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ADAAA: Added Responsibility on Employers

The Americans with Disabilities Act Amendments Act (ADAAA) was signed into action by President Bush on September 25, 2008. Originally enacted on July 26, 1990, the Americans with Disabilities Act (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities and transportation. The **ADAAA is effective January 1, 2009**, giving companies limited time to train managers and supervisors about what has changed in order to be in compliance.

With the change, the definition of an employer has not changed. If a company has 15 or more employees, they must comply with the ADA *and* the ADAAA.

The amended act broadens the definition of a disability and now more employees are subject to protection under the ADAAA. The ADAAA defines a disability as:

- A physical or mental impairment that substantially limits one or more major life activities (see list below)
- A record of such impairment
- Being regarded as having such an impairment

An employee is still responsible for being able to perform the major functions of his/her job. If a reasonable accommodation is necessary, the employee must make the request. Examples of reasonable accommodations may include adjustments to existing facilities, job restructuring, part-time or modified work schedules, and assignments to vacant positions. The impairment with an actual or expected duration of six months or less ("transitory") is not covered.

The new law specifically defines a "major life activity" to include, but not be limited to:

- | | | |
|---------------------------|-------------|-----------------|
| · Caring for oneself | · Walking | · Learning |
| · Performing manual tasks | · Standing | · Reading |
| · Seeing | · Lifting | · Concentrating |
| · Hearing | · Bending | · Thinking |
| · Eating | · Speaking | · Communicating |
| · Sleeping | · Breathing | · Working |

The law also states that a major life activity includes the operation of a major bodily function, including but not limited to:

- Functions of the immune system
- Normal cell growth
- Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions

While the definition of disability has expanded, the definition for "reasonable accommodation" remains the same. Employers will no longer be questioning if someone is disabled, but rather questioning whether a reasonable accommodation can be made. If an employee is only "regarded" as having a disability, no accommodations need to be made for that person. If a disability is under control with medication, or in remission, he or she can still be considered disabled under the ADA's protections.

It is important for companies to become familiar with the ADAAA and the changes that have been made to the ADA. Supervisors and managers should be educated on these changes – it is *critical* they understand how this law is to be implemented. For more information go to:

www.eeoc.gov/ada/amendments_notice.html.

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The U.S. Equal Employment Opportunity Commission

Notice Concerning The Americans With Disabilities Act (ADA) Amendments Act Of 2008

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"). The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- expands the definition of "major life activities" by including two non-exhaustive lists:
 - the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
 - the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and
- emphasizes that the definition of "disability" should be interpreted broadly.

EEOC will be evaluating the impact of these changes on its enforcement guidances and other publications addressing the ADA.

Effective Date:

The ADA Amendments Act is effective as of January 1, 2009.

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