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Legal Developments Affecting Business

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SWEEPING CHANGES TO ADA - NEW BURDENS FOR EMPLOYERS

By David Briggs

Last month Congress passed into law what is perhaps the most dramatic change in federal employment law in the past ten years. The amendments will require employers to shift their focus from whether an employee is “disabled” to whether the employer can provide a reasonable accommodation for the employee. The ADA Amendment Act will require most employers to adopt new policies and procedures. Employers must also be more diligent in going through the ADA interactive process and documenting their decisions. Without that documentation, a lawsuit likely won’t be dismissed short of a jury trial.

Changes to the Definition of Disability. The change of focus from disability to accommodation expands the number of employees protected by the ADA. Under the previous law, “disability” was narrowly defined, and individuals claiming protection under the ADA often found they were either not disabled enough to qualify for the protections of the ADA or were too disabled to qualify for the position in dispute. The old narrow definition often allowed employers to dismiss employee disability claims prior to trial. Now, the statute requires that courts examining ADA cases provide coverage to claimants “to the maximum extent permitted” by the statute.

Mitigation Measures. The new law also expands the number of potentially disabled employees by mandating that, with the exception of eyeglasses and contact lenses, mitigating measures will not be considered. Previously, the courts allowed employers to take any mitigating measures into account when deciding whether an employee was disabled. For example, medication, prosthetics, mobility devices, and hearing aids are all mitigating measures that may allow an individual with a disability to function as if the person were not disabled. If the mitigating measure allowed the employee to perform major life activities like any other person, the protections of the ADA would not apply. Employers must now evaluate whether an individual is disabled without taking mitigating measures or devices into account.

Definition of “Regarded As” Expanded. The ADA Amendment Act also increases protections for individuals whom an employer regards as disabled. Under the old law, employees not otherwise protected by the statute would gain protection if the employer regarded the employee as having a substantial impairment of a major life activity. Now, employees gain protection under the statute if the employer perceives that the employee has a mental or physical impairment. This change will likely allow those employees that are not considered disabled under the ADA to have the same protections in making a discrimination claim as those that are “disabled” under the statute.

Bottom Line. The result of these and other changes to the ADA will mean that more individuals will be protected by the statute. Employers must treat any situation where an employee requests a reasonable accommodation carefully because individuals bringing claims will be more likely to have those claims survive to trial; thus requiring employers to make higher payments in order to settle cases. In order to reduce their risk of claims, employers will need to adopt new interactive process policies and offer accommodations to a greater number of employees.

If you have questions about this article, or to obtain a sample interactive process questionnaire or discuss changes to your ADA policies, please contact David Briggs or Randy Sutton at (503) 399-1070.