect you need to communicate what they can do to meet your expectations. Managers must clearly communicate standards, expectations, and requirements to employees during their initial counseling, when changes occur or whenever issues or concerns arise in performance or conduct. Failing to communicate expectations

results in an injustice to the entire team not just the employees not meeting the expectations. Consequently, the team compensates for the employees that are not meeting the basic standards. If you fail to counsel or correct the sub-standard employee over time your solid performers will begin to resent you, the substandard employee, and burn out or question why they give their job 110% of their efforts when they are not appreciated or valued.

Performance expectations generally fall into one or more of the following categories:

- **Quality:** How well an activity is performed or to what standard the task is completed.
- **Quantity:** How much or how many are produced or performed.
- **Timeliness:** How quickly a result is produced or performed.
- **Manner:** The way or style in which a task is performed or produced.
- **Method:** The policies, procedures and technical considerations applied to the task.
- **Cost:** The effective use of resources to complete a task.

Work requirements often speak to the manner in which work is done and reflects the organization's values. When looking at the above categories, manner should also include workplace behavior. How employees conduct themselves at work is a reflection of the organization and the organization's values. Ensuring values of the organization are adhered to throughout the rating period can lead to fewer harassment complaints and higher morale within the work unit. As a manager, it is your responsibility to set clear, concise, realistic workplace expectations and to ensure employees are held accountable for their good and poor performance. Being fair can be difficult, however managers need to recognize, reward, and evaluate employees based on individual performance.

Letting your employees know and understand what's expected of them sets you and your team up for success while ensuring your mission is accomplished in an agreed upon manner and ultimately exceeding the standards.

Based on information from: hr.ou.edu/managers/communicatingexpectations.asp



Accountability for Diversity Initiatives

Federal agencies are under a lot of pressure to improve diversity and increase the representation of particular groups, including employees with disabilities and veterans. In the current climate of tight budgets and limited hiring, that will take some creativity according to Office of Personnel Management deputy director Christine Griffin.

"It is unreal to think that people are not doing any hiring," Griffin said. "There are a ton of eligible employees who will be retiring and they will need to be replaced even if agencies cannot create new positions." So what's the secret to success?

The first key, Griffin said, is to tie diversity initiatives to the agency's overall human capital plan. Agencies really need to take a hard look, she said, at their expected hiring needs over the next five years or so, taking into consideration anticipated retirements, attrition, and other factors.

Once anticipated hiring needs have been established, organizations can use special hiring authorities for people with disabilities and veterans to help fill these needs quickly. Schedule A, for example, is a quick and easy way to bring qualified employees with disabilities on board, but it is often misunderstood and not fully utilized. To learn more, check out this short five-minute training video from OPM: <http://golearn.gov/HiringReform/hpwd/hpd.htm> (Hiring People with Disabilities Made Simple).

Even if agencies are doing very little hiring these days, there are steps they should be taking to improve diversity. For example, providing training and development opportunities to help women, minorities, and people with disabilities advance and move into the management ranks. Finally, closely examining retention data can really help organizations discover if they are doing enough to keep the veterans and people with disabilities once they are hired.

If you'd like to learn more about Schedule A hiring contact your Civilian Personnel Advisory Center staffing specialist or the EEO Office.

Excerpted from *CyberFeds*, 20 May 2011 interview with Christine Griffin by Julie Davidson

Last Chances for EEO Training This Fiscal Year!

Anti-Harassment/EEO Annual Training	14 September 0800, 1000, 1300 Online anytime	McMahon Theater https://lms.carson.army.mil
EEO for Managers/Supervisors	3 August 1400 7 September 1400	Bldg. 1118, Room 219 Bldg. 1118, Room 219
Reasonable Accommodation Process	3 August 1300, 1500 7 September 1300, 1500	Bldg. 1118, Room 219 Bldg. 1118, Room 219

EEO WEBSITE: <http://www.carson.army.mil/EEO>