



Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. The law made a number of significant changes to the definition of "disability" under the Americans with Disabilities Act (ADA). It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The EEOC issued a Notice of Proposed Rulemaking (NPRM) on September 23, 2009. The [final regulations](#) were approved by a bipartisan vote and were published in the Federal Register on March 25, 2011.

In enacting the ADAAA, Congress made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute. Congress overturned several Supreme Court decisions that Congress believed had interpreted the definition of "disability" too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

The EEOC regulations implement the ADAAA -- in particular, Congress's mandate that the definition of disability be construed broadly. Following the ADAAA, the regulations keep the ADA's definition of the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the regulations implement the significant changes that Congress made regarding how those terms should be interpreted.

The regulations implement Congress's intent to set forth predictable, consistent, and workable standards by adopting "rules of construction" to use when determining if an individual is substantially limited in performing a major life activity. These rules of construction are derived directly from the statute and legislative history and include the following:

- **The term "substantially limits" requires a lower degree of functional limitation than the standard previously applied by the courts.** An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability.
- **The term "substantially limits" is to be construed broadly** in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- The determination of whether an impairment substantially limits a major life activity **requires an individualized assessment**, as was true prior to the ADAAA.
- With one exception ("ordinary eyeglasses or contact lenses"), the determination of whether an impairment substantially limits a major life activity shall be made **without regard to the ameliorative effects of mitigating measures**, such as medication or hearing aids.
- **An impairment that is episodic or in remission is a disability** if it would substantially limit a major life activity when active.
- In keeping with Congress's direction that the primary focus of the ADA is on whether discrimination occurred, **the determination of disability should not require extensive analysis.**

As required by the ADAAA, the regulations also make it easier for individuals to establish coverage under the "regarded as" part of the definition of "disability." As a result of court interpretations, it had become difficult for individuals to establish coverage under the "regarded as" prong. Under the ADAAA, the focus for establishing coverage is on how a person has been treated because of a physical or mental impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature of the person's impairment.

The regulations clarify, however, that an individual must be covered under the first prong ("actual disability") or second prong ("record of disability") in order to qualify for a reasonable accommodation. The regulations clarify that it is generally not necessary to proceed under the first or second prong if an individual is not challenging an employer's failure to provide a reasonable accommodation.

The final regulations differ from the NPRM in a number of ways. The final regulations modify or remove language that groups representing employer or disability interests had found confusing or had interpreted in a manner not intended by the EEOC. For example:

- Instead of providing a list of impairments that would “consistently,” “sometimes,” or “usually not” be disabilities (as had been done in the NPRM), the final regulations provide the nine rules of construction to guide the analysis and explain that by applying those principles, **there will be some impairments that virtually always constitute a disability.** The regulations also provide examples of impairments that should easily be concluded to be disabilities, **including epilepsy, diabetes, cancer, HIV infection, and bipolar disorder.**
- **Language in the NPRM describing how to demonstrate that an individual is substantially limited in “working” has been deleted from the final regulations and moved to the appendix** (consistent with how other major life activities are addressed). The final regulations also retain the existing familiar language of “class or broad range of jobs” rather than introducing a new term, and they provide examples of individuals who could be considered substantially limited in working.
- **The final regulations retain the concepts of “condition, manner, or duration”** that the NPRM had proposed to delete and explain that while consideration of these factors may be unnecessary to determine whether an impairment substantially limits a major life activity, they may be relevant in certain cases.

The Commission has released two Question-and-Answer documents about the regulations to aid the public and employers – including small business – in understanding the law and new regulations. The ADA regulations and accompanying Question and Answer documents are available on the EEOC website at www.eeoc.gov.

Smart Meter Harm

Overbilling, fires, health problems,
inaccuracy, hacking & cybersecurity,
interference, privacy loss, and more....

California legislature recognizes people with electromagnetic sensitivities as disabled

Posted on [September 15, 2017](#)

Since May, the California Legislature has provided ADA accommodation for people disabled by electromagnetic sensitivities (EMS). This is the first California legislative session to acknowledge EMS and to arrange accommodation and access for the EMF-disabled so that they can participate at hearings.

On Wednesday, July 12, California Assembly leaders provided the most extensive accommodation to date at a hearing on Senate Bill 649 (Hueso). Assembly Communications and Conveyance Committee Chairman Miguel Santiago said, "The Assembly's Americans with Disabilities Act coordinator has received multiple requests for accommodation from individuals wishing to participate in this hearing," and "in an attempt to accommodate as many individuals as possible," the committee a) made a special order of business with a "time certain" for the SB 649 hearing, so those with EMS could arrive for the hearing and then leave, reducing their EMF exposure b) provided remote telephone access for those too disabled by the indoor air quality to testify in person, and c) made a request to the audience to turn off the wireless on their cell phones or put them in airplane mode "as a courtesy to the electromagnetically sensitive."

In a 1998 survey by the California Department of Health Services, 3.2% of respondents reported electromagnetic sensitivities, and .5% were unable to work or had to leave a job due to EMS. In 2001, California developed a Cleaner Air symbol for rooms and paths of travel that include reduced EMF. Disability due to electromagnetic sensitivities was recognized by the U.S. Federal Access Board in 2002, and the California State Architect's office helped write the recommendations for accommodating those with EMS and with multiple chemical sensitivities published in the 2005 Federal Access Board report "Indoor Environmental Quality". *see attached excerpt*

Though additional measures and continuing dialogue are needed to accommodate all those who wish to attend state hearings and testify, particularly on matters related to their disability, this is a welcome first step for the disabled rights of these Californians.

