The New ADA Regs Change the Employment Landscape
By Denice A. Gierach – January 2010

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On January 1, 2009, a new act known as the Americans with Disabilities Amendments Act went into effect, broadening the meaning of the word "disability". Both employers and employees awaited the regulations from the Equal Opportunity Commission which would give guidance to the current state of the law. Many believe that the regulations have changed the employment landscape completely.

For instance, the regulations make clear that the bar for claims has been substantially lowered. In the past, an employee had to show that the employer regarded him or her as either unable to perform or severely restricted in performing some major life activity because of a mistaken belief about the person's impairment, which was a very difficult standard to satisfy. The regulations now state that the employee must only show that the employer believed that the individual could not perform the job.

Another change was in the area of mitigating measures. Under prior law, if an employee had some impairment that could be lessened or eliminated, that person was not considered impaired for purposes of the ADA. For instance, if the person could remedy or mitigate their poor eyesight with glasses, the person was not considered impaired under the ADA. Now those mitigating measures will not be considered.

Certain infirmities are deemed to be disabilities per se, such as epilepsy, multiple sclerosis, AID/HIV, diabetes and bipolar disorder. This means that an employer will have an obligation to work with the employee about reasonable accommodations.

In the past, there was a question as to whether the work of an employee was a major life activity. The focus of the regulations is on whether a person is unable to perform a broad class of jobs because of an impairment. In a practical sense, this means that nearly every medication condition will result in a substantial limitation in the major life activity of working and the employer will have a greater obligation to work with the employee to find reasonable accommodations.

Because of the broad definition in the regulations about the word disability, the focus of future litigation in this area will be on whether the employer reasonably complied with their duty to provide reasonable accommodation, rather than whether the employee has a disability.

It is obvious that the landscape has changed in this area.

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