



# HR CORNER

FEES & BURGESS, P. C.



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## EEOC Announces Proposed ADAAA Regulations

**Fees & Burgess, P.C.,  
Emphasizes:**

While employers adjust to legislative changes in disability law via the ADA Amendments Act of 2009 (ADAAA), the Equal Employment Opportunity Commission (EEOC) has made initial revisions to its implementing regulations. In an announcement made on June 17, 2009, the EEOC outlined its proposed regulatory changes, which generally remain faithful to the legislative text of the ADAAA but add a few additional details to the legal requirements. A summary of the major changes between the legislative language and the proposed EEOC regulations follows.

**General Civil Litigation**

**Commercial Law &  
Litigation**

**Municipal Law &  
Litigation**

**Police Civil Liability  
Defense**

**Employment Law &  
Litigation**

**Construction Litigation**

**Corporate Law &  
Government Contracting**

**Insurance Defense**

**Railroad Law**

**“Major Life Activities”:** To qualify for disability protection, an employee must be substantially limited in a major life activity. While the ADAAA added new activities to this list which significantly broadened the scope of the prior list of major life activities, the EEOC regulations takes this further. To the ADAAA list, the EEOC has added reaching, sitting, and interacting with others. Furthermore, the ADAAA allows disability protection for substantial limitations in major bodily functions. To this list of bodily functions, the EEOC has added the hemic, lymphatic, and musculoskeletal systems.

**Substantially Limited in Working:** One of the “major life activities” which may qualify an employee as a disabled worker is the act of working. Previously, “working” was defined as the inability to perform a broad class of jobs, meaning that an individual would have to be unable to perform most jobs, even outside of their particular field of expertise. The EEOC revises this definition. The proposed rule states that an impairment “substantially limits the major life activity of working if it substantially limits an individual’s ability to perform, or to meet the qualifications for, the type of work at issue as compared to most people having comparable training, skills, and abilities.” As such, the issue is not whether the employee can perform a “broad class of jobs,” but whether the employee can perform a particular “type of work.” The EEOC intends this analysis to be industry-specific and tailored to the individual’s particular work experience.

**Ameliorative Effects of Mitigating Measures:** In response to a U.S Supreme Court decision, Congress expressly states in the ADAAA that employers may not make determinations about disability qualifications with regards to ameliorative measures taken by the employee to mitigate their impairment. For example, if an employee takes insulin to regulate their diabetes, and as a result, they are minimally impaired by their diabetes, the employee is still considered substantially limited by their diabetes since in its unregulated state, the diabetes would substantially limit the employee.



## EEOC Announces Proposed ADAAA Regulations –*continued from page 1*

The one exception to this language is the use of “ordinary glasses and contact lenses,” meaning that employees with corrected vision are not considered disabled, despite their impairment in an uncorrected state. However, the EEOC regulations limit this exception. To qualify for the exception, an employee must use glasses that correct their vision to 20/20. Any glasses or contact lenses that only correct vision to 20/30 (or otherwise), do not qualify for this exception, and the ameliorative effects of the glasses should be disregarded. This may significantly broaden the group of “disabled” workers who qualify for ADAAA coverage.

In addition to the above-listed topics, the EEOC has proposed several other minor changes that are either in addition to the ADAAA changes or that clarify issues which the ADAAA does not address. However, these proposed regulations must proceed through the notice-and-comment process, so they could change significantly before a final version is enacted. Nonetheless, review of these proposals can help employers to understand the direction in which the EEOC is headed. Pro-active changes in policies and practices may help supervisors and management adjust to these requirements and assist employers in developing a new corporate culture and ideology regarding disability law.

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### Fees & Burgess, P.C.—Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars:

July 16, 2009 — Muscle Shoals, Alabama

*Legal Update for Human Resources Personnel*, presented for, and sponsored by, Shoals Chapter-SHRM. Jeffrey Roth and Leah Green will provide a brief legal overview on the following:

- Employee Free Choice Act (EFCA),
- Lily Ledbetter Fair Pay Act,
- FMLA, ADA,
- E-verify and I-9 requirements,
- COBRA, and
- FLSA-Minimum Wage Adjustment effective July 2009.

The meeting will be held at the Cypress Lakes Country Club, 1311 East 6th Street; Muscle Shoals, Alabama. Lunch is \$12.00 to be paid at the door. For more information or reservations, please contact [mmfike@una.edu](mailto:mmfike@una.edu) or call 256-765-4289. 1.5 hours HRCI accreditation pending.



**Fees & Burgess, P.C.—Calendar of Events— *continued from page 2***

July 28, 2009 — [Red Flag Update for Veterinary Practices Webinar](#)

The webinar will cover the following topics:

- Covered veterinary practices -- the “big picture” regarding the legislation and what it is attempting to accomplish
- Explanation and discussion of key definitions, including “covered accounts”
- Definition and identification of “red flags” indicating potential identity theft concerns
- Program implementation, oversight, administration, and training requirements

Real time questions and answers. Veterinarians and staff responsible for legal compliance, practice management, and/or client account management and billing should attend.

September 9, 2009 — Birmingham, Alabama

[Wage & Hour Master Class](#), presented for, and sponsored by, M. Lee Smith Publishing, Inc. Our clients receive a 20% discount on the class registration fee; contact Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com) for more information.

September 24-25, 2009 — Chicago, Illinois

[IPC EMS Program Manager Training and Certification II](#)

Presenting Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, as part of EMS Training II:Part C.

October 21-22, 2009 — Scottsdale, Arizona

[IPC Electronics Industry Executive Summit](#); the presentation will address contracts from an EMS-supplier standpoint. A few key topics included: contracts with distribution and with direct purchases including fabricated items (metal, plastics, pcbs), as well as off-shore (Asian) procurement contracts.

For more information on these and other seminars, please go to [www.feesburgess.com](http://www.feesburgess.com).



**SPEAKERS**

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com).

**NEWSLETTERS**

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these e-newsletters, please e-mail Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com) with your contact information.

To remove your name from our mailing list, please e-mail [staylor@feesburgess.com](mailto:staylor@feesburgess.com).

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