

EEOC POSTING REQUIREMENTS

Federal law requires an employer to post notices describing the laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, disability and genetic information.

The EEOC just revised its "Equal Employment Opportunity is the Law" poster. This new version reflects current federal employment discrimination law (including the Americans with Disabilities Act Amendments Act of 2008). The poster was revised to add information about the Genetic Information Nondiscrimination Act of 2008, which is effective November 21, 2009. The revised poster also includes updates from the Department of Labor.

There are several ways for employers to comply with the law:

1. Print the supplement at the URL below and post it alongside EEOC's September 2002 "EEO is the Law" poster or OFCCP's August 2008 "EEO is the Law" poster.
http://www.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf
2. Print and post the EEOC's November 2009 version of the "EEO is the Law" poster.
http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf
3. Order a new poster through the EEOC Clearinghouse. The EEOC poster is on backorder and will be shipped when the poster becomes available in the near future. The new poster will also be available in Spanish, Chinese and Arabic before the GINA statute becomes effective on November 21, 2009. You will need to complete a form online to obtain the poster at this URL: <http://www1.eeoc.gov/employers/poster.cfm>

PROPOSED REGULATIONS UNDER ADA

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. This law made a number of significant changes to the definition of "disability." Congress directed the EEOC to amend its ADA regulation to reflect the changes made by the ADAAA. The EEOC approved a Notice of Proposed Rulemaking (NPRM) which was published in the Federal Register on September 23, 2009.

The NPRM proposes changes both to the ADA regulation itself and to the Interpretive Guidance (also known as the Appendix) that was published at the same time as the original ADA regulation. The Appendix provides further explanation on how the regulation should be interpreted.

The EEOC has published a comprehensive "Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008." The Q&A can be found at this URL:
http://archive.eeoc.gov/policy/docs/qanda_adaaa_nprm.html

The EEOC and the U.S. Department of Justice Civil Rights Division are holding four full-day Town Hall Listening Sessions to obtain direct input from the business/employer community and the disability and disability advocacy community on the EEOC's proposed regulations under the ADAAA. One of the four will be held in New Orleans on November 20th. More information can be found at this URL: <http://archive.eeoc.gov/ada/adaaa-townhall.html>

Employers should be aware that the ADAAA and proposed regulations significantly broaden the class of employees who may be deemed a qualified individual with a disability and, therefore, be afforded a reasonable accommodation under the law. This is a good time to consider updating your policies and/or conducting training on the new ADAAA.

NEW LEAVE PROVISIONS FOR MILITARY FAMILIES

On October 28, 2009, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act which expands the recently-enacted exigency and caregiver leave provisions for military families under the Family and Medical Leave Act of 1993 (FMLA). The FMLA had been amended earlier in the year to provide "exigency leave" of up to 12 weeks for urgent needs related to a reservist family member's call to active service but was confined to family members of those in the National Guard or Reserves. The new requirement extends that leave to the family members of a member of any regular component of the Armed Forces, and removes the requirement that it be in support of a contingency operation.

The 2008 revisions to the FMLA also included "caregiver leave" providing up to 26 weeks of unpaid leave to an employee to care for a family member (spouse, son, daughter, parent, or next of kin) who is injured while serving on active military duty. Eligibility for military-caregiver leave had been confined to the family of active duty members. The new law extends this provision to close family members of veterans who were members of the Armed Forces (including the National Guard or Reserves) at any point in time within five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy. Consequently, the family members of veterans now enjoy the same leave rights as those afforded relatives on active duty status.

To achieve compliance, employers should immediately take steps to revise and update their FMLA policies to include these changes. Employers also should inform those employees responsible for administering attendance and leave matters of these new provisions.

Inquiries concerning topics addressed in the eLABORate may be directed to any of our Employment Law attorneys listed below. Your comments, questions, and suggestions are encouraged.

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