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L. Jason Bryan
BRYAN, DISTEFANO & MATTINGLEY, PLLP
423 1st Avenue East
PO Box 2341
Kalispell, MT 59903
jason@nwmontanalaw.com
P: (406) 890-1880

CLERK OF DISTRICT COURT ORIGINAL

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FILED
BY [Signature]
DEPUTY

Attorney for Plaintiff

**IN THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY**

<p>MICHELE OTTOSEN, individual, <i>Plaintiff,</i> vs. CITY OF KALISPELL/KALISPELL POLICE DEPARTMENT, and JOHN DOES 1-100 <i>Defendant.</i></p>	<p>Cause No. <u>DV-18-1244 D</u> Honorable <u>DAN WILSON</u> <u>COMPLAINT AND DEMAND FOR JURY TRIAL</u></p>
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COMES NOW Plaintiff, Michelle OTTOSEN (“Ottosen”), by and through her counsel L. Jason Bryan, BRYAN, DISTEFANO & MATTINGLEY, PLLP, and for her claims against the Defendants hereby alleges as follows:

ALLEGATIONS COMMON TO ALL WRONGFUL ACTS

1. At all times relevant hereto, Plaintiff Ottosen was a resident of Flathead County, Montana and employed by the City of Kalispell working for the City of Kalispell Police Department.
2. Upon information and belief, at all times relevant hereto, the Kalispell Police Department (“KPD”), a sub-unit of the City of Kalispell was located in Flathead

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County and engaged in providing governmental services to the citizens of Kalispell, Montana.

3. John Does 1-100 are employees and/or agents of the KPD and the City of Kalispell that through their acts and omissions caused harm to Ottosen.
4. This Court has subject matter jurisdiction over these claims.
5. The proper place of trial in this matter is Flathead County District Court, pursuant to §25-2-126, MCA.
6. Ottosen has worked in law enforcement since 1997.
7. Ottosen graduated with a bachelor's degree from Montana State University in the late 1990s.
8. In 1999, she began her career with KPD when she was hired as a patrol officer by Chief Frank Garner.
9. In 2009, Ottosen became a Master Patrol Officer ("MPO") after obtaining the required prerequisites.
10. In 2009, Ottosen was laterally moved to the Detectives division of the KPD.
11. Ottosen was removed from her position as Detective and began serving as a patrol officer.
12. During Ottosen's employment with the KPD, there have been numerous positions posted including Detective Assignments and Student Resource Officer positions stating the qualifications for the position. Ottosen has applied for some of those special assignments. After applying either other applicants were selected prior to the end of the assignment's close date or if Ottosen occupied one of the job assignments

she was removed for pretextual reasons only to have the KPD Administration's preferred applicants take these assignments over.

13. In 2012, Ottosen became pregnant with her third son and began to experience difficulties with her pregnancy.
14. Ottosen's physician informed her she would need to be very careful during this pregnancy and specifically required that she do no heavy lifting.
15. During this pregnancy Ottosen was serving the City of Kalispell as a uniformed patrol officer.
16. Ottosen approached KPD Administration and requested permission to perform her duties without the heavy and cumbersome "service belt."
17. KPD Administration refused to grant this reasonable accommodation and forced Ottosen to retain legal counsel to challenge this clear violation of federal law.
18. After stonewalling Ottosen for nearly three months and facing a deadline to respond, KPD ultimately agreed to comply with Federal and State Law, and granted her request.
19. After challenging the KPD Administration's illegal position, Ottosen experienced continued and open hostility, as well as retaliation.
20. Ottosen, throughout her service to the citizens of Kalispell, enjoyed overwhelmingly positive annual reviews that scored her performance in the upper ranges of the KPD's alphanumeric measuring system.
21. Ottosen's training, experience and knowledge led her to be relied upon by many officers within KPD to handle complex criminal investigations.

