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ADA AMENDMENTS ACT SIGNED INTO LAW

On September 26, 2008, President Bush signed into law the ADA Amendments Act. This law reverses U.S. Supreme Court rulings limiting the scope of protection offered by the Americans with Disabilities Act.

When the ADA was passed in 1990 it was hoped it would remove barriers to employment for millions of disabled Americans who were willing and able to work. However, the cases brought under it have chiefly concerned the termination of employment of individuals with “hidden” disabilities, such as depression or back pain. The U.S. Supreme Court has taken a restrictive view, ruling in 1999, for example, that the Act does not protect those whose disability can be mitigated by medication or other measures. Another opinion in 2002 imposed a demanding standard to determine whether an individual is “substantially limited” in a “major life activity,” the statutory definition of a whether an individual is disabled within the meaning of the ADA.

With unusual bi-partisan support, as well as the support of both labor and employer groups, these restrictive rulings have now been overturned. While the new law furthers the original intent of Congress to get more disabled individuals into the workforce, it does little to ease the burden of employers faced with the challenge of current employees who claim the ADA’s protection.

Practice Pointers:

- If an employee seeks an accommodation for their disability, immediately engage in an interactive process with the individual and their healthcare provider to determine what reasonable accommodation might be appropriate to enable the individual to perform the essential functions of the job.
- Address the performance of disabled employees objectively, as you would the performance of other employees; don’t assume the disability is causing problems.
- Don’t confuse FMLA rights to unpaid time off for an employee’s serious health condition with an ADA reasonable accommodation for a disability. While time off or a reduced schedule *may* be ADA accommodations, it is often better to explore accommodations that allow the individual to come to work on a regular basis.
- You don’t have to accept the accommodation suggested by the employee; obtaining complete information from the healthcare provider is the key in determining the most effective accommodation for everyone.

Contact us for more information on this and other employment compliance topics.