

## Americans With Disabilities Act (ADA), cont. . .

stating that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

### 6. *Regarded As*

An individual will meet the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act 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. In addition the “regarded as” definition does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less. The ADAAA makes regarded as coverage under the ADA very broad. To be covered, an individual only has to establish that an employer discriminated against him because of a medical condition, whether he actually has one or the employer just thought he did. He does not have to meet the substantially-limited-in-a-major-life-activity standard. One exception under regarded as is that impairments that are transitory (lasting or expected to last 6 months or less) and minor are not covered. Arguably, impairments that are transitory or minor, but not both, will be covered. Congress broadened coverage under the regarded as part of the definition to help address the prejudice, antiquated attitudes, and the failure to remove societal and institutional barriers that still exist.

### Reasonable Accommodation

The ADAAA did not change the definition of reasonable accommodation. However, the Act does clarify that only individuals who meet the first (actual disability) and second (record of a disability) parts of the definition are entitled to accommodations; individuals who only meet the third part (regarded as) are not entitled to accommodations. Even though the definition did not change, it is clear that with a broader definition of disability, more focus will be placed on providing reasonable accommodations. One thing to keep in mind regarding a request for reasonable accommodation is that the accommodation does not have to be tied to the substantially limited major life activity that established that the employee has a disability. For example, a person with cancer may establish that she has a disability because she is substantially limited in normal cell growth, which is listed as a major life activity under the “bodily functions” category in the

ADAAA. However, the accommodation request is related to fatigue and nausea resulting from medical treatment. Once the employee establishes that they have a disability, then the employer must consider providing accommodations for any limitations as a result of the impairment, not just the limitation that established the disability.

Another thing to keep in mind is the flexibility built into the reasonable accommodation obligation under the ADA. For example:

- a. employers can choose among effective accommodation options and do not always have to provide the requested accommodation,
- b. employers do not have to provide accommodations that pose an undue hardship,
- c. employers do not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job,
- d. employers do not have to make an accommodation for an individual who is not otherwise qualified for a position, and
- e. employers do not have to remove essential functions, create new jobs, or lower production standards as an accommodation.

### Employers and ADA

An individual’s employer is a potential source of funding for assistive technology. Under ADA, the employer has a legal mandate to provide a “reasonable accommodation” to employees and prospective employees with disabilities, if the accommodations will enable the individual to perform the essential functions of the position. A reasonable accommodation may include “acquisition or modifications of equipment or devices” as long as the accommodation does not impose “an undue hardship” on the company, determined by comparing “the nature and cost of the accommodation(s) in relation to the size, resources, nature and structure of the employer’s operation.” If the facility or company is part of a larger organization, the resources of the larger organization are taken into account when determining “undue hardship.” An employer is not responsible for an accommodation unless the individual makes known his or her disability and need for an accommodation.