



Navigating the Shark-Infested Waters of Recent Employment Law Changes

By Jackie Hagar

If recent amendments to the Americans with Disabilities Act (ADA) or the Family and Medical Leave Act (FMLA) have left your HR department wringing its hands, or you're wondering who "GINA" is, you are not alone. Following are some pointers to help employers sail into smoother waters.

ADA Amendments: The original ADA required employees to show they had a physical or mental impairment that substantially limits one or more major life activities and that they were able to perform the essential functions of the job, with or without an accommodation. Court interpretations made it difficult for plaintiffs to prove they were disabled enough to be protected by the statute, so the 2008 ADA Amendments Act lowered plaintiffs' first hurdle of proving disability by specifying conditions that meet the definition of disability, expanding the list of major life activities and clarifying the definitions of "substantial impairment" and "regarded as disabled." Now, the question is no longer whether the employee is sufficiently disabled, but whether he or she was discriminated against based upon the alleged disability. In response, employers are advised to actively and in good faith engage in the interactive process to determine whether reasonable accommodations can be made when they are made aware of a disability.

FMLA Changes: The 2009 amendments include changes that necessitate updating your personnel manuals. The primary changes create two new leaves: Military Caregiver Leave provides family members or next of kin of covered service members with up to 26 weeks within a 12-month period to care for a service member injured in active duty, and Qualifying Exigency Leave provides up to 12 weeks of leave to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on or is called to active duty status. Note, "next of kin" broadens the category of eligible employees. A recently signed bill has also expanded the definition of "service member" to include many veterans.

As for "GINA," the Genetic Information and Nondiscrimination Act of 2008 prohibits employers of 15 or more employees from refusing to hire, fire or otherwise discriminate against applicants or employees based on their or a family member's genetic information, and requires genetic information to be treated as confidential. In October 2009, the EEOC promulgated a new posting requirement, requiring most employers to post notice of the updated laws, including GINA. A free copy of the poster can be downloaded at.

For more information about these or other employment law topics, please contact Megan Boiarsky, Joëlle Khouzam, Brigid E. Heid or your CPM attorney.