

# New Disability Discrimination Rules Could Lead to an Increase in Broadcast Renewal Discrimination Complaint Reporting

---

May 2011

New rules adopted by the Equal Employment Opportunities Commission (EEOC) implementing the Americans with Disabilities Act Amendments Act (ADAAA) could increase the number of workers covered by the law, creating a corresponding increase in both the number of discrimination complaints broadcasters receive and the number they are required to report when filing broadcast license renewal applications.

The new rules are designed to construe the definition of "disability" broadly-"to the maximum extent allowable under the law." Their effect, therefore, is to make it easier for employees to establish that they have a disability and take advantage of the ADA's protections. Although the ADAAA and the EEOC's final regulations retain the familiar ADA definition of "disability" (a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having a disability), significant changes have been made in how those terms are interpreted.

For example, the new regulations clarify that "major life activities" include "major bodily functions," such as functions of the immune, digestive, genitourinary, neurological, respiratory, circulatory, cardiovascular, endocrine and lymphatic systems, to name a few. Significantly, the regulations also include "interacting with others" in the definition of major life activity, despite concerns raised by employer groups that doing so would limit employers' ability to discipline employees for misconduct. In addition, the EEOC has created nine principles of construction to guide the determination of

## Authors

---

Kathryne C. Dickerson  
Partner  
202.719.7279  
kdickerson@wiley.law

what "substantially limits" means. Under those principles, an impairment need not prevent or severely or significantly restrict performance of a major life activity to be considered a disability (leading to the quandary of an impairment that both "substantially limits" and yet fails to "significantly restrict"). The principles also provide that, with the exception of "ordinary eyeglasses or contact lenses," employers must not consider "mitigating measures" (such as medication and hearing aids) when determining whether someone has a disability. Finally, the regulations make it easier for individuals to establish coverage as being "regarded as" having a disability. Rather than focusing on what an employer believes about the nature of the person's impairment, the rules center on how the person was treated.

Broadcasters filing license renewal applications must report "any pending or resolved complaints filed during this license term . . . alleging unlawful discrimination in the employment practices" of any station in the Station Employment Unit. Because the new EEOC rules will become effective on May 24, 2011, broadcasters with filing deadlines falling later in the renewal period especially may see a marked uptick in the number of discrimination complaints filed against them that they are then required to report. As employers, however, all broadcasters should be proactive in responding to the rule changes. Indeed, the EEOC has repeatedly emphasized that the goal of the new statutory framework is to encourage employers to engage in an interactive process with individuals requesting reasonable accommodation. Broadcasters should consider taking steps such as retraining human resources personnel and managers and updating disability discrimination policies to ensure compliance with the EEOC's rules.