

UPDATE ON AMERICANS WITH DISABILITIES ACT (“ADA”) CHANGES

The ADA Amendments Act of 2008 (the “Act”) became effective on January 1, 2009. The Act overturns several Supreme Court decisions that have narrowed the ADA and the benefits provided to those considered disabled. The Act specifically authorized the Equal Employment Opportunity Commission (“EEOC”) to enact implementing regulations.

Despite the Act currently being effective, the EEOC has not yet completed its implementing regulations. In the absence of these regulations, employers can look to two other resources for explanation and guidance on complying with the Act’s changes to the ADA. The Office of Federal Compliance Programs (“OFCCP”) has published a list of “Frequently Asked Questions,” which can be accessed at <http://www.dol.gov/esa/ofccp/regs/compliance/faqs/ADAFaqs.htm>. Additionally, the Office of Disability Employment Policy’s Job Accommodation Network (“JAN”) has developed both a bulletin and resource page on the Act, located at <http://www.jan.wvu.edu/links/adalinks.htm>. The bulletin contains a summary of the Act’s provisions and practical tips for employers.

Until the EEOC issues regulations implementing the Act, we recommend that employers review these materials and remain cognizant of the Act’s changes to the ADA when making any employment decisions. If you have questions about the Act or its impact on your workplace, please contact a member of Koley Jessen’s Employment, Labor and Benefits Group.

STATE AND FEDERAL E-VERIFY UPDATES

Certain federal contractors will soon be required to sign up for E-Verify – the web-based program operated by the Department of Homeland Security’s U.S. Citizenship and Immigration Services bureau in partnership with the Social Security Administration – but the effective date has been delayed. As the result of a pending lawsuit filed the U.S. Chamber of Commerce, the effective date of the new regulations requiring federal contractor compliance has been pushed back to February 20, 2009. Federal contractors that are required to participate in E-Verify for the first time will be afforded a 90-day period (after the effective date) to begin using the system for all new and existing employees.

Several states are also joining in the fight to increase the reach of E-Verify. A report issued by the National Conference of State Legislatures on December 18, 2008 provides that a total of 205 immigration-related laws and resolutions were enacted in 41 states nationwide from January 1, 2008 through November 30, 2008. Several states already require public and/or private employers to use E-Verify. The flurry of state-based immigration legislation in 2008 added Missouri, South Carolina and Utah to the list. If you have questions about your employment verification obligations, please contact a member of Koley Jessen’s Employment, Labor and Benefits Group.

NO-MATCH BATTLE CONTINUES

In late October 2008, the Department of Homeland Security (“DHS”) issued a supplemental final rule regarding its “no-match” regulations. While substantively similar to the earlier version of the regulations that Judge Stephen Breyer, a federal district court judge in California, enjoined the DHS from enforcing, the supplemental final rule directly responds to the criticisms and concerns highlighted by Judge Breyer. While the DHS requested that Judge Breyer “fast-track” the matter and quickly issue a decision as to the enforceability of the regulations, Judge Breyer declined to do so, noting that the Obama administration may want to revisit the issue. The lawsuit is scheduled to move forward under a standard schedule, with a decision expected in late February or early March of 2009. Koley Jessen’s Employment, Labor and Benefits Group will keep you informed as this matter develops further.

The Koley Jessen Employment, Labor and Benefits Group:

Margaret C. Hershiser

402.343.3711

margaret.hershiser@koleyjessen.com

Julie A. Schultz

402.343.3766

julie.schultz@koleyjessen.com

Leilani M. Harbeck

402.343.3767

leilani.harbeck@koleyjessen.com

Joan M. Cannon

402.343.3753

joan.cannon@koleyjessen.com

Richard D. Vroman

402.343.3810

richard.vroman@koleyjessen.com

Ryan J. Sevcik

402.343.3859

ryan.sevcik@koleyjessen.com