

## Labor and Employment E-news

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### Top Your 2009 "To Do" List with ADA and FMLA Compliance

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The New Year will start with a bang for employers covered by the ADA and/or FMLA. Amendments to the ADA and revised FMLA regulations, which each take effect in January 2009, require swift changes to employer policies, practices, and procedures. To ensure that your Company is prepared, put compliance with the new requirements at the top of your 2009 "to do" list.

#### ADA Amendments are Effective January 1, 2009

First up in the New Year is the January 1, 2009 effective date of the ADA amendments. Your ADA "to do" list should reflect the fact that the amendments to the ADA substantially broaden the types of impairments that will be considered a disability. This means that employers will need to focus on other aspects of the statute, such as whether an employee is qualified to perform the essential functions of the job and how to reasonably accommodate an employee with a disability.

#### ADA "To Do" List

- **Review job descriptions and other performance standards.** The ADA amendments do not change the fact that applicants and employees must be qualified and able to perform the essential job functions with or without a reasonable accommodation. Employers must ensure that their job descriptions and other documents are accurate and clearly detail all aspects of the essential job functions.
- **Implement and/or review and update accommodation procedures.** The ADA amendments will also increase the focus on whether the employer can reasonably accommodate an employee's disability. As a result, employers must be prepared to engage, to a greater extent than ever before, in an "interactive process" with employees to determine if it is possible to reasonably accommodate the employee's disabilities. Employers can add consistency to this process by implementing procedures for obtaining and evaluating information from employees and their health-care professionals.
- **Train supervisors, managers, and HR professionals.** The ADA is not just an "HR" issue. Everyone involved in the employment process, from recruiters, frontline managers, and supervisors, to HR professionals, should understand how the Act's broader scope will impact what is considered a disability and how the employer should respond. In addition, it never hurts to review ADA basics, such as confidentiality obligations.

Just to keep the year exciting, the EEOC is expected to issue regulations related to the ADA amendments later in 2009.

## **Revised FMLA Regulations Take Effect January 16, 2009**

The revised FMLA regulations, which are effective on January 16, 2009, modify FMLA notice, timing, and other requirements that employers and employees alike have grown accustomed to over the past 15 years. The substantive and procedural changes to the regulations make it imperative that employers update FMLA policies and procedures as well as other employment practices to comply with the law and ensure full protection for the employer.

An FMLA "to do" list should reflect the fact that the revised regulations strongly emphasize increased communications between employers and employees about FMLA rights and obligations. In addition, the "to do" list should also take into account the regulations' revised provisions that permit employers to maintain consistency between their non-FMLA policies and procedures and FMLA leave practices.

### **FMLA "To Do" List**

- **Revise FMLA policies and procedures.** The revised FMLA regulations make it imperative that employers update FMLA policies to incorporate changes from the revised regulations and to add the new Military Family Leave Provisions.
- **Develop and implement new FMLA forms.** Along with the revised regulations, the DOL has issued a new FMLA notice and no less than 6 new FMLA "prototype" forms, including new medical-certification forms for both employee and family-member serious health conditions. Employers must incorporate these forms in their FMLA procedures by either using the DOL model forms or developing their own.
- **Review and, if necessary, revise other documents related to FMLA compliance.** The revised FMLA regulations allow employers to require employees to follow "usual and customary" leave and absence policies when taking FMLA leave, as long as those policies are applied consistently. That means that employers must review non-FMLA leave and attendance policies to ensure consistency between those policies and the FMLA policy. Employers should also review or develop job descriptions for essential job functions for use with medical certification forms and fitness-for-duty certifications.
- **Train supervisors, managers, and HR professionals.** After 15 years, employers and employees have grown familiar with existing FMLA requirements, policies, and procedures. Changing long-standing routines is never easy. The revised regulations, however, will require that both employers and employees quickly learn and follow new procedures and revised employer policies. Training for frontline supervisors and managers, who often have the initial responsibility for identifying FMLA issues, is critical for ensuring compliance with the revised regulations.

## Tackling Your ADA and FMLA "To Do" List

Butzel Long's January 9th seminar, ***Understanding the ADA Amendments and the Revised FMLA Regulations***, will assist employers in preparing for the ADA and FMLA changes. This complimentary Advanced Briefing, designed for human resources professionals and in-house counsel, will provide an overview of the upcoming changes, as well as practical advice for implementing and complying with both the ADA amendments and the revised FMLA regulations. Please visit the events area of our website for printable information and easy on-line registration: <http://www.butzel.com>

If you have any questions regarding the ADA amendments, the revised FMLA regulations, or related policy revisions, please contact the author of this E-News bulletin as indicated below, or your Butzel Long attorney.

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