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December 15, 2008

Jay Holmquist, General Manager  
Nebraska Rural Electric Association  
800 South 13<sup>th</sup> Street  
P.O. Box 82048  
Lincoln, NE 68501

Re: ADA Amendments Act of 2008

Dear Jay:

You have asked that I highlight the changes in the American Disability Act as a result of the enactment of the ADA Amendments Act of 2008. These Amendments will have a wide-ranging impact for your members who have 15 or more employees.

1. The Amendments go into effect on January 1, 2009.
2. Employers who have 15 or more employees will be covered by the amendments.
3. The amendments will broaden the ADAs reach by essentially reversing the United States Supreme Court rulings that narrowly interpret the meaning of the key phrase "substantially limits a major life activity."
4. The amendments define disability as any actual, past, or perceived physical or mental impairment that substantially limits a major life activity, and defines substantially limits a major life activity as "materially restricts a major life activity."
5. Changes have been made on how "disability" is defined. Employers will be required to adopt a broad standard in order to determine if an employee is "disabled." Courts will be required to provide coverage to employees "to the maximum extent permitted."

What this means is that more ADA cases are going to pass the initial threshold tests. Before these amendments were enacted, courts dismissed many cases on the grounds that employees were not “disabled.” Employers should now assume that more employees are going to be covered by the ADA and make employment decisions taking that assumption into account.

6. Before the amendments were enacted, the ADA was silent on the meaning of a “major life activity” leaving it up to the courts to decide this issue. The amendments however, have a list of activities that constitute major life activities which include, but is not limited to, caring for oneself, seeing, hearing, eating, sleeping, walking, standing, lifting, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the performance of any major bodily function.

This list of activities is another indication that a “disability” will be considered in a broader sense.

7. Before the amendments, employers and courts were required to determine an employee’s disability including any mitigating measures that the employee had, such as prosthetic devices, medications or hearing aids. After the amendments become effective on January 1, 2009, employers and courts are required to ignore any mitigating measures, except for ordinary eyeglasses and contact lenses. Eyeglasses and contact lenses can be considered by the employer and the courts when determining if an employee is disabled.

8. It is probably that under the amendments an employee will no longer be required to show that his or her impairment substantially limits a major life necessity, but only that the employer perceived the employee as having a mental or physical impairment. If this is the case, the ADA could potentially have a massive expansion in its scope.

9. The upshot of the amendments is that ADA cases are likely to move from issues regarding whether an employee has a disability, to issues regarding whether an employee was actually discriminated against. This means that employers will be defending ADA claims like many other discrimination claims – by showing that the employer has a legitimate, non-discriminatory reason for taking the action complained of.

10. The amendments are likely to cause employers to make more accommodations to employees who claim that they are disabled.

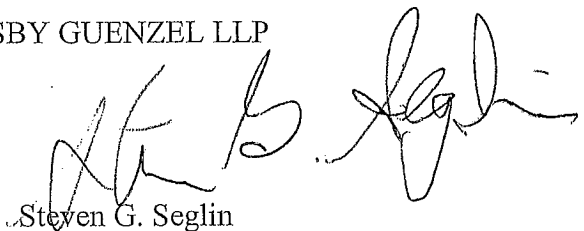
CONCLUSION

Because the amendments will not become effective until January 1, 2009, and there are not yet any court cases interpreting the amendments, it is difficult to give advice on how to handle cases involving disabilities. Until there is more guidance from the courts, it is suggested that you consult with your attorney on any employee or prospective employee who claims a disability.

Very truly yours,

CROSBY GUENZEL LLP

By



Steven G. Seglin

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