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EEOC RELEASES FINAL REGULATIONS ON ADA AMENDMENTS ACT

INSIDE THIS ISSUE

- 1 EEOC Releases Final Regulations on ADA Amendments Act
- 2 Top 10 Labor Law Messes Employers Should Avoid
- 3 Potpourri
- 3 ***How to Spot a Phony Resume***
- 4 E-Verify Self Check Experiment Begins
- 4 Subscriptions...

On May 24, 2011 the final implementing regulations will become effective for the *ADA Amendments Act*. That will be two years after the law became effective. Released by the Equal Employment Opportunity Commission (EEOC) which has authority for enforcing the *Americans With Disabilities Act* (ADA), the regulations are designed to simplify the determination of who has a “disability” and make it easier for people to establish that they are protected by the Act.

The ADAAA and the final regulations keep the ADA’s definition of the term “disability” as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the law made significant changes in how those terms are interpreted, and the regulations implement those changes.

Based on the statutory requirements, the regulations set forth a list of principles to guide the determination of whether a person has a disability. For example, the principles provide that an impairment need not prevent or severely or significantly restrict performance of a major life activity to be considered a disability. Additionally, whether an impairment is a disability should be construed broadly, to the maximum extent allowable under the law. The principles also provide that, with one exception (ordinary eyeglasses or contact lenses), “mitigating measures,” such as medication and assistive devices like hearing aids, must not be considered when determining whether someone has a disability. Furthermore, impairments that are episodic (such as epilepsy) or in remission (such as cancer) are disabilities if they would be substantially limiting when active.

The regulations clarify that the term “major life activities” includes “major bodily functions,” such as functions of the immune system, normal cell growth, and brain, neurological, and endocrine functions. The regulations also make clear that, as under the old ADA, not every impairment will constitute a disability. The regulations include examples of impairments that should easily be concluded to be disabilities, such as HIV infection, diabetes, epilepsy, and bipolar disorder.

For more, go to the EEOC web site at

<http://www.eeoc.gov/eeoc/newsroom/release/3-24-11.cfm>

TOP 10 LABOR LAW MESSAGES EMPLOYERS SHOULD AVOID

By Stacia Abner, Esq.

The contemporary American workplace is subject to numerous federal, state, and local laws that impose strict obligations on employers. Wage and hour laws, nondiscrimination requirements, and safety obligations are some examples. Employers sometimes fail to understand these obligations, and risks to their business for noncompliance. Here are the top ten errors to avoid when managing employees in an organization.

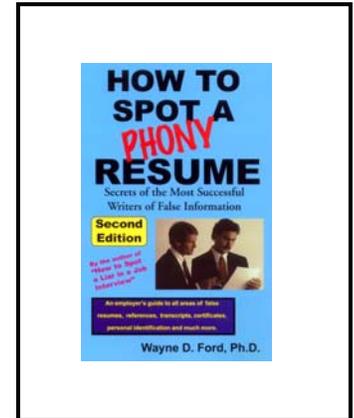
Stacia Abner is a New York labor law attorney who focuses on employer training. She can be reached at <http://www.employmentawtraining.org/> or at 607-869-4700.

- **Misclassifying personnel as independent contractors.** Popular because non-employees don't require employers to pay Social Security and Medicare contributions. State penalties can be very expensive.
- **Misclassifying non-exempt workers as exempt.** Start by classifying everyone as subject to overtime rules. Only make exceptions when a job is clearly meeting ALL of the exempt classification requirements. Otherwise, big penalties await.
- **Not complying with state wage payment law regulations.** Many states demand compliance with specific rules about how employees are to be paid.
- **Not using a personnel handbook.** Written policies are a good defense for employers if they are followed. Handbooks can be a positive communication and training tool with employees.
- **Not documenting personnel job performance.** A well-managed enterprise clearly communicates its employees' duties and responsibilities, trains and supervises workers to be sure they are meeting these requirements, and gives regular, objective, consistent feedback and evaluations.
- **Not training supervisors regarding EEO laws & regulations.** Complaints of illegal job discrimination are sometimes resolved with expensive remedies.
- **Not providing reasonable accommodations for disabled employees.** Talk with any employee who requests an accommodation and honestly find out if it can be done. Then document the result.
- **Not obtaining releases from terminated workers.** Particularly important during layoffs and downsizing, releases must require staff members to agree not to file complaints or law suits in substitution for the separation payment.
- **Not protecting confidential enterprise information.** Big variations in state law mean you should discuss this with your management attorney. Sometimes non-disclosure agreements are a good tool.
- **Not consulting an experienced employment law attorney.** Perhaps the most significant point to take away from this list is that consulting with an experienced employment lawyer is critical. Make your lawyer part of your human resource management team.

How to Spot a Phony Resume (2nd Edition)

Human Resource Managers nearly universally complain that resumes they receive from job candidates are inflated in content. What may be a "slight enhancement" to one person is a "complete fabrication" to another. There are ethical issues involved and questions about legal liability if those mis-truths cause injury to others. Find out how to spot the false information and how you can avoid the games people want to play with you when you try to verify their resume information.

<http://www.management-advantage.com/products/resume-book.htm>



POTPOURRI

- **OFCCP Enforcing ADA Amendments Act Provisions**

The Office of Federal Contract Compliance Programs (OFCCP) is enforcing the provisions of the *ADA Amendments Act* which significantly broadens the definition of "disability" under both the ADA and Section 503 of the *Rehabilitation Act*.

<http://www.dol.gov/ofccp/regs/compliance/faqs/ADAFaqs.htm>

- **New Tool to Help Veterans Transition to Civilian Employment**

The REALifelines: Veterans' Employment and Career Transition Advisor provides veterans, transitioning service members and their family members, with the resources they need to successfully transition to a rewarding career.

<http://www.dol.gov/elaws/realifelines.htm>

- **USCIS Offers Partnership Program for Employers**

By voluntarily participating in the IMAGE (Mutual Agreement between Government and Employers) program, companies can reduce unauthorized employment and the use of fraudulent identity documents. As part of IMAGE, ICE and U.S. Citizenship and Immigration Services (USCIS) will provide education and training on proper hiring procedures, fraudulent document detection, use of the E-Verify employment eligibility verification program and anti-discrimination procedures.

<http://www.ice.gov/image/>

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E-VERIFY SELF CHECK EXPERIMENT BEGINS

The U.S. Citizenship & Immigration Services agency has begun an experiment with E-Verify self check.

E-Verify Self Check ("Self Check") is a voluntary, fast, free and simple service that allows you to check your employment eligibility in the United States. If any mismatches are found between the information you provide and your Department of Homeland Security or Social Security Administration records, Self Check will inform you of how to correct those mismatches.

Once you have confirmed your employment eligibility using Self Check, you are unlikely to encounter difficulties upon being hired by an E-Verify participating employer.

USCIS is releasing the E-Verify Self Check service in phases. At this point the service is offered only to users that maintain an address and are physically located in Arizona, Colorado, the District of Columbia, Idaho, Mississippi, or Virginia.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=2ec07cd67450d210VgnVCM100000082ca60aRCRD&vgnnextoid=2ec07cd67450d210VgnVCM100000082ca60aRCRD>

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