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CLIENT ALERT

ADA Amendments Expand Protections for Disabled Employees

On September 25, 2008 President Bush signed into law a bill that amends the Americans with Disabilities Act (“ADA”) to expand the protections afforded to disabled individuals. The new law, entitled Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”), will take effect on January 1, 2009.

The ADAAA provides that the term “disability” must be construed “in favor of broad coverage of individuals... to the maximum extent permitted by the [ADA].” The ADAAA also clarifies that an impairment that substantially limits one major life activity need not limit other major life activities to be a disability. In this regard, the ADAAA provides an extensive list of tasks that constitute a “major life activity,” including physical tasks such as walking, standing, lifting, and hearing; mental tasks such as learning, reading, and thinking; and the operation of major bodily functions, such as immune system functions, cell growth, and reproductive functions.

The ADAAA also lowers the standard necessary for an individual to prove that an employer discriminated by “regarding” the individual as disabled. The ADAAA specifies that individuals who are subjected to discrimination prohibited by the ADA will be regarded as having an impairment, regardless of whether an actual or perceived impairment limits the individual’s major life activities.

The ADAAA extends protection to individuals who suffer from an impairment that is episodic or in remission, as long as that impairment would substantially limit a major life activity when active. Moreover, ameliorative effects of measures such as medications, artificial limbs, hearing aids, and other treatments will not bar a person from being classified as disabled under the new law. In this respect, the law is intended to extend protection to people with conditions like epilepsy, diabetes, or cancer, who were previously denied protection because their conditions could be treated with medication or were in remission.

* * *

In sum, while the ADAAA does not modify the ADA's non-discrimination and reasonable accommodation provisions, it will make it harder for employers to take the position that any given individual is not "disabled" within the meaning of the Act.

If you should have any questions regarding the new legislation, please contact us.

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