

March 30, 2011 www.mcvpr.com

LEAVES & ACCOMMODATIONS ALERT

New ADAAA Regulations

On March 25, 2011, the final regulations to implement the ADA Amendments Act (ADAAA) were published. The regulations include guidelines for the determination of whether a person has a disability as defined under the law. One example is that impairments which are episodic or in remission are disabilities if they would be substantially limiting when active.

The definition of "major life activities" includes major bodily functions, such as, for example, functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic and others; and activities such as caring for oneself, performing manual tasks, sitting, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and others.

Mitigating measures, other than ordinary eyeglasses or contact lenses, must not be considered in determining whether an individual has a disability. The regulations provide that non-ameliorative effects may be considered in determining whether an impairment is substantially limiting. Nonetheless, the appendix explains that in many situations it will not be necessary to consider the non-ameliorative effects of mitigating measures to determine that an impairment is substantially limiting.

An example provided by the Equal Employment Opportunity Commission (E.E.O.C.) is that, whether diabetes is substantially limiting will most often be analyzed by considering its effects on endocrine functions (in the absence of mitigating measures such as medications or insulin), rather than by considering the measures someone must undertake to keep the condition under control (such as frequent blood sugar and insulin monitoring and rigid adherence to dietary restrictions). The regulations include examples of impairments for which the necessary individualized assessment should be particularly simple and straightforward when evaluating whether someone is disabled and thus covered by the ADAAA.

With respect to the "regarded as" part of the definition of "disability," the ADAAA focuses on how the person was treated, rather than on the old standard based on what the employer believed about the nature of the person's impairment.

We will discuss these Regulations in our Annual Labor and Employment Law Conference to be held this Friday, April 1, 2011 at the San Juan Marriott Resort & Stellaris Casino in Condado.

If you have any questions or comment, or would like additional information regarding these matters, please contact any of the attorneys listed below, all members of our Leaves & Accommodations Practice Team:

James D. Noel	787-250-5673	jdn@mcvpr.com
María Antongiorgi	787-250-2624	maj@mcvpr.com
Anita Montaner	787-250-5652	ams@mcvpr.com
Luis R. Amadeo	787-250-5680	lra@mcvpr.com

The content of this McV Alert has been prepared for information purposes only. It is not intended as, and does not constitute, either legal advice or solicitation of any prospective client. An attorney-client relationship with McConnell Valdés LLC cannot be formed by reading or responding to this McV Alert. Such a relationship may be formed only by express agreement with McConnell Valdes LLC.