



November 23, 2009

Mr. Stephen Llewellyn
Executive Officer, Executive Secretariat,
Equal Employment Opportunity Commission
131 M Street, NE, Suite 4NW08R
Room 6NE03F
Washington, DC 20507

RE: Docket Number EEOC 2009-0012

Dear Mr. Llewellyn:

On behalf of the 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Equal Employment Opportunity Commission's (EEOC) Request for Public Comment concerning Regulations to Implement the Equal Employment Provisions of the American With Disabilities Act, as Amended, published September 23, 2009 at 74 FR 48431.

About APTA

APTA is a non-profit international trade association of 1,500 public and private member organizations, including public transit systems; high speed rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comment

While we find the majority of the proposed changes to be clear, we believe that there is one instance where two sections of the proposed regulation (§1630.2(j)(2)(v) and §1630.2(j)(8)) have the potential to create some confusion. Therefore, we suggest that EEOC provide clarification in the final rule on how these two sections work together.

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Section 1630.2(j)(2)(v) states:

The “transitory and minor” exception in §1630.2 (l) of this part (the “regarded as” prong of the definition of “disability”) does not establish a durational minimum for the definition of “disability” under §1630.2 (g)(1) (actual disability) or §1630.2 (g)(2)(record of a disability). An impairment may substantially limit a major life activity even if it lasts, or is expected to last, for fewer than six months.

However, section 1630.2(j)(8), titled “Impairments That Are Usually Not Disabilities” then states:

Temporary, non-chronic impairments of short duration with little or no residual effects (such as the common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely) usually will not substantially limit a major life activity.

Based on our reading of these two sections, we believe that it is unclear how employers are to evaluate an individual who has a temporary, non-recurring, non-episodic condition that affects a major life activity, but who is expected to fully recover within a few months. While section 1630.2(j)(8) suggests that such temporary, non-chronic impairments of short duration would not be considered a disability, section 1630.2(j)(2)(v) confuses the issue by suggesting that employers cannot rely on the transitory and minor nature of a condition to determine a disability. Therefore, we respectfully request that EEOC provide illustrative examples for section 1630.2(j)(2)(v) to provide guidance to employers on the types of conditions that would qualify as a disability and of the types of conditions that would not qualify as a disability under this subsection.

As always, we appreciate this opportunity to work with EEOC on this important aspect of policy. For additional information, please contact James LaRusch APTA’s chief counsel and vice president corporate affairs at (202) 496-4808 or jlarchus@apta.com.

Sincerely yours,



William Millar
President

WM/rk