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Labor & Employment Bulletin

PRESIDENT SIGNS ADA AMENDMENTS ACT

On Thursday, September 25, President Bush signed into law several amendments to the Americans with Disabilities Act (the "ADA") that will go into effect on January 1, 2009.

Currently, a qualifying disability under the ADA includes only those "physical or mental impairments that substantially limit one or more major life activity," such as performing manual tasks, seeing, hearing, walking, standing, and thinking. With these new amendments, however, the scope of what is considered a qualifying disability will be greatly expanded, as the amendments redefine what is a "disability" and "impairment" under the law, as well as the standard by which a qualifying disability affects an individual's major life activity.

The amendments overrule Supreme Court precedent and prohibit employers from considering mitigating measures, such as medication, prosthetics, or hearing aids, when determining whether an employee has a qualifying disability. An exception exists only for eye glasses and contact lenses. In addition, the amendments operate to include episodic disabilities or disabilities that are in remission as qualifying disabilities. The amendments further alter the interpretation of whether a particular disability satisfies the ADA definition by expanding on whether it "substantially limits" a major life activity, revising the standard to whether the disability "materially restricts" a major life activity. In addition to expanding what is a qualifying disability under the ADA, the amendments also empower the Equal Employment Opportunity Commission,

the Attorney General, and the Department of Transportation with authority to issue regulations and guidance on how these revised definitions should be interpreted.

Finally, the amendments to the ADA clarify coverage under the statute for an individual who is "regarded as" being disabled under the law, excluding minor impairments of less than six months in duration and an employer's requirement to provide a reasonable accommodation. The amendments clarify that the employee continues to bear the burden of proving that he or she is qualified with a disability, or discriminated against due to a perceived mental or physical impairment.

Revisions to the ADA will have a significant practical impact on employers as employees with conditions previously not recognized under the statute, such as epilepsy and cancer, will be covered under the revised law. With this increase in potential claimants, it is expected that a resulting increase in lawsuits and administrative charges will occur as well.

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

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If you have additional questions or would like to discuss the impact of the revisions to the ADA on your specific operations and policies, please contact any of the following members of Benesch's Labor & Employment Practice Group:

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