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Exploring the bigger and broader Americans with Disabilities Act

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So far, 2009 has been an action-packed year for employer regulation. This column, one of a series covering issues arising from the new pro-labor era, explores the Americans with Disabilities Amendments Act, which went into effect on Jan. 1.

When Congress passed the Americans with Disabilities Act in 1990, its intent was to protect employees and applicants whose disabilities “substantially” limited them from performing major life activities.

Generally speaking, the ADA applies to any business that has 15 or more employees in the current or preceding calendar year.

While there is no doubt the ADA has had a positive impact on disabled workers, the Supreme Court has limited the law’s effect through a narrow definition of disability.

For example, the Supreme Court held in *Toyota vs. Williams* that in order to qualify, a person must be “severely” restricted in his or her ability to perform major life activities. The high court has also held that people with disabilities were not eligible under the ADA if their condition(s) could be mitigated by medication, assistive technology and equipment, or learned behavioral adaptations.

The ADA Amendments Act seeks to restore Congress’ original intent of the ADA by overturning more than a decade of court decisions that barred the door to ADA eligibility for people with disabilities such as epilepsy, diabetes, intellectual and developmental disorders, muscular dystrophy and cancer among others.

The new law also clarifies that “major life activities” include working, communicating, concentrating, thinking, reading and other activities of central importance.

The ADA Amendments Act puts tens of millions more workers under the protection of the ADA. In fact, the coverage is so broad that employers should no longer expect ADA cases to be dismissed because employees can’t meet the stringent definition of disability. A much higher percentage of cases will go to trial where they will be decided by a jury, rather than a judge.

Here are some things you can do to ensure that your business complies:

- Know the ADA:

Make sure that you have a formal ADA policy in your employee handbook and have written procedures for handling accommodation requests. Remember, it’s the employee’s responsibility to let their employer know that a performance problem is disability-related and to request an accommodation. Recognize that the ADA requires that you spend money to make reasonable accommodations unless this poses an “undue hardship,” a defense that is rarely applicable.

- Review job descriptions:

Check your job descriptions to ensure they accurately reflect the essential duties of each position. The ADA does not require employers to hire unqualified applicants with disabilities nor does it require a business to retain employees who can no longer perform a job function because of a disability. The ADA does, however, prohibit employers from using unnecessary qualification standards to weed out disabled applicants.

- Focus on performance and conduct:

With the law now focused on the actions of employers, rather than the characteristics of disabled claimants, documentation of employment decisions is crucial. Employers must demonstrate that employment decisions relate to job performance. Enforce policies in a uniform manner and never imply that performance issues are related to an employee’s disability.

One thing that has not changed is that an employee must be able to perform the essential duties of a job. If there is no reasonable accommodation that will allow him or her to safely do so, the employee is not protected by the ADA. Essential job duties include regular attendance at work. The courts have held that unpredictable or indefinite absences are not reasonable accommodations.

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