

Employer • Alert

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CONGRESS EXPANDS THE AMERICANS WITH DISABILITIES ACT

Effective January 1, 2009, new legislation will expand the scope of the Americans with Disabilities Act (“ADA”) so that a greater number of individuals will be considered “disabled” or “regarded as disabled.” Congress has stated explicitly that the new law is intended to reverse the effects of a number of U.S. Supreme Court cases and administrative enactments that had narrowed the broad scope of protections that Congress initially intended when it enacted the ADA in 1990. The effect on employers will be that they will have to be increasingly cautious in addressing potential disabling conditions and requests for accommodations by employees.

Under the current version of the ADA, an employee is considered disabled if he or she has “a physical or mental impairment that substantially limits one or more major life activities.” The new legislation retains this definition, but rejects the prior interpretations of this “substantially limits” language and makes clear that those interpretations set too high of a standard for protection under the law. Consequently, Congress has ordered the federal Equal Employment Opportunities Commission (“EEOC”) to revise its interpretive regulations to broaden the scope of people to be characterized as disabled under the law. The EEOC has not yet issued revised regulations on the issue, but we can expect these in the near future.

The new law also significantly expands what a “major life activity” is under the ADA, again broadening the scope of the Act. Individuals suffering from certain relatively common afflictions will now be considered disabled, such as insomnia, dyslexia, stuttering, and attention deficit disorder. In addition,



Congress has indicated that an individual may be disabled even if he or she has a condition that is controlled by medication, physical aids, or similar ameliorating measures. This latter change is a departure from a specific Supreme Court decision that had previously limited the applicability of the ADA to individuals who could control their conditions and function in the same way as a non-disabled individual. Finally, the new law expands the category of employees who can claim that they are “regarded as disabled” by their employer.

The changes made by this recent legislation reverse an employer-friendly trend that had been established over the past decade or so. As a result, employers will likely encounter more employee demands for accommodation as well as an increase in the number of claims of disability discrimination. Consequently, it is now particularly important for employers to carefully consider requested accommodations and to engage in the interactive process required under the ADA. In addition, employers must be fair and consistent in addressing personnel matters with employees who may be covered under the new law.

QUESTIONS OR ASSISTANCE?

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