

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission or agency) is to ensure equality of opportunity in employment by vigorously enforcing six federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; Titles I and V of the Americans with Disabilities Act of 1990, as amended, and sections 501 and 505 of the Rehabilitation Act of 1973, as amended (disability); and the Government Employee Rights Act of 1991. Effective November 21, 2009, the EEOC will enforce Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information.

The first item in this Regulatory Plan is titled “Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act.” On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 (“ADA Amendments Act” or “Act”). The Act makes important changes to the definition of the term “disability” by rejecting the holdings in several Supreme Court decisions and portions of EEOC’s ADA regulations. The Act retains the ADA’s basic definition of “disability” as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways.

The second item in this Regulatory Plan is titled “Reasonable Factors Other Than Age Under the Age Discrimination in Employment Act”. In March 2008, the EEOC published a Notice of Proposed Rulemaking (NPRM) concerning disparate impact under the Age Discrimination in Employment Act. 73 FR 16807 (March 31, 2008). In this NPRM, the Commission asked whether EEOC regulations should provide more information on the meaning of “reasonable factors other than age” (RFOA) and if so, what the regulations should say. After consideration of the

public comments, and in light of the Supreme Court decisions in *Smith v. City of Jackson*, 544 U.S. 228 (2005), and *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. _____, 128 S. Ct. 2395 (2008), the Commission believes it is appropriate to issue a new NPRM to address the scope of the RFOA defense. Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission intends to publish a new NPRM proposing to amend its regulations concerning RFOA.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Acting Chairman of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

EEOC

PROPOSED RULE STAGE

155. REASONABLE FACTORS OTHER THAN AGE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625.7(b),(c)

Legal Deadline:

None

Abstract:

On March 31, 2008, the EEOC published a Notice of Proposed Rulemaking (NPRM) concerning disparate impact under the Age Discrimination in Employment Act. 73 FR 16807 (March 31, 2008). In addition to requesting public comment on the proposed rule, the Commission asked whether regulations should provide more information on the meaning of “reasonable factors other than age” (RFOA) and, if so, what the regulations should say. After consideration of the public comments, and in light of the Supreme Court decisions in *Smith v. City of Jackson*, 544 U.S. 228 (2005), and *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. _____, 128 S. Ct. 2395 (2008), the Commission believes it is appropriate to issue a new NPRM to address the scope of the RFOA defense.

Accordingly, before finalizing its regulations concerning disparate impact under the ADEA, the Commission intends to publish a new NPRM proposing to amend its regulations concerning RFOA.

Statement of Need:

In *Smith v. City of Jackson*, the Supreme Court affirmed that disparate impact is a cognizable theory of discrimination under the ADEA but indicated that “reasonable factors other than age,” not “business necessity,” is the appropriate model for the employer’s defense against an impact claim. In *Meacham v. Knolls Atomic Power Lab.*, the Supreme Court ruled that the employer has the RFOA burden of persuasion. Current EEOC regulations do not define the meaning of “RFOA.” The EEOC is revising its regulations to address the scope of the RFOA defense.

Summary of Legal Basis:

The ADEA authorizes the EEOC “to issue such rules and regulations it may consider necessary or appropriate for carrying out this chapter. . . .” 29 U.S.C. section 628.

Alternatives:

The Commission will consider all alternatives offered by the public commenters.

Anticipated Cost and Benefits:

Preliminary estimates of anticipated costs and benefits have not been determined at this time. The Commission will explore options for conducting a cost benefit analysis for this regulatory action if necessary. This revision to EEOC’s regulation, informed by the comments of stakeholders, will be beneficial to courts, employers, and employees seeking to interpret, understand, and comply with the ADEA.

Risks:

The proposed regulation will reduce the risks of liability for noncompliance with the statute by clarifying the RFOA defense. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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EEOC**FINAL RULE STAGE****156. REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT****Priority:**

Other Significant

Legal Authority:

42 USC sec 12116 and sec 506 as redesignated under the ADA Amendments Act of 2008

CFR Citation:

29 CFR 1630

Legal Deadline:

None

Abstract:

The Americans With Disabilities Act Amendments Act of 2008 ("the Amendments Act") was signed into law on September 25, 2008, with a statutory effective date of January 1, 2009. EEOC proposes to revise its Americans With Disabilities Act (ADA) regulations and accompanying interpretative guidance (29 CFR part 1630 and accompanying appendix) in order to implement the ADA Amendments Act of 2008. Pursuant to the 2008 amendments, the definition of disability under the ADA shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA, and the determination of whether an individual has a disability should not

demand extensive analysis. The Amendments Act rejects the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

Statement of Need:

This regulation is necessary to bring the Commission's regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the existing regulations. The Amendments Act retains the terminology of the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the existing regulations and interpretive guidance contained in the accompanying "Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act," which are published at 29 CFR part 1630. The proposed revisions to the title I regulations and appendix are intended to enhance predictability and consistency between judicial interpretations and executive enforcement of the ADA as now amended by Congress.

Summary of Legal Basis:

Section 506 of the Amendments Act, 42 U.S.C. section 2000ff-10, gives the EEOC the authority to issue regulations implementing the definitions of disability in section 12102 of this title (including rules of construction) and the definitions in section 12103 of this title, consistent with the ADA Amendments Act of 2008.

Alternatives:

None: Congress mandated issuance of regulations.

Anticipated Cost and Benefits:

For those employers that have 15 or more employees and are therefore covered by Amendments Act, the potential economic impact stems from the likelihood that due to the broader interpretation of "substantially limited in a major life activity," more employees will be covered under the first two prongs of the definition of

disability, and thus potentially entitled to reasonable accommodations that do not pose an undue hardship. However, the Amendments Act does not change the scope of the accommodation obligation itself, or the definition of the "undue hardship" defense as "significant difficulty or expense." The Amendments Act also reverses at least three courts of appeals decisions that previously permitted individuals who were merely "regarded as" individuals with disabilities to potentially be entitled to reasonable accommodation. This change narrows the financial impact of the ADA on employers. While many individuals with disabilities do not request or need a reasonable accommodation, statistical studies have repeatedly shown that when reasonable accommodation is required by an individual with a disability, it is far less expensive than many employers suspect.

Risks:

The proposed rule imposes no new or additional risk to employers. The proposal does not address risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/23/09	74 FR 48431
NPRM Comment Period End	11/23/09	
Final Action	07/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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