

# **Five Questions**

By: Jill Tyrer

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Recent changes to the Americans with Disability Act (ADA) and the Family Medical Leave Act (FMLA) heighten some requirements of both employees and employers. Lisa Garrett, an employment attorney who practices in the Bonita Springs and Pittsburgh offices of Cohen and Grigsby law firm, explains how the modifications, which are mostly technical and procedural, might impact employers.



# 1. What are some of the changes to the ADA, and what should employers know?

Effective Jan. 1, Congress amended the definition of "disability" under the ADA by providing clarification and expanding the definition. For example, it now prohibits the consideration of mitigating measures, such as medication, assistive technology or [aids] except ordinary eyeglasses or contact lenses, when determining whether a mental or physical impairment constitutes a disability.

### 2. What does this mean for employers?

If we have an increase in covered individuals, then we're likely to see an increase in employers' need to provide reasonable accommodations in the workplace. Employers may want to train their managers so they understand when there might be a request for accommodation so they can work with human resources or upper management to address the issue.

# 3. Would the effects be different for small versus large employers?

A certain request may not be reasonable for a smaller employer but for a larger employer it might be. If there is an [alternative] accommodation that would be equally or even more effective, the employer has the right to provide that as a reasonable accommodation. [Examples include] a modified work schedule, additional breaks, an assistive device—maybe special software that would increase the size of print for somebody who's visually impaired.

# 4. What changes have been made to the Family Medical Leave Act?

The qualifying reasons for leave have not changed, such as the employee's serious health condition, to care for a covered family member who has a serious health condition, for the birth of a child or to deal with adoption or foster care. What we see in the final regulations is clarification of procedural issues and obligations [such as providing notices]. They also provide guidance regarding the military leave provisions, which were added to the FMLA in 2008. That relates to the qualifying exigency leave and family leave to care for a covered service member who's been injured or ill.

### 5. Anything else employers should know about the final regulations?

[Healthcare privacy laws] need to be complied with, but there is now a mechanism for the employer to seek clarification directly from the [covered person's] healthcare provider. Any employer covered by the FMLA [generally, those with 50 or more employees] needs to be sure that its existing FMLA policy complies with the final regulations, and that it has the new forms the Department of Labor has issued and the updated FMLA posters that employers are required to post. As with the ADA, we would recommend that they focus on training managers to ensure that FMLA leave is being addressed correctly