

EEOC Releases Proposed Regulations to Expand the Coverage of the ADA

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

On September 23, 2009, the EEOC published proposed regulations to implement the ADA Amendments Act. The ADA Amendments Act, enacted last year, made a number of significant changes to the definition of “disability” in the ADA and directed the EEOC to amend its existing regulations to reflect the changes made by the ADA Amendments Act. In effect, the statute and proposed regulations are designed to expand the coverage of the ADA.

The proposed regulations, published in the *Federal Register*, retain 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, the Amendments Act and the proposed regulations change the way that these statutory terms should be interpreted in several ways.

For example, under the proposed regulations, the decision of whether an impairment substantially limits a major life activity would be based upon a “common-sense assessment,” comparing an individual’s ability to perform a specific major life activity with that of most people in the general population. The proposed regulations also significantly expand the nonexhaustive list of major life activities

to include activities such as bending, reading, and sitting. An impairment would substantially limit the major life activity of work if an individual was substantially limited in his or her “ability to perform, or meet the qualifications, for the type of work at issue,” instead of a “class” or “broad range” of jobs.

The proposed regulations also expand the definition of “regarded as” disabled. An individual seeking to establish that he or she was regarded as disabled would only have to demonstrate that the employer took an action against him or her because of a perceived impairment, not a perceived impairment that substantially limited a major life activity.

Additionally, the proposed regulations list specific types of physical and mental impairments that will “consistently” qualify as disabilities under the ADA, such as deafness, blindness, missing limbs, cancer, cerebral palsy, epilepsy, HIV/AIDS, and severe mental disorders such as bipolar disorder or schizophrenia.

Interested parties now have 60 days to comment and respond to the proposed regulations. When the 60-day period for public comment ends, the EEOC may revise its proposal or adopt the regulations as issued.

This client alert is for general information purposes and should not be regarded as legal advice.