

EEOC Working to Produce Proposed Rules For ADA Amendments Act, Officials Say

ORLANDO, Fla.—The Equal Employment Opportunity Commission is “working diligently” to issue proposed regulations under the ADA Amendments Act but no “real clear time frame” exists for completing the entire rulemaking process, EEOC Acting Vice Chair Christine Griffin told an American Bar Association conference April 4.

Speaking at the National Conference on Equal Employment Opportunity Law, sponsored by the ABA's Section of Labor and Employment Law, Griffin said she thinks EEOC staff “will be finished sometime soon” with preparing a notice of proposed rulemaking, which then would have to be cleared by the commission, approved by the White House Office of Management and Budget, and published for public comment. EEOC would issue final rules following the comment period and possible further revisions.

Last December, EEOC's four commissioners deadlocked on approving a set of proposed rules, preventing the agency from sending a proposal to OMB in the waning days of the Bush administration. Passed by overwhelming margins in Congress and signed by President George W. Bush on Sept. 25, the ADA Amendments Act took effect on Jan. 1, 2009.

Griffin, who opposed the proposal in December, said EEOC is aiming to issue a notice of proposed rulemaking “as quickly as possible” but will not sacrifice “due diligence” in ensuring that its proposal faithfully reflects the intent of Congress in amending the Americans with Disabilities Act.

Overturing four U.S. Supreme Court opinions that ADA proponents believed had too narrowly interpreted the original ADA, Congress said in the new law that statutory terms such as “disability” must be broadly construed and that whether an individual is disabled generally should be assessed without considering “mitigating measures” such as medication taken to control symptoms.

Shift to the Merits

Griffin and Peggy Mastroianni, EEOC associate legal counsel, spent most of the conference session describing the new law and answering questions about its potential effects. Griffin said that although proposed regulations have yet to emerge, the ADA Amendments Act “is a very clear statute” and that Congress made plain that courts construing “disability” should look for guidance to prior cases decided under the Rehabilitation Act.

Mastroianni said that as instructed by Congress, EEOC will change its current regulation that says “substantially limited” in major life activities means “significantly restricted,” but she declined to offer further details about the prospective proposed regulations. Mastroianni said that in addition to removing “mitigating measures,” Congress made other major changes to the ADA by expanding the “non-exhaustive” list of “major life activities” by adding conditions affecting “major bodily functions”; amending the “regarded as” disabled prong; and requiring employers that use a job standard requiring a certain acuteness in uncorrected vision to show that standard is justified by business necessity.

Congress made it clear that EEOC and the courts generally should move beyond ADA coverage issues and decide whether discrimination occurred, whether reasonable accommodation is warranted, whether proposed accommodations would cause “undue hardship” to the employer, and similar issues on the merits, Mastroianni said.

Asked what Congress meant by instructing courts to interpret “disability” consistent with the Supreme Court decision in *Nassau County Sch. Bd. v. Arline*, 480 U.S. 273 (1987), Mastroianni said *Arline* provided a “pretty relaxed” definition of “handicap” under the Rehabilitation Act and the court eschewed “rigid categories” in determining coverage under that act. Griffin added that the *Arline* court said the statutory definition of “handicap” was broad and that Congress intended to prohibit bias against individuals who were not limited by their “handicap” but might be regarded by others as so limited.