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CLIENT ALERT: EEOC Proposed Revisions to ADA Regulations Signal Broad Interpretation of the ADA Amendments Act

In January 2009, the American with Disabilities Amendments Act ("the Act") took effect. As set forth in a September 26, 2008 MBJ Client Alert, the Act broadened the definition of "disability," thereby expanding the population eligible for protection under the Americans with Disabilities Act ("ADA"), the primary federal law prohibiting discrimination against the disabled.

Recently, the Equal Employment Opportunity Commission ("EEOC") approved a proposed rule revising its existing interpretive regulations of the ADA in conformance with the Act. Although the proposed rule has not been published, EEOC assistant legal counsel issued a written statement summarizing key revisions which suggest that the EEOC has broadly interpreted the Act. Revisions of particular interest to employers are highlighted below; for a more detailed summary of the proposed rule, see the EEOC's written statement at http://www.eeoc.gov/abouteeoc/meetings/6-17-09/kuczynski.html.

First, the Act retains the same three-part definition of disability: a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. However, the EEOC's proposed rule increases the "non-exhaustive" list of activities considered to be "major life activities," to include the activities "reaching, sitting and interacting with others." The EEOC's proposed rule also lowers the standard for determining whether an impairment "substantially limits" a major life activity, and states that an impairment need not "severely restrict or significantly restrict performance of a major life activity" to be substantially limiting.

Further, the EEOC suggests that there are certain conditions that will consistently meet the definition of "disability" without the need for detailed analysis, including cancer, multiple sclerosis, diabetes and AIDS. This is the first suggestion that certain impairments should be considered *per se* disabilities, as the law has always emphasized the need for individualized assessments of an individual's impairment to determine whether it is substantially limiting.

The EEOC's proposed rule also redefines what it means to be substantially limited in the major life activity of working. While the EEOC's current regulation states that an individual needs to be substantially limited in a "class" or "broad range of jobs" to be considered substantially limited in working, the change proposed by the EEOC provides that an impairment "substantially limits the major life activity of working if it substantially limits an individual's ability to perform, or meet the qualifications for, the *type of work* at issue as compared to most people having comparable training, skills, and abilities." (emphasis added). That an individual only has to show that he or she is substantially limited in a type of job rather than a broad range of jobs is a significant lowering of the plaintiff's burden in ADA cases. In addition, the proposed rule states that the fact that an individual has obtained employment elsewhere is not dispositive of whether an individual is substantially limited in working.

The EEOC's proposed rule is currently being reviewed by the White House Office of Management and Budget and other federal agencies. This review period is anticipated to last several months, and once a final proposed rule is published, there will be a 60 day period for public comment. The EEOC then would have to review these comments and potentially make further revisions to its proposal before issuing a final rule.

In the meantime, employers should continue to review their policies and practices to ensure compliance with the ADA Amendments Act, and consider training for supervisory and management employees to promote increased awareness and knowledge of ADA best practices when dealing with disabled employees and their requests for reasonable accommodations.

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