

## Proposed Revisions to the ADA

On September 23, 2009, the Equal Employment Opportunity Commission (EEOC) published a notice of proposed revisions to the Americans with Disabilities Act (ADA) regulations to bring these regulations into compliance with the ADA Amendments Act of 2008. The EEOC is holding a series of meetings around the country through November 23, 2009, allowing comments from interested parties. After that date, the ADA Regulations will be finalized. Final regulations will come in early 2010.

The notice of proposed revisions suggests the definition of disability will be a categorical assessment rather than an individual assessment of whether someone has a disability, because the notice of proposed revisions convey that certain impairments such as AIDS or HIV, cancer, cerebral palsy, diabetes and epilepsy would perpetually meet the definition of disability and the individualized assessment would be perfunctory to meet the definition of disability.

The notice of proposed revisions further advises that to be substantially limited in the major life activity of working, an individual must be unable to perform a "category of work," after considering the job-related demands. The notice of proposed revisions provide for the definition to be broadly construed so that "major life activities" are basic activities that the general population can perform with little or no difficulty.

The notice of proposed revisions convey that an individual will be regarded as disabled if they are subjected to an action prohibited by the ADA on the basis of an actual or perceived impairment, regardless of whether the impairment limits or is perceived to limit a major life activity.

The question for the employer is no longer does the employee have a disability but has the employer sufficiently accommodated an employee's disability. The EEOC's focus now is whether the discrimination occurred and not on whether the employee meets the definition of disability. The burden of proof of accommodation has shifted to the employer.

The implemented notice of proposed revisions will undoubtedly cause an increase in the number of individuals considered to be disabled. However, the employer can still contest the reasonableness of the accommodations suggested by the employee. The notice of proposed revisions does not define either a reasonable accommodation or whether the accommodation suggested would present an undue hardship on the employer.

Employers who want to comment on the notice of proposed revisions should contact the EEOC. The EEOC can be reached for comment at [www.eeoc.gov](http://www.eeoc.gov). If you wish to discuss this proposed change and/or to read further topical articles on the law, please visit [www.klnevada.com](http://www.klnevada.com).