



Two federal mandates employers need to be looking at and preparing for now, prior to their January effective dates:

1. ADA Amendment Act of 2008 (ADAAA):

- Effective 1/1/2009
- Applies to employers with 15 or more employees

Three Key Changes:

- Elimination of restrictive interpretations on "substantially limits"
- Restriction of mitigating measures (such as devices, medication, or bodily redaction) in the analysis of disability – except for eyeglasses.
- Expanded definition of "major life activities." Under the amendments to the ADA, the definition of major life activities will include many new items including: Eating, sleeping, standing, lifting, bending, breathing, concentrating, thinking, communicating, and normal body functions. An impairment that's episodic or in remission is also a disability if it limits a major life activity when it becomes active.

What's it all mean?

Look for the EEOC to significantly lower the standard to establish physical disability under ADA.

Business Impact:

- Review policies and procedures now and revise to meet new standards
- Provide reasonable accommodations with a much greater frequency
- Conduct Manager and Supervisor Training

2. Final Regulations - Family and Medical Leave Act & Military Family Leave Act

- Effective 1/16/2009
- Applies to employers with 50 or more employees within 75 miles

Key Changes:

- Employer can enforce its normal rules for Paid Time Off (PTO)
- FMLA absences can be taken into account for bonuses and awards
- New information and timing in the Rights & Responsibilities Notice
- New information and timing in Designation Notice
- New notification requirements for "Fitness-for-Duty" (FFD) certification
- New timing and requirements for Medical Certifications
- Employer may contact employee's Health Care Provider to authenticate Medical Certification or FFD Certification – restricted as to "who" can contact
- Employees may waive FMLA rights retroactively but not prospectively
- New military family leave entitlements –

Allows relatives of active duty National Guard & Reserves service members to take up to 12 weeks of leave for certain qualifying exigencies, and (2) up to 26 weeks of leave to care for a covered service member (Regular Armed Forces or National Guard or Reserves) recovering from a serious illness or injury incurred in the line of duty on active duty.

Federal Mandates: FMLA & Military Family Leave Act con't

What's it all mean?

Significant degrees of change for the FMLA - The key changes listed are certainly not all inclusive of the Department Of Labor's November 2008 final regulations. The revised regulations do provide clarity for several provisions, hopefully making them more user-friendly.

Business Impact:

- Develop / modified policies and procedures
- New documentation
- New posting requirements
- Conduct Manager and Supervisor Training



So what's next in 2009?

On the National level -

As the new President and congress get going in January expect to see...

Employment Bills (likely in 2009):

Employee Free Choice Act (EFCA) – Would make it much easier for unions to unionize employers. Would eliminate the secret ballot process and possibly allow a union to be certified by a “card check” (Senator Obama co-sponsored this bill in 2007).

Patriot Act – Tax breaks for employers that maintain headquarters in U.S., pay at least 60% of employee's health benefits, and have a policy of neutrality in union organizing.

Employment Non-Discrimination Act (ENDA) – protected class based on sexual orientation, gender identity, or both.

Equal Remedies Act – Repeals caps on damages in discrimination under Title VII.

Expanding FMLA – 7 paid sick days, 8 weeks of paid FMLA through an insurance pool funded by employees and employers, reduce the number of employees from 50 to 25 for covered employer.

Working Families Flexibility Act – Individual Bargaining with Employees over number of hours required to work, times required to work, and where required to work.

On the State level –

The Texas Legislature will convene on January 13th

Employment Bills

HB 48 – Suspend certain licenses held by employers who knowingly employ illegal aliens.

HB 308 - Employers pay employee for the first day employee response to jury summons.



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“As you can see 2009 promises to be full of HR challenges from day one; some of these are difficult for even HR Professionals requiring several hours of research and continuing education. We know that as a business owner or business manager, Human Resource management and compliance can be an overwhelming challenge and a miss-step in this area can be very costly for your business and in some cases you personally. At TCOR we understand the challenge and continue to seek to serve and support our clients at the highest level. If you need additional information, support or service on the topics of this newsletter or any other HR issue please contact us. Additionally, you can visit our website for more information on TCOR's HR support and services.”