DISABILITY ACT CHANGES MAKE IT EASIER FOR EMPLOYEES TO SUE

Changes in the Americans with Disabilities ACT ("ADA") that took effect January 1, 2009 will expand the number of employees that qualify for its protections. The legislation was in reaction to several Supreme Court cases, which strictly interpreted the law to require individuals seeking coverage to meet a demanding standard. The obvious goal of the amendments is to discourage a micro analysis of whether an employee meets the definition of disability and to focus instead on the employer meeting its obligations under the ADA. As the ADA Amendments Act states, "…the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis."

In some respects, M.G.L. c. 151B is already applied in the employee-friendly way that the ADA amendments seek to accomplish so the adjustment for Massachusetts employers should not be major. But employers are always well advised to contact counsel with any potential ADA or 151B claims as disability and handicap discrimination claims continue to be a source of confusion and litigation.

Prior to the amendments, "disability" was defined as (1) a physical or mental impairment that substantially limits one or more major life activities of the affected individual; (2) a record of having such an impairment; or (3) being regarded as having such impairment.

Court decisions refined this definition to require that medications or other mitigating measures (like eyeglasses) be considered as narrowing the definition of disability. "Disability" has now been expanded to consider an individual without regard to mitigating measures in determining whether a condition substantially limits a major life activity. In short, an individual must be considered in the individual's "uncorrected" state.

The amendments also make it easier to qualify under the third part of the definition – "being regarded as having an impairment." Previously, an individual would have to show that they were perceived to be substantially limited in a major life activity to satisfy even this part of the definition. With the amendments, however, an individual need only show that the perception that he/she has an impairment results in a violation of the statute. There is no need to establish that the perceived impairment limits or is perceived to limit a major life activity.

Finally, Court decisions had defined a "major life activity" to include only something of "central importance to most people's daily lives." For example, the fact that an ADA claimant could not perform manual tasks specific to the job involved did not meet the test. The amendments expand the definition of "major life activity" to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working." The expanded definition also includes major bodily functions, including digestive, bowel, bladder, respiratory, circulatory and reproductive.

In short, it will become more difficult for employers to defeat ADA claims without a deeper review of the facts and circumstances of the claim. As a result, employers should be more careful when taking adverse action where potential disability issues are involved.Ω