

EEOC Proposes Regulations Implementing the ADA Amendment Act of 2008

Recently, the Equal Employment Opportunity Commission (“EEOC”) proposed new regulations implementing the Americans with Disabilities Act Amendments Act of 2008 (“the Act”). Both the Act, which overturned two prior Supreme Court decisions, and the proposed regulations, if finalized, shift the focus from whether an individual has a disability to whether an employer has complied with its ADA obligations. **Employers should note how the Act and these proposed regulations, depending on their final form, may impact their policies, practices and procedures and take appropriate reactive measures.**

Noteworthy Revisions

Broadly, the proposed regulations, mirroring the Act, clarify and reiterate individuals covered by the ADA, revise the ADA’s definition of “disability,” eliminate mitigating measures from having a determinative effect on whether a “disability” qualifies as such under the ADA and clarify the ADA’s coverage of impairments that are episodic or in remission that substantially limit a major life activity when active

Impacts on Employers?

The EEOC anticipates employers will incur some, but – by its analysis – not “significant” costs to implement changes that may be brought about by its proposed regulations. **Certainly, employers should audit their policies, practices and procedures to maximize compliance with the Act. To the extent an employer has not begun auditing its policies, practices and procedures following the Act’s**

January 1 effective date, it should begin that process as soon as practicable and monitor the finalization process of these proposed regulations.

Status of Proposed Regulations

The public may now submit comments to the EEOC concerning the proposed regulations. At the end of 60 days, **which began on September 23**, the EEOC will evaluate submitted comments and possibly revise the proposed regulations in response. The EEOC will then submit its proposed final regulations to the Office of Management and Budget pursuant to Executive Order 12866. The proposed final regulations will be coordinated with other federal agencies before being published in the Federal Register.

If you have any questions about these proposed regulations or how they might impact you, please contact Brown & Ruprecht, PC:

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