

More Changes to the Americans With Disabilities Act

Legal Alert
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Garvey Schubert Barer Legal Update, May 7, 2007.

As you may be aware, in July of 2006, the Washington Supreme Court changed Washington's definition of disability so that it mirrored the Americans with Disabilities Act. This change had the effect of narrowing the employees who were considered "disabled" under Washington law. The law has now changed again!

Today, May 4, the Governor signed into law a bill that broadens the definition of disability *beyond* what had existed in July. Now, to be disabled in Washington State, an employee must have (or have a record of or be perceived as having) a sensory, mental or physical impairment. It does not matter if the impairment is temporary, common or can be mitigated (by medication or assistive devices). As a result, almost all medically cognizable conditions *are* disabilities under Washington law.

While almost all medical conditions are now disabilities under the law, not all disabilities are entitled to "reasonable accommodation" in employment. In order to be entitled to a reasonable accommodation, the impairment must substantially limit the employee's ability to (i) perform his or her job, (ii) apply for or be considered for a job or (iii) access equal benefits, privileges, or terms or conditions of employment.

As you can tell, this definition is extremely broad. Substantially limiting is defined as "more than a trivial effect." This definition, in effect, can create a reasonable accommodation duty almost every time there is a measurable job impact. Moreover, even conditions that do not currently substantially limit an employee from performing his/her job must be accommodated, if there is a "reasonable likelihood" that job-related factors "will aggravate it" so "it could create a substantially limited effect if not accommodated."

With this new law – *which applies retroactively* – employers will have to accommodate any medical condition that could limit an employee's ability to perform his or her job to any degree. And, *all* medical conditions could subject an employer to a charge of disability discrimination, even if there is no reasonable accommodation duty because the medical condition does not affect the employee's job.

Other New Employment Law Changes:

Background Checks

New limits have been placed on an employer's ability to obtain credit information. In order to obtain information that bears on a person's "credit worthiness, credit standing or credit capacity," the information must be substantially related to their job *and* the employer's reasons for obtaining the information must be disclosed to the consumer in writing. The only exception to this requirement is when a credit check is mandated by law. All employers who obtain credit information on applicants or employees will need to examine their processes to ensure that they comply with the new law – which goes into effect in July of 2007.

Family Leave

The Washington legislature also passed - but the Governor has not yet signed - changes to its family leave laws. **The law does not go into effect until October 1, 2009** and its implementation details are still to be determined. However, this new law provides for the establishment of a Family Leave insurance program whereby employers with 25 or more employees would provide up to five weeks of paid leave per year (paid by the State via this new insurance program) for an employee's leave to care for newborn or newly-adopted children. Not all employees will qualify for this new benefit.

Now, more than ever, it is important for you to have up-to-date systems to help you comply with disability accommodation, background checks and family leave laws. GSB's online resource - AdviceOnline - contains a wealth of easy-to-use sample forms, letters and tools to help you establish and administer your disability accommodation process and all other HR functions.