

Washington Healthcare News

wahcnews.com

Articles, Interviews and Statistics for the Healthcare Executive

VOLUME 4, ISSUE 2

FEBRUARY 2009

Update Your Policies Now to Comply with ADAAA

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If you thought you were up to speed on the Americans with Disabilities Act, think again.

In the most sweeping change to employment law in more than a decade, the ADA Amendments Act of 2008 significantly expands the protections of the original ADA – to include more individuals with less severe impairments. The new law took effect January 1, 2009.

The ADA is the federal law that protects disabled workers against discrimination and requires that their employers provide them with reasonable accommodations to help them perform the essential functions of their jobs.

Under the ADA, “disability” is de-

fined as (1) having a physical or mental impairment that substantially limits one or more major life activities; (2) having a record of such an impairment; or (3) being regarded as having such an impairment.

Over the past 18 years, the U.S. Supreme Court has construed this definition of disability very narrowly. The ADAAA overturns these court decisions and unequivocally states that the ADA is intended to provide a “broad scope of protection.”

Substantially limits – In the ADAAA, Congress explicitly rejects the strict standard created by the U.S. Supreme Court and commands a broad reading of the term “disability.” The Equal Employment Opportunity Commission has been directed to issue new regulations that will re-define “substantially limits.”

The U.S. Supreme Court, for example, had ruled that a qualifying impairment must restrict activities that are of “central importance to most people’s daily lives.” The ADAAA requires only that an impairment substantially limit a single major life activity – regardless of whether it is of “central” importance.

Mitigating measures – The ADAAA clearly states that a determination of whether an individual

is substantially limited in a major life activity shall be made without regard to mitigating measures – medication, medical supplies, equipment, and other auxiliary aids or services. This does not include ordinary prescription eyeglasses and contact lenses.

Major life activities – Under the ADAAA, “major life activities” include (but are not limited to) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

“Major life activities” also includes a new category -- the operation of “major bodily functions” like the immune system, normal cell growth, digestive, bowel and bladder, neurological and brain, respiratory and circulatory, endocrine, and reproductive functions.

Under the ADAAA, impairments that are episodic or in remission can be considered a “disability” if they would substantially limit a major life activity when they are active. Documentary evidence of disability from a healthcare practitioner is still required.

Regarded as disabled – To make a claim under the old law, an employee had to prove that an employer regarded the employee as being

substantially limited in a major life activity because of a qualified disability. Under the ADAAA, the employee needs to demonstrate only that he or she was subjected to a prohibited action because of an actual or perceived physical or mental impairment – whether or not the impairment limits or is perceived to limit a major life activity.

“Regarded as disabled” does not include employees with a minor or transitory impairment. Employers need not provide reasonable accommodations to employees who are “regarded as disabled” unless those individuals also satisfy another part of the three-part definition of a disability.

In addition, under the new ADAAA, employees who were not considered disabled before will now be protected. Consequently, employers will need to document

and engage in the interactive and accommodation process with these employees. Accommodations must be offered only when they are reasonable and do not impose undue hardship. Documentation of a legitimate interactive process will provide an employer – if faced with a lawsuit -- with an important defense.

Reasonable accommodations can include acquiring certain equipment, adjusting exams, training materials or policies, providing qualified interpreters, reallocating nonessential job functions, permitting part-time or modified work schedules, and reassigning employees to equivalent vacant positions.

Healthcare employers should review the policies and practices that govern their interactive process and revisit the essential functions

of jobs to determine which core responsibilities may require accommodations under the ADAAA. They should review their forms to reflect changes, review handbook policies, train supervisors and managers, and anticipate the pending EEOC comprehensive regulations in 2009.

Many claims will likely be filed in the wake of the ADAAA. Protect yourselves by anticipating these changes -- and making them part of your policies and practices.

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