A NEWSLETTER PUBLISHED BY
DICKIE, McCAMEY & CHILCOTE'S
EMPLOYMENT AND LABOR LAW GROUP

Employment Law Update

Dickie McCamey
Integrity. Experience. Solutions.

May 25, 2011

Final Regulations implementing the amendments to the Americans with Disabilities Act are now in effect.

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective January 1, 2009. The law made a number of significant revisions to the Americans with Disabilities Act which, in effect, broadens the scope of protection under the Act. On Tuesday, May 24, 2011, the final regulations issued by the Equal Employment Opportunity Commission implementing the ADAAA became effective.

Initially, it is important to note that the ADAAA does not apply retroactively. So, it would not apply to allegations of violations of the ADA which occurred prior to January 1, 2009.

One of the most significant aspects of the new regulations is the expansion of the definition of disability under the Act. For example, the ADAAA expressly rejects certain Supreme Court decisions which Congress thought inappropriately narrowed the definition of disability, effectively resulting in individuals with impairments such as epilepsy, diabetes, multiple sclerosis, and bipolar disorder having difficulty meeting the definition of disability under the former law. Under the new expanded definition, individuals will have less difficulty proving that they are disabled under the Act. Consequently, where, under the former ADA, the initial focus was whether an individual was disabled, the new regulations with the expanded definition shift the focus of a lawsuit to whether discrimination occurred. The new law and regulations also increase the Act's applicability to "regarded as" claims; however, neither the law nor the regulations require an employer to reasonably accommodate individuals who are regarded as being disabled.

The new regulations attempt to clarify the application of the law to temporary disabilities. In fact, the rules of construction state that the effects of an impairment lasting less than six months may be substantially limiting. The new law and regulations also specifically state that an impairment that is episodic in nature or in remission may be considered a disability if it would substantially limit a major life activity when active.

Finally, the new law puts a greater emphasis on the requirement of employers to engage in the "interactive process" of reasonable accommodations. While this interactive process between employees and their employers has always been one of the goals of the ADA, the shift in the regulations away from the threshold question of whether an individual is disabled will redirect the focus in the direction of the interactive process.

These are just a few of the most significant pieces of the regulations. While the ADAAA and the new regulations attempt to clarify the law of disability discrimination, like any new law the early stages are certain to cause confusion among employers. There are a number of things employers should be doing in connection with the new law and regulations. First, employers must become familiar with the new law and regulations and understand how they differ from the former law and regulations and what is required of employers. Once they have a working understanding of the law and regulations, employers should review and update their policies and procedures regarding equal employment opportunities, reasonable accommodations, and leaves of absence and update any medical certification or related forms to make sure that they are in compliance with the new law and regulations. Employers should also be examining their job descriptions to determine the validity of the essential functions of the job listed in the descriptions. This will help to streamline the interactive process when an accommodation is requested. Now is also the time to re-train managers and supervisors on how to comply with the new law, including how to handle requests for accommodations. All of this underscores the importance of employers carefully analyzing all of their employment decisions, especially those related to applicants or employees with disabilities or perceived disabilities. Employers should consult with employment counsel before making any decisions that may possibly run afoul of the new law.

* * *

If you have any questions or comments regarding this information, or would like to discuss other labor and employment issues, please contact Terri Imbarlina Patak at 412-392-5613 or via e-mail at tpatak@dmclaw.com, Thomas H. May at 412-392-5437 or via e-mail at tmay@dmclaw.com, or any other Dickie, McCamey & Chilcote lawyer with whom you have worked.

This *Employment Law Update* is provided by the law firm of Dickie, McCamey & Chilcote to inform readers of recent developments within the field of employment law. The firm regularly counsels corporate clients concerning labor and employment law issues and legislation and is available to provide presentations and seminars regarding a variety of preventive law subjects. To learn more about the firm's capabilities in this area, please visit the website at www.dmclaw.com and look for information on the firm's Employment and Labor Law Practice Group.