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## Americans with Disabilities Act

We hope you are having a nice summer. Here at Insurance Professionals of New England, Inc. we pride ourselves on providing value added service delivered with a social conscience. We wanted to mention a few highlights of an informative and valuable article on recent changes in the Americans with Disabilities Act and provide you with a link to the complete article. The article is from an insurance industry periodical called [“Agent & Broker”](#) the article is entitled “The ABC’s of the new ADAAD” and written by Jeffrey S. Shoskin. A few excerpts from the informative article are:

*“On Jan. 1, 2009, the Americans with Disabilities Act (ADA) was significantly and purposefully amended to broaden the number of employees who can claim to be disabled and seek ADA protection. In an unprecedented move, Congress discarded a series of U.S. Supreme Court decisions that effectively restricted ADA protection to a limited number of employees who were truly “disabled” (as defined under ADA) instead of bestowing protection on virtually anyone with a physical or mental problem. Not anymore.”*

*“Under the ADA Amendments Act of 2008 (ADAAA), more individuals will likely be deemed disabled and will qualify for reasonable accommodations and protections from alleged discrimination. Additionally, because of the watered-down interpretation of disability, more lawsuits likely will be filed and covered employers (15 or more employees) will need to re-assess their reasonable accommodation practices.”*

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*“BEST PRACTICES: Most ADA lawsuits likely will no longer focus on whether an individual fits under the definition of disability. That definitional bar has been lowered to an amazingly low level. Rather, attention will shift to the following inquiries:*

- *Can the employee perform the essential functions of the job?*
- *Did the employer engage in an interactive dialogue with the employee to determine whether he can perform those essential functions with or without a reasonable accommodation?*
- *Did the employer offer a reasonable accommodation?*
- *If not, can the employer prove an “undue hardship?”*
- *Did the employee’s disability (e.g. “medical condition”) actually motivate the employer’s adverse employment action*

**Accordingly, employers should consider the following practices:**

- **Review and revise all employment policies that encompass employees with medical conditions (e.g., discrimination, harassment, light duty, leaves of absence, reasonable accommodations).**
- **Confirm that job descriptions are accurate and list the essential functions of the job.**
- **Train supervisors. Callous retorts about an employee's medical condition or a careless response to a reasonable accommodation request could spark an ADA claim.**
- **Establish and publicize a "reasonable accommodation" process that an employee (who believes she needs an adjustment to her job because of her medical condition) can use. Define the process. Identify the contact person. Document all efforts. Remember, it is an interactive dialogue- not a monologue.**
- **Supervisors should consult with human resources before taking an adverse action against an employee with a medical condition, granting a "reasonable accommodation" is possible.**
- **Make sure all employment decisions are based on objective work performance or misconduct, not on assumptions or stereotypes.**
- **If reasonable accommodation requests to employers have been denied based on a determination that they did not satisfy the "disability" requirements of the ADA, reconsider whether the ADAAA changes that analysis.**

**Good rule of thumb: If supervisors hear the words "restriction," "limitation," "medical condition," "leave of absence," or "accommodation," they promptly should alert human resources. "**

**Below is the link to "Agent and Broker's" website with the complete article. You may also link to their website through our website at [www.ipne.com](http://www.ipne.com)**

**<http://www.agentandbroker.com/Issues/2009/June-2009/Pages/The-ABCs-of-the-new-ADAAA.aspx>**