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CLIENT NEWS BRIEF

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AMENDMENTS TO ADA INCREASE COVERAGE FOR EMPLOYEES

President Bush recently signed the Americans with Disabilities Act, Amendments of 2008 ("ADAAA"), which significantly amends federal disability law and increases the scope of coverage for employees. The changes take effect January 1, 2009.

The amendments follow two United States Supreme Court cases that Congress determined had limited protections intended by the Americans with Disabilities Act ("ADA"). In Sutton v. United Airlines (1999) 527 U.S. 471, the Supreme Court ruled the ADA required an employer to consider corrective and mitigating measures when determining whether a person was disabled. For example, if an individual's condition could be corrected by assistive or prosthetic devices, he or she might not be disabled. In Toyota Manufacturing, Kentucky v. Williams (2002) 534 U.S. 184, the Court ruled that an impairment had to prevent or substantially limit an individual's ability to perform tasks of "central importance" to his or her life, such as walking, seeing, and hearing, to be considered a disability.

Under the ADAAA, however, the determination of whether an individual is considered disabled must be made without considering corrective or mitigating measures. For instance, an individual may be disabled even if his or her medication allows him or her to engage in major life activities. Further, the amendments provide an impairment only needs to substantially limit a single major life activity to be a disability and no longer applies just to those of "central importance" to an individual's life.

Other changes include:

- Listing what constitutes a major life activity, including general activities (i.e., working, lifting, bending, thinking) and impairments of major bodily functions (i.e., immune, neurological, circulatory, and reproductive systems).

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- Permitting an individual to establish a “regarded as” disabled claim if an adverse employment action occurs because he or she has an actual impairment or is perceived as having an actual impairment.
- Prohibiting a finding that an individual is “regarded as” disabled when the individual’s impairment is minor or temporary. For example, an individual with a broken wrist that is expected to heal normally would not be considered disabled.
- Creating the possibility that an individual may be considered disabled even if his or her impairment limits a major life activity only episodically or is in remission.
- Clarifying that the intent of the law is to broaden the scope of coverage for individuals under the law.

While these amendments will increase the scope of coverage under the ADA, employers are reminded that California employees already have broad protections under the State’s Fair Employment and Housing Act (“FEHA”). Employers are encouraged to review and update their policies regarding employee disabilities in the workplace. Employers are also reminded that the amendments do not change their obligation to engage in interactive dialogue with employees who request reasonable accommodations or to provide reasonable accommodation if necessary.

For more information regarding this case or any other employment law matters, contact any of our six offices throughout the state.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.



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