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INSIDE THIS ISSUE

JOB ACCOMMODATION NETWORK OFFERS HELP WITH ADA AMENDMENTS ACT

When Congress passed the *ADA Amendments Act of 2008* it directed the Equal Employment Opportunity Commission (EEOC) to propagate new regulations that match the intent of the Congress in defining disability and the employment of disabled. So far, the EEOC has not published those regulations. In its December 11, 2008, meeting the four commissioners considered a proposal from the EEOC's Office of Legal Counsel and rejected the idea of publishing draft regulations. Democrats Ishimaru and Griffin accused Republicans Earp and Barker of rushing to get a set of "flawed or tainted" regulations out before President Bush leaves office. EEOC Chair Naomi Earp said she resented such an accusation because it is the responsibility of the EEOC to get rules published so employers will know how to deal with the new legal requirements.

The Amendments Act became effective on January 1, 2009, and employers are left to their own devices for interpretation of the law until those regulations are published.

Well, not entirely on their own. The Job Accommodation Network (JAN) is an agency within the U.S. Department of Labor, Office of Disability Employment Policy that has taken upon itself the task of giving employers some guidance until the EEOC comes to the party. (Don't expect any EEOC action of the regulatory front until at least Spring. The Obama Administration will need time to get itself up and running and make the final EEOC Commissioner appointment.)

If you go to http://www.jan.wvu.edu/bulletins/adaaa1.htm you will find this ADA bulletin. According to Congress the EEOC and Department of Labor had placed restrictions on the definitions of disability and employment related to disability that were never intended by Congress when it sent the *Americans with Disabilities Act of 1990* to President George H. W. Bush. The U.S. Supreme Court and the EEOC had each issued opinions that restricted definitions under the ADA. A primary example is the definition of "Substantially Limits." Under the new amendments, Congress says the substantially limited standard is not supposed to be as hard to meet and that more people are supposed to be covered by the law. OFCCP offers

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its advice on the subject at
http://www.dol.gov/esa/ofccp/regs/compliance/faqs/ADAfaqs.htm

A second major change is that "Mitigating Measures" will not be considered in determining whether or not a person is disabled. So, we may not take into consideration the fact that a diabetic's disease is controlled by use of insulin, or that another's vision impairment is corrected with contact lenses or eye glasses. Neither may we take into consideration prosthetics including limbs and devices, hearing aids and cochlear implants, mobility devices or oxygen therapy equipment and supplies. We may, however, consider eyeglasses or contact lenses in determining whether an impairment substantially limits a major life activity.

The most important part of the job accommodation process is the dialogue between employee and employer.

The definition of major life activities now includes a list of basic bodily functions and caring for oneself. Up to now there has been a huge argument about whether someone with a medical condition that only affects internal functions should be covered by the ADA. Those medical conditions include such things as cancer, sleep disorders, heart disease and gastrointestinal disorders, for example.

Now, an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

As of this year, we now know that:

- The "substantially limits" standard is not as high a test as it once was.
- We may not consider anything other than eyeglasses or contact lenses as mitigation of a condition that substantially limits someone.
- Having one major life activity substantially limited is enough to meet the new ADA requirement.
- When considering whether a person whose condition is episodic or in remission is substantially limited in a major life activity, we consider the person's limitations as they are when the condition is in an active state.
- Someone can be "regarded as" disabled, but might not be subject to the ADA requirements if their impairment is expected to last six months or less.
- Only individuals who have an actual disability or have a record of a disability are entitled to job accommodation consideration. Those who are "regarded as" disabled are not entitled to accommodation consideration based on the "regarded as" status alone.
- Employers are still required to participate in a dialogue about job accommodation requests, but may choose from alternatives other than those specifically requested by the employee if the alternatives would enable the employee to do their job.
- Job accommodation is still not required for people who are not otherwise qualified for a job.
- Employers need not remove essential functions, create new jobs, or lower production standards as an accommodation.

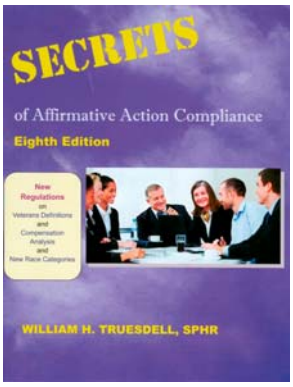
When will the EEOC finally get around to publishing its regulations on the ADA amendments? That is an uncertainty we will not be able to resolve until the new Administration is settled into Washington.

Secrets of Affirmative Action Compliance (8th Edition)

It's that time of year again for many employers who are also federal government contractors. If you sell goods and/or services to the U.S. Government, chances are you will be required to develop affirmative action programs for minorities and women, disabled, and veterans. This book tells you how to do just that.

Get the reference used by thousands of employers across the country.

http://www.management-advantage.com/products/AAP8.htm



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☑ **Best Places to Work – 2009**

Glassdoor.com surveyed 75,000 people and compiled a list of the 50 employers folks consider the "Best Places to Work" for 2009. As you can imagine, there are some prominent high tech companies on the list. But, you might also be interested to learn that the number one spot didn't go to high tech, but rather to the pasta and cereal manufacturer General Mills of Minneapolis, Minnesota. CEO Ken Powell received an approval rating of 96% from employees! Is your company on the list?
http://www.glassdoor.com/Best-Places-to-Work-LST_KQ0,19.htm

☑ **OFCCP Will Continue Inspecting I-9 Forms**

OFCCP is authorized to inspect I-9 Forms when conducting on-site audits of federal contractor or subcontractor affirmative action compliance. That has been true since 1998 and will continue into the future. The agency has issued a directive that it will ensure "any electronically reproduced Form I-9 is legible and has no evidence of inserts or changes made to the name, content, or sequence of the data elements."

☑ **OFCCP Looking for Groups of 10 or More Applicants/Workers**

Directive #285 from the Office of Federal Contract Compliance Programs (OFCCP) says Compliance Officers should look for disparate impact among job applicants and employees when 10 or more people are in the affected group. *"The contractor's personnel activity and compensation data will be analyzed for possible systemic discrimination indicators (i.e., a potential affected class of 10 or more applicants/workers)."*
http://www.dol.gov/esa/ofccp/regs/compliance/directives/dir285.htm

CONTRACTORS FIGHT E-VERIFY REQUIREMENT

The **US Chamber of Commerce** along with several other government industry groups have filed a lawsuit challenging a requirement for all federal contractors and sub-contractors to use the DHS E-Verify system to check on the citizenship status of all their employees. The suit, filed in US District Court for the District of Maryland, was joined by the **Associated Builders and Contractors**, the **Society for Human Resource Management**, the **American Council on International Personnel**, and the **HR Policy Association**.

"This massive expansion of E-Verify is not only bad policy, it's unlawful," said Robin Conrad, executive vice president of the National Chamber Litigation Center, representing the chamber.

In response, the Department of Homeland Security announced on January 9, 2009, that it would postpone implementation of the requirement until February 20th. The government estimates it will cost federal contractors $188 million in 2009 to comply with the E-Verify requirement.

[SOURCE]: Federal Manager's Daily Report, Tuesday, January 6, 2009, www.fedweek.com & San Jose Business Journal, http://sanjose.bizjournals.com/sanjose/stories/2009/01/05/daily88.html

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