

Your Monthly Legal Update – December 2006
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HOUSE OF REPRESENTATIVES AGENDA: AMERICANS WITH DISABILITIES ACT

Now that the holiday season is upon us, whether we like it or not, many of us wonder what next year will bring!! I'm certainly hoping for less stress, like that is going to happen!!! What will be interesting to see is how the recent federal elections may affect our employment law fields. Will the shift in party impact legislation in the new year?

On the agenda in the House of Representatives is the Americans with Disabilities Act. House Judiciary Chair James Sensenbrenner (R-Wisconsin) and Representative Steny Hoyer (D-Maryland) have introduced a bill (HR-6258) to expand the definition of disability under the Employment Section of the Americans With Disabilities Act in reaction to the recent Supreme Court cases (the federal ones), that we have all been so diligently reviewing, and that have narrowed the definition of who is "disabled." Representative Sensenbrenner states that the U.S. Supreme Court has cut the definition of who is disabled beyond the "broad protection" Congress originally intended. The proposed bill will diminish the requirement that a Complainant must prove they are unable to engage in a significant life activity. The new proposed legislation will allow a person to be "disabled" under the law even if their condition is fully controlled by medication or other mitigating treatment or devices; the person's ability to function will not be a factor, as long as there is a diagnosis of an underlying medical or mental condition. This revised language will potentially put back on the table such controlled disabilities as diabetes, asthma, etc. that have been rejected by the current federal standards in some instances. Remember, though case law is bound to its facts and in these situations evidence regarding failure to fully control the disease is a loophole that may have not have been adequately argued.

This definition in the proposed bill is more in line with the Wisconsin interpretation of disability cases, so it will be interesting to see what happens but this should not cause us widespread panic. If this Act passes and becomes law, employers will probably see a growth in the number of disability cases being pursued in federal court versus through the State Equal Rights Division system. However, will this change the way we practice on a day to day basis? Probably not, since all of us are so diligently trained to review all necessary reasonable accommodations regarding all health issues in our workplace as mandated by the FMLA, ADA and Wisconsin Fair Employment Act anyway. We know that we must apply common sense to any situation we are presented with and that it is safer to proceed with caution and accommodation than to rush to judgment.

I hope all of you have a very happy holiday season!!! May your new year be less stressful!!!