

## CUT AND PASTE POST SEPTEMBER, 2016 FEDERAL RULES UPDATE: ADA AAA TO ZIKA

### DOJ Issues Final Rule on ADA AAA



On August 11, 2016, the Department of Justice issued a final rule revising regulations under Title II (state and local governments) and Title III (public accommodations and commercial facilities) of the Americans with Disabilities Act (ADA). **The final rule goes into effect on October 11, 2016.**

In 2008 Congress passed the ADA AAA in response to several Supreme Court decisions that narrowly interpreted the ADA's definition of disability, resulting in the exclusion from coverage of individuals with cancer, diabetes, epilepsy, attention deficit hyperactivity disorder, learning disabilities, and other disabilities. The ADA AAA made a number of significant changes to the meaning and interpretation of the ADA definition of "disability" to ensure that the term would be broadly construed and applied without extensive analysis so that all individuals with disabilities could receive the law's protections.

Consistent with the ADA AAA, the [Final Rule](#) establishes 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.
- 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.
- 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.

**Professional pointer:** *The ADA AAA was passed in 2008, and the Final Rule for Title I (Employment) was published a long time ago and modified a few times since, so these new rules will probably not be "news" to most HR folks. However, it's a good time to review all of your business practices for compliance.*

#### ***Inside this Issue:***

- *Final Rule: ADA AAA of 2008*
- *Final Rule: Federal Contractor Fair Pay and Safe Workplaces*
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## Fair Pay and Safe Workplaces Final Rule

On August 25, 2016, the U.S. Department of Labor and the Federal Acquisition Regulatory (FAR) Council issued a final rule and guidance implementing Executive Order 13673, generally known as the Fair Pay and Safe Workplaces Executive Order. Executive Order 13673 was signed by President Obama on July 31, 2014, to require prospective federal contractors to disclose labor law violations and give agencies guidance on how to consider labor violations when awarding federal contracts.

With the new rule goes into effect, prospective contractors will be required to disclose violations of 14 basic workplace protections from the previous three years — including those addressing wage and hour, safety and health, collective bargaining, family and medical leave, and civil rights protections. The final rule will make sure that federal agencies have the information they need to determine which contractors are meeting their responsibilities to workers.

Read the [final rule](#) and/or visit the [Fair Pay and Safe Workplaces webpage](#)

***Professional Pointer:** At GVHRA's Law and Libations meeting in August, Jim Nys talked about the potentially huge number of businesses that could potentially be considered 'federal contractors' under FAR. If your business receives payments from the federal government, you may want to read these resources to see if the reporting requirements will apply to you. Based on a quick read, it appears that you may be subject to this Rule if you provide services to a federal agency under a contract that "may exceed" \$500,000. It also appears a 'contract' may be something as "unofficial" as a purchase order. A call to the folks at the agency where you provide services or supply goods may be a good way to determine if you will be subject to this Rule and, therefore, to the reporting requirement.*

## OSHA Issues Interim Guidance on Zika Virus

The U.S. Occupational Safety and Health Administration (OSHA) has released *Interim Guidance for Protecting Workers from Occupational Exposure to Zika Virus*. The guidance is not a standard or regulation, and creates no new legal obligations for employers. The guidance is advisory in nature, informational in content, and intended to assist employers in providing a safe and healthful workplace.

The guidance includes the following topics:

- An introduction to the Zika virus.
- How the Zika virus affects humans.
- Methods for controlling and preventing the spread of the Zika virus.
- How to handle employees with suspected or confirmed Zika.
- Precautions to take when traveling to Zika-affected areas.
- Additional resources.



View the [Guidance](#).

***Professional Pointer:** We do not have the mosquitos that carry the Zika virus in Montana. However, you may want to review this guidance if your employees travel to Zika "hot spots".*