Michigan Supreme Court

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Jennifer Warner
Director

MEMORANDUM

DATE: September 9, 2016

TO: Judges
Court Administrators
Probate Registers
County Clerks

FROM: Robin Eagleson, Management Analyst
Jim Inloes, Management Analyst

RE: Final Rule Implementing the ADA Amendments Act of 2008

On July 15, 2016, the United States Attorney General signed a Final Rule incorporating the requirements of the ADA Amendments Act into the ADA Title II and Title III regulations. The Final Rule was published in the Federal Register on August 11, 2016, and takes effect on October 11, 2016. Although Michigan judges and ADA coordinators have been trained in a manner that is consistent with this Final Rule, the SCAO is providing you with the details of the rule.

Consistent with the ADA Amendments Act, the regulations establish the following:

- The definition of "disability" should be interpreted broadly. The question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.
- Major life activities now include the operation of major bodily functions, such as functions of the neurological, digestive, or respiratory systems. The ADA Amendments Act provides a more extensive, non-exhaustive list of examples of major life activities, which includes major bodily functions.
- Due to uncertainty about the meaning of "physical and mental impairments," the term is now illustrated with the additional examples of dyslexia and Attention Deficit/Hyperactivity Disorder (ADHD).

- Specific rules of construction apply when determining whether an individual has a disability. These rules of construction include the following:
    1. The primary issue in a case brought under the ADA should be whether the covered entity (i.e. the court) has complied with its obligations and whether discrimination has occurred, not the extent to which the individual's impairment substantially limits a major life activity;
    2. The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA;
    3. In making the individualized assessment required by the ADA, the term "substantially limits" shall be interpreted to require a degree of functional limitation that is lower than the standard for substantially limits applied prior to the ADA Amendments Act;
    4. The comparison to which an impairment substantially limits the ability of an individual to perform a major life activity should be to most people in the general population;
    5. Comparing an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence;
    6. The ameliorative effects of mitigating measures, such as medication or hearing aids (but excepting ordinary eyeglasses and contact lenses), shall not be considered in assessing whether an individual has a disability;
    7. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and
    8. An impairment that substantially limits one major life activity need not substantially limit the other major life activities in order to be considered a substantially limiting impairment.
- It should be easier for individuals to establish coverage under the "regarded as" prong of the definition of "disability." The emphasis should be on how a person has been treated because of an actual or perceived physical or mental impairment (that is not transitory and minor), rather than on what a covered entity may have believed about the nature or severity of the person's impairment.
- Individuals covered under the "regarded as" prong are not entitled to reasonable modifications.

The Department has also published Questions and Answers on the Final Rule that provide additional information.

If you have any questions regarding the above information, please contact us at TrialCourtServices@courts.mi.gov.