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EMPLOYERS BEWARE! AMERICANS WITH DISABILITIES ACT HAS BEEN AMENDED

Since it was first enacted on July 26, 1990, the Americans with Disabilities Act (the ADA) has never been amended by Congress. That all changed last week when, on September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008. Although lost amongst much of the news coverage and concern surrounding the country's financial markets, these amendments to the ADA could prove to be a great burden and cost to employers.

The stated purpose of the ADA Amendments is to reverse the holding of certain decisions of the United States Supreme Court interpreting the ADA, decisions which were generally seen as employer friendly decisions. The amendments speak directly to two such decisions, in particular the 1999 decision in Sutton v. United Airlines, Inc. (which limited the ADA's protection when a person's disability could be "mitigated" by such measures as medication, treatment, or other assistive devices) and the 2002 decision in Toyota Manufacturing v. Williams (which tightened the standards by which individuals were found to be

"disabled," or not).

In particular, the ADA will now state clearly that with the exception of such things as "ordinary eyeglasses and contact lenses," a person's status as having a disability will be determined without regard to the mitigating effects of medicines, assistive devices, or similar items. Furthermore, the ADA as amended states specifically that it is the intent of Congress that the law is to be interpreted broadly so as to provide protection and coverage to more affected employees. This particular provision, perhaps more than any other, will dramatically change the ADA's impact on employers.

The ADA Amendments are not effective until January 1, 2009. It is expected that the interval between now and then will allow the EEOC to promulgate and issue regulations to direct employers on how to comply with the new requirements of the ADA. Whether the presidential election and its outcome will interfere



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ADA

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with that process is unknown. What also remains to be seen, however, is whether the Ohio General Assembly will follow the lead of Congress and enact similar amendments to Ohio's law prohibiting "handicap" discrimination in the workplace.

This new legislation will likely generate a new wave of ADA claims against employers.

E-DISCOVERY IN OHIO

The increase of electronic information has led to legal proceedings wherein courts can mandate searches of digital data for evidence. This process is known as e-discovery.

The Ohio Supreme Court recently amended the Ohio Rules of Civil Procedure with regards to e-discovery. Ohio is now in line with federal law and most state jurisdictions that have addressed e-discovery.

The amount of email, electronic documents, and other information that is stored electronically continues to grow. The danger to those who ignore the new rules is

significant, especially in cases or claims where electronically stored information may be relevant.

As a result, employers should immediately consider developing document retention policies. Well conceived document retention policies, developed prior to a legal proceeding, will provide some safety in the event of a legal proceeding, and may save a company money by promoting efficiency in the retrieval of such information at a later date.

For more information concerning the ADA Amendments, or E-Discovery, please contact a member of our Labor and Employment law practice group at (419) 244-6788:

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THE EMPLOYER is not intended to provide legal advice, but is intended as a service to the clients of Bugbee & Conkle, LLP and to alert them to recent developments affecting the employment relationship, with a particular emphasis on the perspective of the employer.