22. Ottosen has tested for the Sergeant's position within KPD numerous times over the years and in spite of scoring near the top of all candidates on the objective portions of the Sergeant's test, she was systematically given poor scores by KPD Administration.
23. To date, Ottosen has never been promoted to the position of Sergeant, in spite of her overwhelmingly positive annual reviews, commendations, training, experience and the overall positive opinions professionals outside of KPD hold of her professionalism and abilities.
24. Only male KPD officers have been promoted to the position of Sergeant since she has been testing for the Sergeant's promotion. Many, if not all, of the male officers who have been promoted to Sergeant during this period have less education, less experience, and fewer years served than Ottosen.
25. During the first 18 years of Ottosen's entire tenure with KPD, she had never been formerly disciplined.
26. Ottosen has over 2000 hours of advanced law enforcement training and has served as the KPD liaison with the Special Olympics Inc., volunteering 100s of hours to raise awareness and money for Montana Special Olympics.
27. With the KPD Administration's support and encouragement, Ottosen was asked to work with the Montana Special Olympics during her scheduled shifts.
28. Ottosen has experienced and continues to experience multiple overt and subtle incidents of gender and disability discrimination, hostility, and retaliation.
29. Between 2002 and 2003, Douglas Overman was also employed as a Patrol Officer with KPD. He was junior in seniority to Ottosen at that time and has since been promoted to the rank of Investigations Captain. During the time Overman was in the

Investigations Captain position, Ottosen received an email, sent from Overman's department email, which was of a sexual nature. The message was shared with KPD Administration.

30. Between 2002 and 2003 Anthony McDonnell was also employed as a Patrol Officer with KPD, he also has been promoted to Sergeant. During the time McDonnell was in the Sergeant position, Ottosen received an email, sent from McDonnell's department email, which was of a sexual nature. The message was also shared with KPD Administration.
31. Patrol Officers share a workspace/computer. It was known by KPD Administration that it is common for officers to "joke around" by accessing another officer's email (if their accounts were accidentally left open on a computer) and sending out random, usually derogatory, emails to other department members. Officers were advised to not leave their accounts open and to not send out emails on other officers' accounts. There were no investigations conducted to determine who sent the emails to Ottosen. There were also no repercussions as a result of Ottosen's sexual harassment complaints.
32. Ottosen has complained to the KPD Administration about morale and treatment of fellow officers in the past and as a result of her reporting this has suffered retaliation and hostility from the KPD Administration and fellow officers.
33. It is common practice for the KPD to have a morning briefing where Police Administrative Officers discuss a variety of matters facing the Department on that given day. All law enforcement officers who will be on duty are required to attend the morning briefing. On numerous occasions at meetings attended by Ottosen over

the years, Ottosen would inevitably witness male officers begin to engage in inappropriate sexual banter. On many occasions Ottosen would speak up and make comments along the lines of "hey now" or "come on now" indicating her fellow law enforcement officers had taken the inappropriate sexual comments too far. She did not always express her concern and discomfort with these inappropriate conversations for fear of reprisal. Typically, when Ottosen would speak up, KPD Administrative Officers would end the meeting by announcing something along the lines of, "on that note, we are done before I get named in the 'suit.'" This was a clear indication that they were aware this type of conversation was not only inappropriate for the work place but illegal. KPD Administrative Officers never informed the officers present at the meeting that this was inappropriate and illegal conversation and that this type of conversation would not be tolerated. Instead they would end the meeting and leave the room. Their inaction substantially fostered a work place environment where sexual harassment was openly tolerated.

34. This exact type of conversation was not only limited to the morning briefing but occurred in the squad room at lunch time, and break time, as well as in the computer room where officers worked on completing reports.
35. Ottosen has also had biblical scripture that dictates a woman's place is at home and not in the work place left in her KPD locker.
36. In 2008, Ottosen became pregnant with her first child. At the time, she was assigned to the Patrol Division. Ottosen had just recently completed a temporary assignment as an Acting Sergeant with the Patrol Division, where she received favorable reviews from Chief Nasset and Patrol Lieutenant Wade Rademacher. KPD was in the process

of conducting testing for a Patrol Sergeant promotion, and Ottosen advised Chief Nasset of her pregnancy. Subsequently, she did not receive a promotion to Sergeant, and in fact did not make the Sergeant's eligibility list on which she had previously been included.

