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HR Policy Urges EEOC to Preserve the "Balanced Approach" Achieved by the ADA Compromise

HR Policy Association expressed grave concerns this week with the Equal Employment Opportunity Commission's (EEOC) dramatic revision of the Americans With Disability Act's regulations. The Association stated in testimony and written comments that the EEOC is "radically changing the intent" and "eroding the protections of workplace functionality" of the amendments.

In comments filed on the EEOC's proposed regulations implementing the ADA Amendments of 2008 (ADAAA), the Association pointed out that the bill was the product of a "hard fought compromise" between the employer and disability communities."

The Association's comments were drafted by our Employment Rights Committee, chaired by Northwestern Mutual Vice President, Human Resources Sue Lueger. The comments were highly critical of several of the proposed regulations' specific provisions, including:

- a list of *per se* disabilities--despite Congress' refusal to adopt such a list--that includes numerous conditions, such as obsessive compulsive disorder, that can occur in very mild states that do not "substantially limit a major life activity;"
- expansion of the law's protections to include situations where an employer is unaware of a disability but takes corrective action based on its symptoms (*e.g.*, terminating an alcoholic fork lift driver for being inebriated at work); and
- with regard to the minimum duration of a condition qualifying as a disability, the adoption of a rule of construction that was clearly rejected by Congress.

Appearing at an EEOC town hall hearing in Chicago, HR Policy's Director of Labor and Employment Policy Mike Peterson observed that the Commission's proposal to subject employers to liability for taking an adverse action against an employee based solely on a symptom without knowing of an underlying condition "is simply unfair and may pose constitutional problems."

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HR Policy Association brings together the chief human resource officers of more than 280 of the largest corporations in the United States who are concerned about the direction of HR public policy and practices in the United States and globally. Representing nearly every major industry, HR Policy members have a combined market capitalization of more than \$7.5 trillion and

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[HR Policy Comments to EEOC with Appendix](#)