

Implementing the ADAAA at the

Hawaii Department of Human Services

- ❖ **The Americans with Disabilities Act, as Amended, (ADAAA) was enacted on September 25, 2008.**
- ❖ **The ADAAA became effective January 1, 2009.**
- ❖ **Final EEOC Regulations on implementing the ADAAA became effective March 25, 2011.**
- ❖ **The Department of Human Services is covered by the ADAAA both in employment and services.**



EEOC Final Regulations

- Kept the ADA definition of the term “disability” (3 prongs).
- Implemented significant changes that Congress made regarding how those terms should be **INTERPRETED**.
- Set forth predictable, consistent and workable standards by adopting “rules of construction” to use when determining whether an individual is “substantially limited” in a major life activity.



In Summary, the U. S. Congress

- Made it easier for an individual seeking protection under the ADA to establish that he or she has a disability.
- Overturned several Supreme Court decisions that resulted in a denial of protection for many individuals with impairments, for example, cancer, diabetes and epilepsy.
- Mandates that the definition of disability be construed broadly.



Rules of Construction

- **“Substantially limits” requires a lower degree of functional limitation than the previous standard.**
- **“Substantially limits” is to be construed broadly in favor of expansive coverage.**
- **Determination requires an individualized assessment.**
- **Without regard to ameliorative effects of mitigating measures.**
- **Impairment that is episodic or in remission is a disability.**
- **Determination of disability should not require extensive analysis.**
- **Comparison of a person’s performance of a major life activity to the performance of the same activity by most people in the general population usually will not require scientific, medical or statistical analysis.**
- **An impairment that substantially limits one major life activity need not “substantially limit” other major life activities in order to be considered “substantially limiting.”**
- **Whether an individual’s impairment “substantially limits” a major life activity is not relevant to coverage under the “regarded as” prong of the definition of disability**



ADAAA Regulations

- **Make it easier for individuals to establish coverage under the “regarded as” prong of the definition of “disability.”**
- **Focus for establishing coverage is on HOW A PERSON HAS BEEN TREATED because of an impairment rather than on WHAT an employer may have believed about the nature of the person’s impairment.**
- **Individual must be covered under the first prong (actual disability) or second prong (record of disability) in order to qualify for a reasonable accommodation.**
- **Contains NO list of impairments that would “consistently”, “sometimes”, or “usually not” be disabilities. The rules of construction guide the analysis.**



Keep in Mind....

- A person with a disability must be qualified to do the **ESSENTIAL** job functions with or without reasonable accommodation.
- A person with a disability has to request an accommodation and an **interactive process** is necessary between employee and supervisor.
- **Reasonable** documentation is needed indicating disability and **need for** accommodation, especially when the disability is not obvious.
- Since the definition of disability was broadened, documentation may focus less on whether the person has a disability and more on the need for accommodation.
- ADAAA changes do NOT affect workers' compensation laws or Federal and State disability benefit programs.



For More Information...

- See Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA
- Visit EEOC website at www.eeoc.gov for ADAA regulations and question and answer documents
- See Hawai'i Administrative Rules relating to disability discrimination §12-46-187 Failure to make reasonable accommodation, a-d attached, or visit <http://hawaii.gov/labor/hcrc/har9.shtml#12-46-187>
- Call 586-4955 or e-mail gwatts@dhs.hawaii.gov