37. In June or July of 2012, while employed with KPD, Ottosen became pregnant with her third child. At the time, she was assigned to the Detectives Division, specializing in Sex Crimes. This position required extensive specialized training. Ottosen advised Investigations Captain Jim Brenden of her pregnancy. At the time, Brenden, was attempting to get her position set for a five-year rotation, due to the qualifications and specialized training required. Ottosen was advised that Chief Roger Nasset did not approve of extending the three-year rotation, and she would be transferred back to the Patrol Division at the end of August 2012. Since 2012, the officers who have been placed in the position after Ottosen held it, have been advised the position would be for a three to five-year rotation.
38. After visiting her doctor for a prenatal appointment in September 2012, Ottosen was prescribed a "position that does not require wearing 25-30 lbs. of equipment starting at 16-18 weeks" due to possible growth restrictions of the baby caused by wearing a full duty belt. This type of position is usually referred to as a Light Duty assignment.
39. Ottosen was denied a Light Duty assignment which extended beyond 16 weeks by Chief of Police Roger Nasset through Patrol Captain Tim Falkner in a letter dated October 17, 2012. Ottosen's request was concurrent to another officer's request for a Light Duty assignment. When granting this male officer's request, he was not limited

to 16 weeks of Light Duty and was able to have flexible hours due to his medical condition.

40. Not receiving a Light Duty assignment meant Ottosen would be forced to utilize her accumulated vacation hours and sick leave. Once those two reserves were exhausted, Ottosen was forced to take unpaid leave for the remainder of her pregnancy.
41. The doctor's advice was not for Ottosen to stop working while pregnant, as she had already worked (full-term) through two previous pregnancies without issue, rather she be given an alternative work assignment without restriction from the department.
42. It is implied that there would not be any sort of retaliation from KPD to Ottosen as she continued her career in law enforcement.
43. In December 2015, Ottosen was removed from her position as the Field Training Supervisor. Patrol Captain Tim Falkner advised her that this was per the direction of Chief Roger Nasset. She had not received any negative reviews on her performance in this position. Ottosen had held this position since 2006, prior to Chief Nasset's promotion to Chief.
44. In October of 2017, Wade Rademacher, Administrative Captain, sent out an email to Officers, including Ottosen, detailing areas of focus for the Sergeants' exam.
45. On November 3, 2017, Ottosen spoke with Tim Falkner, Patrol Captain, about setting up a time to review her scores on the Sergeants' exam. Falkner stated he needed more time to review the scores himself, before reviewing them with Ottosen. He suggested they meet the following week (either November 7, 2017 or November 8, 2017). During the following week, Falkner met with other candidates and discussed their evaluations/scores. He did not attempt to speak with Ottosen. On Nov. 21,

2017, Ottosen sent Falkner an email requesting to have a meeting scheduled. He responded on Nov. 28, 2017 and scheduled a meeting for the following day.

46. The testing process consisted of a written test, an oral interview and a leadership assessment completed by KPD Sergeants and Administration. In her meeting, Ottosen was advised she had the top ranked written score and was in the top 4 of the interview process. Ottosen was one of only two candidates that currently possessed a Supervisory certificate through the Montana POST Council. Yet, Ottosen did not receive a promotion to Sergeant or a position on the Sergeant's hiring list.
47. Ottosen has tested for promotion consecutively since her initial eligibility in 2004/2005. She has continually been denied a promotion or eligibility since she was taken off the hiring list in 2008, around the time of her first pregnancy.
48. Ottosen has recently (2017) been placed on an Employee Improvement Plan for failing to meet KPD's and the City of Kalispell's illegal Quota System. This system mandates that officers make a certain minimum number of traffic stops, issuing a minimum number of citations, and make a minimum number of arrests.
49. Ottosen was placed on the EIP after testing for Sergeant in 2017 for failing to comply with this illegal quota system, in spite of her department issued patrol car not being equipped with a radar system, continuing to do work as a liaison for the department during working hours, being called to assist with major felony investigations, working as the acting patrol Sergeant when the patrol Sergeant was not on duty, and working as a Field Training Officer. All of which distracted away from her abilities to make traffic stops, issue citations and make arrests to comply with the illegal quota system.

