

**In this issue:**

- New FMLA Rules Workshop
- The ADA Amendments Act of 2008
- Acceptable I-9 Documents for work

## The ADA Amendments Act of 2008

Effective July 24, 2008, the federal minimum wage for covered non-exempt employees rose from \$5.85 to \$6.55 per hour. The Fair Minimum Wage Act of 2007, which amended the Fair Labor Standards Act (FLSA), provides for phased-in increases ultimately reaching \$7.25 per hour effective July 24, 2009. A separate provision of the bill brings about phased increases to the minimum wage in American Samoa and the Commonwealth of the Northern Mariana Islands.

Effective January 1, 2008, the Oregon minimum wage increased by 15 cents to \$7.95 per hour. Each year BOLI calculates an annual adjustment to the minimum wage for the following calendar year. The annual adjustment is based on any increase during the previous 12 months in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items.

**Oregon Office**

7320 SW Hunziker Street, Suite 320  
 Portland, Oregon 97223  
 (503) 244-0297 Phone  
 (503) 244-0298 Fax

**Washington Office**

1710 W. Main, Suite 219  
 Battleground, WA 98604  
 (360) 687-2288 Phone  
 (360) 397-0380 Fax

[www.golsanscruggs.com](http://www.golsanscruggs.com)

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**RISK MANAGEMENT WORKSHOP SERIES**

## What are the most significant changes to FMLA for 2009 and what steps should be taken to protect your business

- What will the impact be of the new FMLA regulations taking effect January 19, 2009?
- How will the changes effect the OFLA?
- What does an Armed Forces deployment or medical leave have to do with FMLA?
- How does the definition of an employer change and what impact does that have on my business?
- How can the changes to the definition of a serious health condition be beneficial to employers?
- How can the changes to the definition of a serious health condition get employers into trouble?
- What are the new FMLA notice requirements?
- Why are job descriptions important during an FMLA leave?
- When can employer's dictate when paid leave is required during an OFLA or FMLA leave?
- Why is the language within your health insurance contract important to your FMLA/OFLA exposure?
- How does FMLA supervisor training protect my profit margin?

**Wednesday, February 20, 2009**

Registration: 8:45am  
 Workshop: 9:00am—11:00am

**LOCATION**

Hilltop Conference Center  
 7300 SW Hunziker Street, Portland, Oregon  
 (503) 244-0297

**DIRECTIONS**

From Hwy 217, take 72nd Ave exit. From SW 72 Ave, turn onto SW Hunziker St (first street south of 217 overpass). Make first left into parking lot. Conference room at entrance of building.


**REGISTRATION**

Free of charge—includes continental breakfast and workshop materials. Seating limited.

Send registration information to the following:

**Call:** (503) 244-0297

**Fax:** (503) 244-0298

**Email:** [info@golsanscruggs.com](mailto:info@golsanscruggs.com)

Name \_\_\_\_\_

Company \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_

**IMPORTANT** – Include your e-mail address as confirmation will be e-mailed to you with directions prior to the workshop.

**REGULATION UPDATE**

## The ADA Amendments Act of 2008

On January 1, 2009, the Americans with Disabilities Act (ADA) Amendments Act of 2008 went into effect, making some major changes to the way the definition of disability has been interpreted in the past. The changes apply to both the ADA and the Rehabilitation Act. Many agree that these changes were needed because the courts had interpreted the definition of disability so narrowly that hardly anyone could meet it – but the challenge now is understanding what the changes are and who is going to be covered as of January 1st. We do not yet have any regulations nor do we have any court interpretation; all we currently have are the words of the Amendments Act and its legislative history.

According to Congress, the ADA Amendments Act was passed “to carry out the ADA’s objectives of providing ‘a clear and comprehensive national mandate for the elimination of discrimination’ and ‘clear, consistent, enforceable standards addressing discrimination’ by reinstating a broad scope of protection to be available under the ADA.” In other words, the purpose of the original ADA was to eliminate discrimination. However, if hardly anyone was covered, then very few were actually being protected from discrimination. So, in the Amendments Act, Congress fixed the definition of disability to cover more people and, as a result, prevent more discrimination. That means that once the Act goes into effect, the question of who has a disability will no longer be the main focus. Instead, the focus will be on whether discrimination occurred.

The term disability means, with respect to an individual

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

The Amendments Act did not change the actual definition of disability; the definition is exactly the same as it was. What did change is the meaning of some of the words used in the definition and the way those words are to be applied to individuals.

In the Amendments Act, Congress expressly gave the EEOC the authority to revise its regulations regarding the definition of substantially limits to make them consistent with the Act’s purpose. In the past, the regulations had defined substantially limits as “significantly restricted,” but Congress said that is too high a standard and the EEOC is working on revisions.

These revisions are not available yet. However, we do have additional information in that “mitigating measures” will not be considered.

Mitigating measures are:

- Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

- Use of assistive technology;
- Reasonable accommodations or auxiliary aids or services; or
- Learned behavioral or adaptive neurological modifications

Except

- The ameliorative effects of the mitigation measures of ordinary eyeglasses or contact lenses shall be considered in determining whether impairment substantially limits a major life activity.

When determining whether a person is substantially limited in a major life activity, we ignore the beneficial effects of mitigation measures except ordinary eyeglasses or contact lens. In the past, the U.S. Supreme Court held the opposite, that you do not ignore mitigation measures. This holding resulted in a lot of people not being covered by the ADA. The Amendments Act overruled the Supreme Court’s holding regarding the use of mitigating measures.

Additionally, there was some debate over what activities were considered “major life activities” for ADA purposes, but one of the most confusing issues was whether someone with a medical condition that only affected internal functions would be covered. Congress has cleared up the confusion by specifically stating in the Amendments Act that bodily functions are indeed major life activities.

In the past, a person whose condition was in remission or whose limitations came and went might not have been covered by the ADA, depending on how long that person’s limitations were in an active state. Congress addressed this in the Amendments Act by stating that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

The Amendments Act makes “regarded as” coverage under the ADA very broad. To be covered, an individual only has to establish that an employer discriminated against him/her because of a medical condition, whether he/she actually has one or the employer just thought he did. He/she does not have to meet the substantially-limited-in-a-major-life-activity standard. One exception under “regarded as” is that impairments that are transitory (lasting or expected to last 6 months or less) and minor are not covered. Arguably, impairments that are transitory or minor, but not both, will be covered.

Even though the EEOC regulations are not available yet, there are some practical things that employers can do to get ready for the Amendments Act:

- Review job descriptions, qualification standards and accommodation procedures
- Focus on performance and conduct
- Train frontline supervisors and managers
- Document actions and decisions

For additional information, go to [www.eeoc.gov](http://www.eeoc.gov) or [www.jan.wvu.edu](http://www.jan.wvu.edu)