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LABOR AND EMPLOYMENT NOTES

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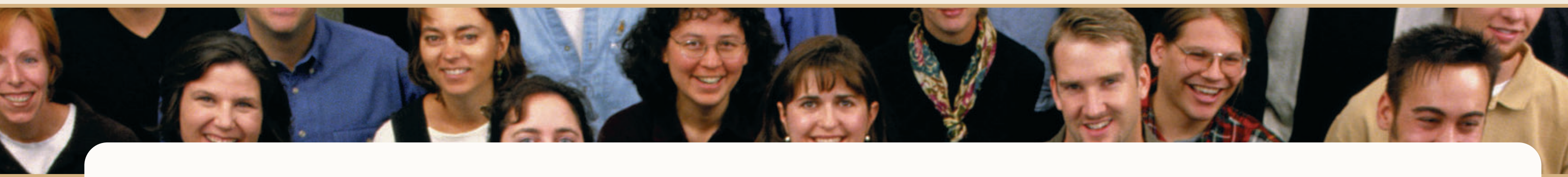

NEW GUIDANCE REGARDING EPILEPSY AND THE ADA

The EEOC recently clarified several issues for employers regarding epilepsy and the ADA. Epilepsy may be, but is not necessarily, a disability under the ADA. In order to be classified as a disability under the ADA, epilepsy must substantially limit one or more of a person's major life activities. Epilepsy may be a disability because of (a) limitations that are the result of seizures, (b) side effects or complications resulting from medications taken to control epilepsy, (c) because it was substantially limiting some time in the past, or (d) because the employer treats the individual as if epilepsy significantly affects the person's everyday activities, even though it does not.

Application Issues

An employer **may not ask an applicant** whether he has epilepsy or seizures, whether he uses any prescription drugs, or whether he has ever been injured on the job or filed a workers' compensation claim. The ADA does not require applicants to disclose that they have epilepsy or other disabilities unless they will need reasonable accommodation for the application process. Some applicants may voluntarily disclose their epilepsy to eliminate any surprise in case a seizure should occur. In response to an applicant's voluntary disclosure, the **employer may ask only two questions**: whether he needs a reasonable accommodation, and if so, what type. The employer must keep confidential any information an applicant discloses about his medical condition.

Post Offer Issues

A person with epilepsy may request an accommodation after becoming an employee even if that person did not disclose his epilepsy or request accommodation in the application process. When an employer learns that the applicant has epilepsy **after** he has offered him a job, he may not withdraw the job offer if the applicant is able to perform the essential functions of the job with or without reasonable accommodation without posing a direct threat to safety. After the offer has been made, the employer may ask the applicant additional questions about his epilepsy, such as whether he takes medication; whether he still has seizures, and, if so, what type; how long it takes him to recover after a seizure; and whether he will need assistance if he has a seizure at work.

Reasonable Accommodations For Employees With Epilepsy

The following are possible reasonable accommodations for employees with epilepsy: breaks to take medication, leave to seek treatment or adjust to medication, a private area to rest after having a seizure, a rubber mat or carpet to cushion a fall, adjustments to work schedule, a consistent start time or a schedule change (including from night shift to day shift), a checklist to assist in remembering tasks, permission to bring a service animal to work or to work at home, and someone to drive to meetings and other work-related events.

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LOUISIANA'S NEW PAYDAY STATUTE

In addition to Louisiana's wage payment law for employees whose employment terminates, La. R.S. 23:631, et seq., Louisiana has a newly adopted statute, effective August 15, 2004, regarding paydays. La. R.S. 23:633 (Act No. 601, Louisiana 2004 Regular Session) imposes requirements on certain employers, including those with ten or more non-exempt employees, regarding the frequency of paydays and the payment to be made each payday.

First, the law requires employers to inform all non-exempt employees at the time of hire "what wages they will be paid, the method in which they will be paid, and the frequency of payment, along with any subsequent changes thereto." The law also requires that such employees be paid "as often as once every two weeks or twice during each calendar month . . . two weeks apart as near as practicable." In the absence of a different designation by a covered employer, the law requires that paydays be the "first and sixteenth days of the month or as near as practicable to those days."

In addition to the frequency of paydays, the law also requires that the pay of all non-exempt, non-clerical, non-salesperson employees include all compensation earned "up to not more than ten days pervious to the time of payment." The statute does not define whether a day is a working day, calendar day, or weekday. The allowable delay is extended to 15 days for "public service corporations."

The new law also requires that an employer post a notice to be provided by the Louisiana Department of Labor that will advise employees of (a) the employer's obligations to inform employees of their pay and paydays, (b) that upon the employer's failure to make payment in accordance with "that agreement," an employee must first lodge a complaint with the employer, and (c) that if no action is taken by the employer to resolve the complaint, the employee may lodge a complaint with the Louisiana Department of Labor.

Finally, the statute provides for fines from $25.00 to $250.00 for each day's violation (other than failure to post) of the statute's requirements and, for a second offense, up to ten days imprisonment in addition to fines.

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