SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Employment Law Alert

**Amendments to Americans With Disabilities Act Require Careful Attention By Employers**

The Americans With Disabilities Act ("ADA") has been amended by the ADA Amendments Act of 2008 ("Amendments Act"), which goes into effect on January 1, 2009. The Amendments Act was in response to and rejects the holdings of previous Supreme Court decisions that had narrowly construed the definition of "disability" under the ADA.

While the Amendments Act retains the ADA's basic definition of "disability" [-- an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment --] the Amendments Act provides that this definition is to be interpreted in favor of ***broad*** coverage. In that regard, the Amendments Act also adds new provisions intended to provide guidance for assessing whether a person has a disability, including:

(a) specifying "major life activities" to include, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working, and operation of a major bodily function (such as functions of the immune system, normal cell growth, digestive, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions);

(b) prohibiting consideration of mitigating measures (such as medication, prosthetics, hearing aids, and mobility devises) and use of assistive technology in determining whether a person has a disability;

(c) clarifying that an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability;

(d) clarifying that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and

(e) providing that an individual subjected to an action prohibited by the ADA (such as failure to hire) because of an actual or perceived impairment will satisfy the "regarded as" portion of

the disability definition, unless the impairment is transitory and minor, but providing that such persons are not entitled to a reasonable accommodation.

As a result of the Amendments Act, many persons with impairments that previously would not have been considered disabilities under the ADA may now be found to have a disability subject to the protections of the ADA. Undoubtedly, more claims will be filed alleging violations of the ADA. Thus, employers will need to proceed with caution and carefully evaluate how to address those situations involving possible ADA-protected disabilities, including requests for reasonable accommodations.

**Save the Date:** On January 14, 2009 at 8:00 am, Shulman, Rogers' will hold a roundtable discussion of these important changes to the ADA. Further details will be provided as that date approaches.

## "Michelle's Law" Affects Health Insurance Plans

"Michelle's Law," which was signed by President Bush on October 9, 2008, requires group health insurance plans to allow college students covered as dependents to remain covered while on a medically necessary leave from their studies for up to one year, even if the child would otherwise lose student status for purposes of coverage under the terms of the plan. Thus, the child does not lose dependent status under such circumstances, and COBRA does not become applicable until such time as the student loses coverage. This law becomes effective for plan years beginning on or after October 9, 2009 (January 1, 2010 for calendar year plans).

Employers should consult with their insurance professionals regarding this law and how it will impact their health insurance plans.

## District of Columbia Sick and Safe Leave Act

***Reminder:*** The District of Columbia Sick and Safe Leave Act, which we summarized in our August 2008 Alert, went into effect on November 13, 2008 for District of Columbia employers.

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