

QUINN & TANDY, LLC.

Attorneys at Law
745 Kinderkamack Road
River Edge New Jersey 07661
(201) 599-2000
(201) 599-2017 (facsimile)
rt@quinntandylaw.com

Firm Website:
www.njdiscriminationlaw.com

WHAT'S NEWS IN EMPLOYMENT LAW?

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ADA Amendments Act Signed Into Law

By Robert A. Tandy, Esq.

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On September 25, 2008, the ADA Amendments Act of 2008 (ADAAA) was signed into law expanding the scope of medical conditions protected by the ADA. The purpose of the ADAAA is to “carry out the ADA’s objectives....by reinstating a broad scope of protection to be available under the ADA.” The ADAAA was enacted primarily in response to recent U.S. Supreme Court decisions that have narrowly interpreted the ADA. The ADAAA, which takes effect on January 1, 2009, includes but is not limited to the following modifications:

- The definition of disability shall be construed in terms of “broad coverage of individuals....to the maximum extent permitted”
- “Major life activities” have expanded to allow for broad protection including “operation of a major bodily function” such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

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Bills Pending in NJ Assembly Relating to Criminal Background Checks for Employment

By Robert A. Tandy, Esq.

For more information

about any of the issues covered in this newsletter or for general employment law information, please contact:

Robert A. Tandy, Esq.
rt@quinntandylaw.com

Colin M. Quinn, Esq.
cq@quinntandylaw.com

Several bills were introduced in the New Jersey Legislature requiring criminal background checks for certain employees and applicants. Bill A3227, introduced on October 6, 2008, requires criminal background checks for owners and employees of businesses providing home services that require entry into a person’s residence (e.g., maids, plumbers, HVAC contractors, electricians, delivery persons, etc.). The background checks would be conducted by the Director of Consumer Affairs in the NJ Department of Law and Public Safety. Consumer Affairs would also review whether a disqualified individual has been rehabilitated such that the disqualification from home-services employment would be waived. Home-service businesses would be charged an annual registration fee for these background searches.

Bill A2735 was also introduced which would exclude certain crimes from the criminal background check (e.g. third or fourth degree, disorderly or petty disorderly persons) if the crime or offense was committed more than seven years prior to the date of the background check. This exclusion would not apply if the employee or applicant has been convicted of another crime or offense within the past seven years.

'Tis the Season to Get Sued

By Robert A. Tandy, Esq.

The Office Holiday Party is an HR manager's nightmare and a Plaintiff's lawyer's dream. Despite the risks involved, companies hold holiday parties each December and receive demand letters from their employees' attorneys each January. Here are some helpful hints to reduce your Company's liability this season:

- Have policies in place relating to harassment, discrimination and retaliation and conduct training (if it was not already conducted) about discrimination and harassment in the workplace. Advise employees that the holiday party is a work event (an extension of the work environment) and they should behave accordingly.
- If at all possible, don't serve alcohol. If you do serve alcohol, make non-alcoholic beverages readily available. Additionally, try to keep the free booze to a minimum and only serve beer and wine. Alcohol lowers inhibitions and impairs judgment. Consider a taxi service for employees in attendance.
- Invite spouses and/or partners (opposite and same sex). Your employees are less likely to engage in inappropriate behavior with their spouse/partner present.
- Do not organize after-party outings or suggest going to another location to "keep the party going."
- If you have a band/DJ, do not encourage dancing, especial where spouses/partners are not invited.
- Do not allow for "Secret Santa" or "Grab Bag Gift Exchanges"
- Consider purchasing Employment Practices Liability Insurance.

If you have any questions or seek additional information on how to limit your Company's liability this holiday season contact Robert Tandy at (201) 599-2000.

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- Employers cannot consider the ameliorative effects of mitigating measures in determining whether an employee has a disability, except glasses and contact lenses can still be considered.
- Impairments that are episodic or in remission are disabilities if they would substantially limit a major life activity when active, such as cancer, epilepsy and post traumatic stress disorder.
- Although an individual does not have to establish the impairment limits a major life activity, employers need not provide reasonable accommodations to persons "regarded as" having a disability.
- The EEOC was instructed to revise current regulations to be consistent with the ADAAA, specifically relating to the definition of "substantially limits."

For assistance in updating your current policies and materials or training employees on the requirements of the new ADAAA, please contact Robert A. Tandy at (201) 599-2000.

Final Revised FMLA Regulations

By Robert A. Tandy, Esq.

On November 17, 2008, the US Department of Labor published its final revised regulations for the Family and Medical Leave Act. The new regulations provide, among other things, much needed clarification relating to “qualifying exigency” and “servicemember” leaves which were added to the FMLA in January 2008. The new regulations take effect January 16, 2009, which requires employers to act quickly in revising policies, training managers and implementing the new requirements.

“Qualifying Exigency” Leave: This allows eligible employees to take FMLA leave to handle affairs involving the employee’s spouse, parent or child who is on active duty or called to active duty status. “Qualifying exigencies” include short-notice deployment, attendance at military events and related activities, child care and school activities, financial and legal arrangements, attending counseling, rest and recuperation and attending post-deployment activities.

Qualifying exigency leave counts against the eligible employee’s 12 week allotment. Additionally, intermittent and reduced schedule leave are available for qualifying exigencies.

“Servicemember” Leave: Eligible employees may take leave to care for a covered relative with a serious injury or illness incurred in the line of duty “while on active duty” that “may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.” An eligible employee is entitled to up to 26 weeks “in a single 12-month period.” Simply, this leave is available in subsequent 12-month periods for different covered servicemembers, or for the same covered servicemember if he or she contracts a new qualifying injury or illness. The 12-month period begins on the first day of the leave and ends 12 months from that date, regardless of the normal method used by the employer to calculate FMLA leave.

“Eligible Employees”: An employee is eligible for FMLA leave if he or she (i) has been employed by the entity for at least 12 months; (ii) has had at least 1250 hours of service in the 12-month period immediately preceding the start of leave; and (iii) is employed at a work site that has 50 or more employees within a 75 mile radius. The new regulations provide that if an employee has a break in service lasting seven years or less, the employee’s service prior to the break must be counted when determining if the employee has been employed for at least 12 months.

“Serious Health Condition”: As to serious health conditions involving more than 3 consecutive, full calendar days of incapacity plus 2 or more days of treatment to a healthcare provider, the new regulations require the 2 visits must occur within 30 days of the first day of incapacity and the first in-person visit must occur within 7 days of incapacity.

As to serious health conditions involving more than 3 consecutive, full calendar days of incapacity plus a regimen of continuing treatment, the new regulations require the first in-person visit to occur within 7 days of the first day of incapacity.

As to serious health conditions involving “chronic conditions”, the new regulations require at least 2 visits for treatment per year.

This is only a summary of the new FMLA regulations. For more information, please contact Robert Tandy at (201) 599-2000