Access Board <https://www.access-board.gov/research/completed-research/indoor-environmental-quality>

CDHS survey <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241215/>

Cleaner Air symbol: http://www.documents.dgs.ca.gov/dsa/pubs/cleanerair_factsheet.pdf

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IEQ Indoor Environmental Quality

A project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board)



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Some cleaning products also contain disinfectants. The U.S. EPA notes that one major concern from a health standpoint is the increased incorporation of antimicrobial agents and fragrances in cleaners and air fresheners marketed to reduce indoor air contamination (1).

Many commonly used disinfectant or sanitizer products contain chlorine, phenol, quaternary ammonium compounds, and isopropyl and other alcohols. These produce hazardous fumes and present access barriers for people with chemical sensitivities.



Electromagnetic Fields

For people who are electromagnetically sensitive, the presence of cell phones and towers, portable telephones, computers, fluorescent lighting, unshielded transformers and wiring, battery re-chargers, wireless devices, security and scanning equipment, microwave ovens, electric ranges and numerous other electrical appliances can make a building inaccessible.

The National Institute for Occupational Safety and Health (NIOSH) notes that scientific studies have raised questions about the possible health effects of EMF's. NIOSH recommends the following measures for those wanting to reduce EMF exposure – informing workers and employers about possible hazards of magnetic fields, increasing workers' distance from EMF sources, using low-EMF designs wherever possible (e.g., for layout of office power supplies), and reducing EMF exposure times (11).

Renovation/Remodeling/Furniture

Many new building materials, such as paints, adhesives, wallboard, carpet, and insulation, as well as upholstered furniture, particleboard cabinets, and other furnishings emit hazardous volatile organic compounds (VOC's), contribute to poor indoor air quality (IAQ) and create significant access barriers for people with asthma and/or chemical sensitivities. These materials often outgas and are problematic for prolonged periods of time.

Smoke & Combustion

Many people with asthma and most people with chemical sensitivities are made sick by exposure to: 1) smoke, such as that from tobacco, fireplaces, candles, incense, and barbeques, and other outdoor fires, 2) vehicle and other engine exhaust, especially exhaust from vehicles using diesel or oxygenated fuel, and 3) combustion appliances burning kerosene, propane, or natural gas (natural gas usually being better tolerated than kerosene or propane). If combustion appliances are used, they should be directly vented to the outdoors. Electrical appliances are preferred by people with chemical sensitivities.

Noise & Vibration

Noise and vibration from HVAC systems, vacuums, pumps, helicopters and other sources can trigger severe symptoms, including seizures, in susceptible individuals.

Synergistic Effects of Indoor Air Pollutants

Indoor air is a "chemical soup" made up of a variety of chemicals emitted by building materials, cleaning products, pesticides, personal care and consumer products, emissions from building equipment and activities, etc. While individual chemicals may be hazardous, combinations of chemicals can be even more hazardous through additive or synergistic effects. Synergistic effects

RECOMMENDATIONS FOR ACCOMMODATIONS

People with chemical and/or electromagnetic sensitivities can experience debilitating reactions from exposure to extremely low levels of common chemicals such as pesticides, cleaning products, fragrances, and remodeling activities, and from electromagnetic fields emitted by . . . computers, cell phones, and other electrical equipment.

The severity of sensitivities varies among people with chemical and/or electromagnetic sensitivities. Some people can enter certain buildings with minor accommodations while others may be so severely impacted that they are unable to enter these same spaces without debilitating reactions. Furthermore tolerances to specific exposures can vary greatly from one individual to the next. Meanwhile some exposures, such as the application of certain pesticides or extensive remodeling, for example, may be devastating to all chemically sensitive people and make a building or facility inaccessible for a substantial period of time.

According to the Americans with Disabilities Act (ADA) and other disability laws, public and commercial buildings are required to provide reasonable accommodations for those disabled by chemical and/or electromagnetic sensitivities. These accommodations are best achieved on a case-by-case basis.

Reasonable accommodations for a chemically sensitive and/or electromagnetically sensitive individual can include providing a space or meeting area that addresses one or more of the Cleaner Air criteria, upon request, such as

- Remove fragrance-emitting devices (FEDS)
- Delay or postpone indoor or outdoor pesticide applications, carpet cleaning, or other cleaning or remodeling until after the meeting
- Provide room or meeting area near exterior door or with window(s) that can be opened
- Require cell phones and computers be turned off
- Provide incandescent lighting in lieu of fluorescent lighting
- Provide at least one nonsmoking, fragrance-free person per shift to provide services (e.g. nurse, police officer, security guard, clerk)

For individuals who are unable to use or meet in a building or facility, or who are too severely impacted by chemical and/or electromagnetic exposures to use a designated Cleaner Air Room, accommodations may include:

- Meet an individual at the door or outside to conduct business
- Allow a person to wait outside or in car until appointment
- Provide a means, such as a phone, intercom, bell, or buzzer to summon staff to an outside door for assistance
- Permit business to be conducted by phone, fax, mail, or e-mail rather than in person
- Allow participation in a meeting by speakerphone

End duplicated text

SPECIAL ACKNOWLEDGEMENT: The Committee extends a generous thank you to Sharon Toji, Access Communications, for designing the Cleaner Air Symbol and making it available for public use.

Dear Ms. Patkin,

I am writing to request that the Commission include on its Disability Advisory Committee at least one member with electromagnetic hypersensitivity (EHS). This condition is recognized by the Architectural and Transportation Barriers Compliance Board (Access Board), the Federal agency devoted to the accessibility for people with disabilities.

In its Background for its Final Rule Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Recreation Facilities that was published in September 2002, the Board stated: "[M]ultiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities."

Thank you.