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**Americans With Disabilities Act
Amendments Likely To Increase Claims**

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On September 25, 2008, President Bush signed into law the ADA Amendments Act of 2008. This Act, which is effective January 1, 2009, amends the Americans with Disabilities Act ("ADA") by reversing a series of U.S. Supreme Court decisions that had substantially limited the scope of coverage to employees. As a result of this recent reversal, employers can expect to see a significant increase in ADA-related claims and lawsuits.

Since 1990, when the ADA was enacted, the U.S. Supreme Court had narrowed the definition of "disability" to exclude a number of physical impairments, such as diabetes and heart disease, as well as mental illness. The Court had also held that mitigating measures such as medication, hearing aids and prosthetics eliminated individuals from the definition of "disability."

Highlights of the new law include:

- Requiring the term "disability" to be construed broadly in favor of coverage;
- Prohibiting consideration of mitigating measures (except eye-glasses and contact lenses) in determining whether an individual has a disability;
- Clarifying that an impairment that is episodic or in remission will be deemed a disability if, when active, it would substantially limit a major life activity; and
- Placing into the law a non-exhaustive list of "major life activities" (activities which, in order to be eligible under the ADA, must be substantially limited, e.g., seeing, hearing, eating, sleeping, walking, standing). The amendment also expands the definition of "major life activity" to include major bodily functions.

The outgrowth of the ADA Amendments Act is that many employees who were previously not covered under the ADA may now be considered to have a disability. The natural result will be an increase in requests for accommodations and, ultimately, an increase in ADA lawsuits.

Employers in New York already were subject to a state law that provided broader coverage to employees than the ADA. Nevertheless, an increase in claims is foreseeable because the ADA permits significantly greater damages (such as punitive damages and attorney's fees) that New York law does not make available.

Employers should take this opportunity before the law takes effect to account for the broader scope of the ADA by:

- Reviewing accommodation policies and job descriptions.
- Training supervisors in responding to accommodation requests.
- Updating employee manuals.

Our Employment Law Group stands ready to assist you with this or any other employment law-related issue.

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