

How's Your Knowledge of the ADA Amendments and Proposed Regulations?

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 took effect on January 1, 2009. It requires employers to make significant changes to ensure they comply with the new ADA provisions. The Act also required the Equal Employment Opportunity Commission (EEOC) to develop related implementing regulations. The EEOC has recently published its Proposed Regulations. You can find them at <http://edocket.access.gpo.gov/2009/pdf/E9-22840.pdf>. The regulations are subject to a 60 day public comment period and will then be finalized. It's not likely that they'll change significantly.

Now is a good time to reacquaint yourself with the ADAAA and get to know the proposed regulations.

Test Your Knowledge of the ADAAA. True or False?

1. The fundamental change resulting from the ADAAA is that now all employers of 5 or more employees must comply with the Americans with Disabilities Act.
2. No changes were made to the basic definition of "disability" under the ADA.
3. Determining if someone has a "physical or mental impairment" still requires a case-by-case analysis.
4. Impairments that are episodic or in remission aren't generally considered disabilities.
5. The definition of "major life activities" remains the same.
6. To have a disability (or a record of a disability) an individual must only be "substantially limited" in performing a major life activity as compared to most people.
7. Conditions that are well controlled by medications would not be considered disabilities.
8. To be considered disabled under the "regarded as" prong of the ADA definition, an individual must show that an employer regarded him as substantially limited in a major life activity.
9. The ADAAA also changes the definitions of "qualified," "direct threat," "reasonable accommodation," and "undue hardship."
10. Pregnancy is a disability under the ADAAA.

Answers on next page.

Answers:

1. **False.**

The ADA still applies to organizations of 15 or more, although your state may impose additional requirements. The basic change in the ADA is that the law and its definition of “disability” must be interpreted “broadly to the maximum extent permitted” and generally shouldn’t require “extensive analysis.” The bottom line: it will be much easier for an individual to establish that he or she has a covered disability.

2. **True.**

The ADA’s definition of “disability” remains as:

- a. A physical or mental impairment that substantially limits a major life activity; or
- b. A record of a physical or mental impairment that substantially limits a major life activity; or;
- c. Being regarded as having such an impairment. (i.e., When an employer takes an action prohibited by the ADA based on an actual or perceived impairment.)

Note, however, that significant changes have been made as to how some of the key terms in the definition will be applied. They have become much more expansive.

3. **Some True, Some False.**

The proposed rules provide that some impairments will “consistently” meet the definition of disability. Numerous examples of this type of impairment are provided including such things as deafness, blindness, cancer, diabetes, and multiple sclerosis. The EEOC says that an individual assessment should be done regarding these impairments but that it “can be done quickly and easily.” Some impairments are much closer to “automatic” disabilities.

4. **Basically False.**

The ADAAA and the proposed regulations specifically state that an impairment that is episodic or in remission meets the disability definition if it would substantially limit a major life activity when active.

5. **False.**

The definition of “major life activities” has expanded and will now include two non-exhaustive lists of basic life activities and also certain major bodily functions.

6. **Basically True.**

The definition of “substantially limited” has expanded and become more employee friendly. An impairment need not “prevent” or “significantly” or “severely” restrict a major life activity.

7. **False.**
In the past, determinations of whether an individual is protected under the ADA were made with consideration given to mitigating measures (e.g., medication, prosthetics, hearing aids, mobility tools). Under the ADAAA, disability determinations are to be made without regard to mitigating measures.
8. **False.**
The “regarded as” definition has changed significantly. It no longer requires that an employer believe an individual to be “substantially limited.” The proposed regulations provide that an employer “regards” an applicant or employee as disabled if it takes actions prohibited by the ADA (e.g., illegal termination) based on the person’s impairment or an impairment the employer thinks he has.
9. **False.**
Most of the changes only affect the definition of “disability.”
10. **False.**
Nothing has changed in this area. Pregnancy is still not considered a disability under the Americans with Disabilities Act. However, certain impairments resulting from pregnancy could be disabilities if they substantially limit a major life activity.

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