

What the new ADA Amendments Have to Do with You: *A Brief Guide for HR Managers*

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On September 25, 2008, President Bush signed into law new amendments to the federal Americans with Disabilities Act (“ADA”). As most HR professionals know, the ADA (which applies to employers with 15 or more employees), prohibits discrimination against employees with physical and/or mental disabilities who are otherwise qualified to perform the job, as well as protects employees who may be “regarded as” disabled. The law also requires employers to make reasonable accommodations to disabled employees that do not pose undue hardships on the employer.

Of note is that Congress enacted the new amendments to expand the ADA’s coverage because it was concerned that litigation of ADA cases had gone in a direction unintended by the original 1990 Act. Congress wanted courts to focus on “whether entities covered under the ADA had complied with their obligations” to people with disabilities, instead of whether the employee in question was disabled. Prior to these amendments, companies faced with ADA claims from employees or former employees would often argue that the employee was not disabled as defined by the ADA and so was not entitled to the ADA’s protections. Because the ADA’s definition of “disability” was being interpreted very narrowly, the employer would often prevail with those arguments. Under the new amendments, however, which go into effect on January 1, 2009, many more employees will be covered under the definition of “disabled” than had been covered before. In fact, the amendments expressly overturn certain court cases that had limited the definition.

HR professionals would be wise not to take hasty action against employees with physical or mental conditions under the misplaced presumption that the condition is not protected, and should ensure that managers are trained as to how to respond to requests for accommodations.

HR and other managers should also be familiar with the “interactive process” requirements—that conversation that needs to occur between employee and employer when an employee’s inability to perform his or her job is in any way related to a physical or mental condition. The end result of this process is to determine whether there is a reasonable accommodation that can be provided. There may not be. Indeed, employers need not provide the accommodation requested by the employee—only an accommodation that assists the limitation imposed by the condition, that does not cause an undue hardship on the employer. However, employers are required to engage in the process to see what may be possible.

Thus, rather than presuming that the employee’s condition is not covered by the ADA, and that the company’s obligations are ended, the new amendments will require employers to take more care when dealing with disabled employees. It is advisable that employers not wait until the effective date to conform their HR procedures to the new amendments.

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