

UPDATE #1

As changes to Federal and State employment laws are made throughout 2009, we will post them to our website to keep you as updated as possible. The most recent area to undergo changes involves the **Americans with Disabilities Act (“ADA”)**.

President George W. Bush signed into law amendments to the Americans with Disabilities Act (“ADA”) that will clarify and expand the protections afforded to persons with disabilities. The ADA Amendments Act of 2008 (“ADAAA”), as the new law is known, overturns several landmark U.S. Supreme Court decisions that narrowly interpreted the definition of “disability.” The enactment of the ADAAA will most likely make disposing of ADA cases prior to trial more challenging for employers. In some instances, though, providing accommodations under the new law will be less confusing for employers. This is because the ADAAA has made it clear that employers are not required to provide a reasonable accommodation to individuals who are “regarded as” disabled, but not actually disabled.

The ADAAA includes the following provisions:

- Employers and courts must now adopt a broad standard to determine if an employee is “disabled” by providing coverage to individuals “to the maximum extent permitted by the terms of this Act.”
- Before the amendments, the ADA was silent on the definition of a “major life activity,” leaving the issue for the courts to decide. Now, the ADAAA has a laundry list of major life activities such as “thinking,” “concentrating,” “eating” and “working.”
- Previously, an employer could argue an employee was not disabled if there were mitigating measures that the employee utilized, such as prosthetics, medications or hearing aids that corrected or alleviated the medical issues. Now, employers and courts are prohibited from considering these measures (other than a few limited exceptions related to vision) in determining whether an employee has a disability.

Employers need to understand that the range of coverage and protections afforded to employees will be broader under the ADAAA. We therefore encourage employers to review their organizations’ ADA policies and procedures for compliance before these changes take effect January 1, 2009.

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