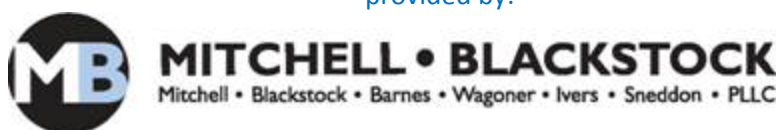


Health Law Bulletin

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Americans with Disabilities Act Amendments Means More Employees Covered by the ADA

Every private and public employer who has 15 or more employees is covered by the federal Americans with Disabilities Act (“ADA”), which was amended late last year to expand employee protection under this law. The ADA Amendments Act of 2008 applies the ADA to a wider range of employees and disabilities than had been allowed under interpretations of the ADA by the United States Supreme Court.

In general, the ADA prohibits employment discrimination against qualified disabled workers or job applicants. A covered employer is obligated to make reasonable accommodations to enable a disabled employee to perform the essential functions of his job, unless doing so would impose an undue burden on the employer.

Many of the terms used to discuss the ADA are defined in the statute or through case law. The amendments to the ADA made several important changes in some definitions, the details of which are too lengthy to discuss in this article. However, the effect of these changes can be summarized as including the following:

- Now an employee will be within the protection of the ADA if he has an impairment that significantly impacts a bodily function. (Bodily functions include such functions as immune system activity, digestive system and brain activity.) Before the amendment, an employee could have a significant impairment to a bodily system, such as having diabetes, and still not be considered as disabled under the ADA as long as the diabetes did not significantly limit the employee’s daily activities.
- In assessing whether an employee has an impairment that qualifies for ADA protection, there is no longer any consideration of remedial measures, like medication or devices, for the impairment. (There is one exception, which is that if a person uses glasses or contact lenses to correct his sight to within normal ranges, he is not considered disabled under the ADA.) Under the pre-amendment ADA, remedial measures used by an impaired person were considered in the determination of whether an employee met the standards used to decide whether he was eligible for protection under the ADA. This meant that a person who was able to control his diabetes with medication would not have been considered as “actually disabled” and entitled to ADA protection. Because of this change, the number of employee who will be considered actually disabled and qualified for ADA protection will increase substantially.

- An employee whose condition is episodic or in remission will be considered as actually disabled — and thus entitled to a reasonable accommodation under the ADA — if the employee would be substantially limited in a major life activity while his condition is active. For example, someone who has periodic flare-ups of multiple sclerosis likely will be entitled to the reasonable accommodation of time off for necessary MS-related medical appointments, even when the MS is not causing immediate problems.

ADA coverage issues are fact-specific and can be complex to navigate. It is advisable to seek legal counsel when employment situations arise that implicate the ADA.