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A t t o r n e y s

**News Alert!**

**Notice of Date Change**

We hope you already marked your calendar and plan to attend the May Oberfell Lorber employment law update in October 2008. Due to a schedule conflict at the training site, we are changing the date from Thursday, October 9, 2008 to **Wednesday, October 8, 2008**. So, mark your calendar again and save the date!



We apologize for any inconvenience this change may have caused.

**Americans With Disabilities Act**

The House of Representatives, on June 25, 2008, approved legislation that would amend the Americans With Disabilities Act which would in turn reject recent U.S. Supreme Court interpretations of the disability discrimination law. The bill now goes to the Senate and will likely receive its approval.

Provisions of the House bill:

- Define the term “disability” as “a physical or mental impairment, a record of such impairment, or being regarded as having such impairment.”
- Protect employees against discrimination because of disabilities.
- Provide that while an individual recognized as having a disability is protected against discrimination, the “regarded as” provision would not apply to an individual with a condition that is minor or that is a “transitory” condition lasting or expected to last six months or less.
- Modify the definitions of disabilities and impairments, and would add standards for determining whether an impairment substantially limits an individual’s major life activity.
- Establish new definitions of “major life activities” which would encompass “major bodily functions” including “the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”
- Provide the determination of whether an individual has an impairment that limits a major life activity would be made without regard to the “ameliorative effects” of various “mitigating measures” like medications.
- Intended effective date: January 1, 2009.

The administration has offered support of the bill, but not without “significant concerns” about some of the provisions which could “unduly expand” the law’s coverage.

*HR Issues in  
the News:  
Changes  
That Will  
Impact the  
World of  
Employment  
Law*

MAY • OBERFELL • LORBER  
R  
4100 Edison Lakes Parkway  
Suite 100

## Family and Medical Leave Act

Changes are coming, but there will not be a major overhaul of the act; however, the changes for employers and employees will be significant. Some of those changes are:

- An individual seeking leave: The employer will have increased responsibility to track the amount of FMLA available to the employee and to inform the worker of the amount of time that will be charged against the employee's FMLA entitlement.
- Where the need for leave is foreseeable, regulations will require employees to make requests for leave in more specific terms, stating that the employee is unable to work, providing the anticipated dates of absence from work, and identifying a health care provider.
- Unforeseeable needs for leave: An employee's request for leave must be made as soon as practicable, except in extraordinary circumstances, prior to the start of the scheduled work shift.
- Employers will be able to enforce policies and procedures for calling in during periods of leave.
- Limitations on employers' ability to communicate with health care providers: Employers will be able to contact providers directly to verify some of the information provided, but would not be able to use such direct contacts if the purpose is merely to clarify information.
- New instructions on the medical certification form may present some problems, i.e., certain terms like "lifetime" or "indeterminate" may be insufficient. Use of the form may discourage requests for some leaves.
- No changes are contemplated in the treatment of intermittent leave, or in the definition of a serious health condition.
- In determining whether a need for medical treatment demonstrates the existence of a serious health condition, two treatment visits generally would be required within 30 days of a period of incapacity related to the condition.
- Substitution of paid leave for unpaid leave: Under the proposal, an employer would be allowed to enforce a leave policy governing the use of paid time off, even if doing so limits the employee's ability to obtain pay during an FMLA absence.
- Perfect attendance awards or bonuses: An employee would not be entitled to an award unless the employee could show that employees who missed work because of other categories for a leave of absence from work received credit toward attendance awards for the time they missed.
- Employee waivers: Existing DOL language would be tightened. Employers would be allowed to obtain from an employee or former employee a "retrospective" release of claims that the individual had or might have had.

*With these proposed regulations, will your job become easier or harder? Only time will tell, but, as with every law, the courts will have the final say in the interpretation of the regulations.*

*Questions about employment laws should always be referred to experienced counsel. The Labor and Employment team at May Oberfell Lorber is available to answer any of your questions.*

MAY•OBERFELL•LORBER  
4100 Edison Lakes Parkway  
Suite 100  
Mishawaka, IN 46545  
(574) 243-4100

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