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The ADA Is Amended – Effective January 1, 2009

By John H. Schmidt, Jr., Esq.

Recent amendments to the Americans with Disabilities Act (“ADA”) designed to provide broader protections to individuals suffering from disabilities were signed into law in September, 2008, and are effective January 1, 2009.

The ADA amendments were aimed at reversing recent United States Supreme Court decisions that made it more difficult for individuals to qualify as “disabled” under the law. The Supreme Court held that corrective and mitigating measures (such as eyeglasses and contact lenses for someone suffering from a loss of vision, or medication from someone suffering from diabetes) were to be considered in determining whether an individual is “substantially limited in major life activity,” the touchstone for meeting the definition of disability under the ADA. The Supreme Court also determined that to be disabled, an individual must have an impairment that prevents or severely restricts that individual from doing activities that are of central importance to most people’s daily lives. As a result of these narrow interpretations of the law, many individuals with impairments were not accorded the protections of the ADA.

Under the ADA, a qualifying disability has consistently been defined as (i) a physical or mental impairment that substantially limits one or more major life activities of an individual; (ii) a record of such an impairment; or (iii) being regarded as having such an impairment. As amended, the ADA now emphasizes that the definition of a disability is to be interpreted broadly. To that end, the ADA amendments provide specific examples of “major life activities” that qualify for protection, including but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. The amendments further expand the definition of “major life activities” to include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Most importantly, the ADA amendments further expand coverage by providing that (i) an impairment that substantially limits one major life activity is sufficient to constitute a disability within the meaning of the ADA; (ii) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and (iii) a determination of (*cont’d* ➔)

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whether an impairment substantially limits a major life activity shall be made *without regard* to the ameliorative effects of mitigating measures of such things as medication, medical supplies, prosthetics including limbs and devices, and hearing aids. An exception was made, however, for the mitigating measures of ordinary eyeglasses and contact lenses, which shall be considered in determining whether an impairment substantially limits a major life activity.

As a result of the amendments to the ADA, more employees will be considered “disabled” under the law and under circumstances that may not be readily apparent to employers. To comply with these expanded protections, employers must be more circumspect when dealing with employees claiming to be “disabled” under the ADA. In addition, employers must be prepared to engage in the “interactive process” with a greater number of employees to determine the true nature of the disability, to determine the major life activity that is adversely affected by the disability, and to determine what accommodations may be necessary and required for the disabled employee. An interactive process has been described as an open, face-to-face discussion between an employer and an employee at which the

parties discuss the nature of the employee’s disability, how it may affect the employee’s ability to perform his/her job, and what the employer may be able to do to accommodate the employee so that the employee can continue to perform the essential functions of the job at the workplace.

Finally, in response to the ADA amendments it is equally important for employers to undertake the following measures to ensure compliance with the new requirements: (i) review and revise (where necessary) their current ADA policies and complaint procedures; (ii) establish procedures for engaging in and documenting the interactive process with employees; (iii) prepare job descriptions that specify the essential functions of the job; (iv) train supervisors and managers on how to handle requests for reasonable accommodations; and (v) provide diversity training for all employees that includes discussions about disabilities in the workplace.

The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact John H. Schmidt, Jr., Esq. of the Labor & Employment Law Group. He provides advice and counsel to company management in employment law matters and can be reached at jschmidt@lindabury.com.



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