50. In short, Ottosen was penalized for being an all-around excellent officer dedicated to serving the citizens of Kalispell.

51. During her entire time serving as a patrol officer until late 2017, Ottosen's Patrol Sergeant gave her overwhelmingly positive reviews and did not place her on notice she was not meeting the KPD's quota system requirements.

52. It has always been her Patrol Sergeants opinion that Ottosen was a superior officer who long should have been promoted to Sergeant.

53. KPD Officer, Jason Parce was informed directly by former Chief Roger Nasset that Ottosen would never be promoted to Sergeant because male officers would not follow a woman's leadership.

54. In late 2017, KPD Captain Faulkner stated as long as he had anything to do with it Ottosen would never be promoted to Sergeant.

55. Ottosen is and has been subjected to retaliation and hostility as a result of filing her complaint with the Montana Human Rights Bureau.

COUNT I: UNLAWFUL DISCRIMINATION

56. Ottosen incorporates the allegations set forth in paragraphs 1 through 55 as if fully set forth herein.

57. On February 26, 2018 Ottosen filed a Complaint with the Montana Human Rights Bureau.

58. On September 5, 2018 the Human Rights Bureau issued its Notice of Dismissal and Notice of Right to File Civil Action in Court.

59. Ottosen has been denied promotion from the Defendants because of her sex or because of a disability, in violation of the Montana Human Rights Act, Mont. Code

§49-1-101, and Title VII of the Civil Rights Act of 1964, as amended, for which the defendants are liable to Harding for damages in an amount to be proven at trial.

60. The Defendants' actions, as set forth above, were done maliciously and in reckless disregard of Ottosen's rights. Those actions should be punished, and an example made thereof by an award of punitive damages in an amount to be determined at trial.

COUNT II: RETALIATION

61. Ottosen incorporates the allegations set forth in paragraphs 1 through 60 as if fully set forth herein.
62. The Montana Human Rights Act, §49-2-301, MCA, provides that it is unlawful discriminatory practice "for a person, educational institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because she has opposed any practices forbidden under this chapter or because she has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."
63. KPD and the City of Kalispell's conduct in connection with Ottosen's employment was a violation of the Montana Human Rights Act in that, among other things, it affected the terms and conditions of Ottosen's employment, constituted action that would likely have dissuaded a reasonable worker from making or supporting a charge of discrimination and is directly attributable to Ottosen's protected activity.
64. As a direct and proximate result KPD and the City of Kalispell's reprisal discrimination, Ottosen has suffered a loss of income, mental anguish, humiliation, embarrassment, loss of reputation and other pain and suffering, attorney's fees, costs

and punitive damages in an amount to be proven at trial and she is entitled to such equitable relief to remedy the discriminatory practices.

COUNT III: AMERICANS WITH DISABILITIES ACT

65. Ottosen incorporates the allegations set forth in paragraphs 1 through 64 as if fully set forth herein.
66. The Americans with Disabilities Act bars discrimination against qualified individual with a disability in regard to job application procedures, termination, compensation, job training, and other terms and conditions of employment.
67. Ottosen is a qualified individual and yet KPD and the City of Kalispell violated her rights because they failed to engage in the interactive process and refused accommodations due to her disability.
68. KPD and the City of Kalispell committed unlawful discriminatory practices when they failed to engage in the interactive process and refused to accommodate her disability.
69. Employment discrimination is prohibited by the ADA, and Ottosen has obtained a Right to Sue Letter from the EEOC, a copy of which is attached hereto as "Exhibit A."
70. As a result of KPD's and the City of Kalispell's wrongful disability discrimination, Ottosen has suffered damages in an amount to be determined at trial.

