

The Americans with Disabilities Act Amendments Act of 2008 and Its Potential Impact on Reasonable Accommodations Requests

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 (ADA Amendments Act). The ADA Amendments Act is effective as of January 1, 2009, though implementing regulations from the Equal Employment Opportunity Commission (EEOC) may not be issued for several months.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations.

The Act retains 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. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act directs the EEOC to revise that portion of its regulations defining the term "substantially limits" and directs it to expand the definition of "major life activities" by including two non-exhaustive lists:

- the first list includes many activities that the EEOC has recognized (e.g. hearing, seeing, walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and 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 Act also states that mitigating measures, other than "ordinary eyeglasses or contact lenses", shall not be considered in assessing whether an individual has a disability; clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor; provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and emphasizes that the definition of "disability" should be interpreted broadly.

For the time being, we should continue to use the NOAA Reasonable Accommodation Policy and Procedures as our guide; they are found on the NESDIS EEO & Diversity web page at <http://www.nesdis.noaa.gov/About/Diversity/diversity.html> under Federal Anti-Discrimination Laws and DOC/NOAA Policies and Procedures.

Though the NOAA Procedures do not direct managers and supervisors to contact their EEO and Diversity Manager when reasonable accommodation requests are made, I do ask that you begin doing that so that I'm able to provide assistance and to track the progress of requests.