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Labor and Employment

New Regulations Make it Easier for Disabled Individuals to Obtain Protection Under the Americans with Disabilities Act

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The Equal Employment Opportunity Commission ("EEOC") issued final regulations, effective May 24, 2011, implementing recent amendments to the Americans with Disabilities Act ("ADA"). As stated by the EEOC in a press release concerning the final regulations, the effect of the amendments to the ADA and the new regulations is to "make it easier for an individual seeking ADA protection to establish that he or she has a disability within the meaning of the ADA."

By way of background, the ADA was amended in late 2009 by legislation that was generally designed to reverse a trend in Supreme Court decisions to eliminate individuals from coverage under the Act by limiting the Act's reach. The Amendments therefore broadened the ADA's protection to millions of Americans who had been previously excluded by the Supreme Court's narrow interpretation of the ADA's provisions.

The new and final regulations implemented by the EEOC provide both the courts and employers with guidance, or "Rules of Construction," that will help them understand how the ADA will be implemented and enforced. Some of the major highlights of these new Rules of Construction are as follows:

1. Disabled individuals are only protected under the ADA if their disability "substantially limits" a "major life activity." The final regulations make clear that the concept of "substantial limitation" must be broadly construed in favor of expansive coverage, to the maximum extent permitted by the ADA. Moreover, even impairments that are episodic or in remission may still qualify as substantially limiting a major life activity, if it so effects the individual when the disability is "active." The regulations even permit a finding of disability for short term impairments that may last less than 6 months.

2. The final regulations made clear that the concept of "substantial limitation" does not require an individual seeking protection under the Act to prove the limitation by scientific, medical or statistical analysis. Instead, a disabled individual should be able to meet the requirement by simply comparing the individual's ability to perform the major life activity as compared to most people in the general population. Additionally, the final regulations state that the impairment need not prevent or significantly restrict an individual's ability to perform a major life activity in order to be "substantially limiting."

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3. The final regulations add to the list of major bodily functions that may be considered when determining "major life activities." Added bodily functions include the operation of an individual's organs within a body system. (For example, the operation of a person's kidneys, heart, lungs or liver.)

4. The final regulations also expand the "mitigating factors" that a court and employer may consider in determining whether a person has a qualifying disability. The final regulations expand the list to include psychotherapy, behavioral therapy, and physical therapy. In this one area, the new regulations may actually reduce the number of individuals that may be covered by the ADA.

From a practical perspective, employers should recognize that substantially more individuals will be protected by the ADA than had been anticipated. As a result, employers should be prepared to address issues and concerns raised by their employees (and job applicants) that are disabled (or may be regarded as disabled). Such issues and concerns include: (i) educating your HR and management staff on the new rules and how they will impact management decisions; (ii) recognizing that many individuals previously unprotected by the ADA are now protected by the law; (iii) establishing guidelines on how to analyze whether someone's disability is "qualified" and whether "mitigating factors" can be considered; (iv) establishing guidelines on what needs to be considered when analyzing essential job functions and requests for accommodations; and (v) creating policies and practices designed to meet an employer's obligations and reduce the risk of litigation.

The Labor & Employment Practice Group at Green & Seifter, Attorneys, PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

If Green & Seifter, Attorneys, PLLC can provide you with additional insight and information regarding the new ADA regulations, please contact **John L. Valentino**. John Valentino is a Managing Member of Green & Seifter Attorneys, PLLC, (www.gslaw.com) and concentrates his practice in the areas of Business Transactions and Employment Law. He can be reached at jvalentino@gslaw.com or at **315.701.6308**.



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