

CLIENT NEWS BRIEF

New ADA Regulations Confirm Congressional Intent to Give Broad Protection to Individuals with Disabilities

The Department of Justice recently released revisions to the regulations implementing the Americans with Disabilities Act (ADA) Amendments of 2008, which went into effect on January 1, 2009. The 2008 amendments were passed by Congress in response to various Supreme Court cases which denied protection to individuals under the ADA based, in part, on a finding that the individuals failed to qualify as “disabled” under the law. The purpose of the newly released revisions to the ADA regulations is to confirm Congress’ original intent for the ADA to be construed in favor of broad coverage for persons with disabilities.

Under the ADA, an individual with a physical or mental impairment is considered “disabled” if the impairment substantially limits the individual’s ability to perform a major life activity, as compared to members of the general population. Specifically, the revisions to the ADA do the following:

- Clarify that the terms “disability” and “substantially limits” should be interpreted broadly and that the question of whether someone has an ADA-qualifying disability should not demand extensive analysis. Rather, the focus of an ADA inquiry should be on whether an employer has complied with its obligations under the law.
- Expand the definition of “major life activities” to include “writing,” “operation of major bodily functions,” and a number of other activities included on a non-exhaustive list now provided in the regulation.
- Clarify that an impairment which is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- Clarify that an impairment need only substantially limit one major life activity to be considered a disability.
- Confirm that individuals who qualify for protection under the ADA because their employers regard them as having an impairment are not entitled to reasonable accommodation. However, these individuals may establish an employer’s violation of the ADA if they are subjected to a prohibited action because of an actual or perceived physical or mental impairment, regardless of whether the impairment limits or is perceived to limit a major life activity.
- Add Attention-Deficit/Hyperactivity Disorder (ADHD) as an example of a physical or mental impairment.

The revisions to the ADA regulations are intended to clarify existing law and create no new legal obligations for employers. Furthermore, California’s Fair Employment and Housing Act (FEHA) is generally more favorable than the ADA in protecting persons with disabilities, so much of the new federal regulatory language is already required under state law. In summary, employers should broadly construe the language and intent of the FEHA and the ADA when

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considering employees' requests for accommodation.

Finally, please note that these revisions are consistent with recent guidance regarding section 504 the Rehabilitation Act of 1973, under which public school staff must also broadly construe whether a student has a physical or mental impairment which substantially limits a major life activity.

For questions regarding the revised regulations or an employer's general obligations to individuals with disabilities under state and federal law, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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