COUNT IV: HOSTILE WORK ENVIRONMENT

71. Ottosen incorporates the allegations set forth in paragraphs 1 through 70 as if fully set forth herein.

72. It is unlawful to subject a person to conduct which a reasonable person would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.
73. Ottosen is a qualified person under the Montana Human Rights Act.
74. Ottosen has been subjected to and is subjected to verbal harassment, among other unwelcomed harassment, at the hands of KPD and the City of Kalispell because of her gender and or disability among other things.
75. The conduct was and is unwelcome.
76. The conduct was and is sufficiently severe or pervasive to alter Ottosen's condition of employment with KPD and the City of Kalispell and has created and is creating an abusive working environment.
77. KPD's and the City of Kalispell's acts and omissions pled herein violated Federal and State Law and entitle Ottosen to all available damages under Federal and State Law.

COUNT V: PUNITIVE DAMAGES

78. Ottosen incorporates the allegations set forth in paragraphs 1 through 77 as if fully set forth herein.
79. KPD and the City of Kalispell engaged in actual malice or reckless indifference to Federal and State Law in its treatment of Ottosen, and Ottosen is entitled to reasonable punitive damages under Federal and State Law.

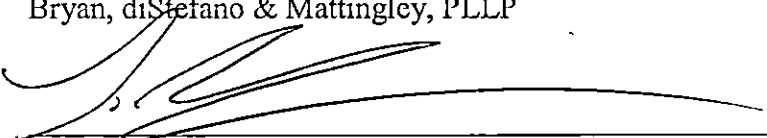
WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. For judgment against the Defendants, for each count in an amount to be determined at trial;

2. For compensatory damages, including future and past pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment and other non-pecuniary losses pursuant to Federal and State Law;
3. Emotional distress damages;
4. For pre-judgment and post-judgment interest;
5. A trial by jury on all claims;
6. Attorney's fees and costs;
7. Punitive Damages;
8. All other such relief as the Court deems equitable and just.

RESPECTFULLY SUBMITTED this 27th day of November 2018.

Bryan, diStefano & Mattingley, PLLP



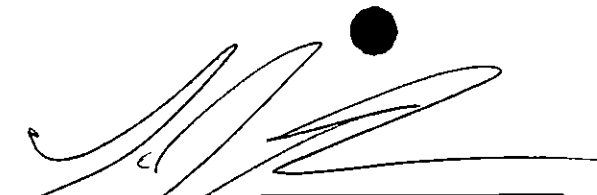
L. Jason Bryan

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, Michelle Ottosen, and respectfully demands that the foregoing action be tried before a jury.

RESPECTFULLY SUBMITTED this 27th day of November 2018.

Bryan, diStefano & Mattingley, PLLP



L. Jason Bryan

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Michelle O'Neil
C/O L. Jason Bryan Attorney At Law
P.O. Box 2341
Kalispell, MT 59903

From: Seattle Field Office
909 First Avenue
Suite 400
Seattle, WA 98104-1061

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

Table with 3 columns: EEOC Charge No., EEOC Representative, Telephone No.
32D-2018-00197, Kristine A. Jensen, State & Local Coordinator, (415) 522-3232

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- List of reasons for closing file with checkboxes. Option 6 is checked: 'The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.'

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment.

On behalf of the Commission

Handwritten signature of Nancy A. Sienko

09/05/2018

SM

Enclosures(s)

Nancy A. Sienko, Director

(Date Mailed)

CITY OF KALISPELL
C/O Stephanie Breck Attorney At Law
P.O. Box 2071
Columbia Falls, MT 59912



**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 -- not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it would be **substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

“Regarded as” coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

Note: *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

