

# **New Disability Discrimination Regulations Impact on New Jersey Employers**

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While recent federal changes involving the Americans with Disabilities Act have attracted a great deal of attention in employment circles, New Jersey employers should also be aware how the changes will impact them.

Additionally, the New Jersey Division of Civil Rights has proposed an amendment to its disability discrimination regulations that the New Jersey Division on Civil Rights says are consistent with the federal changes.

The proposed regulations contain several provisions that could impact New Jersey employers, as outlined below:

*Public Hazard Defense:* The proposed regulations appear to significantly restrict the availability of this defense. Under current law, an employer can choose not to hire an applicant with a disability or terminate an employee who poses a hazard to the employee or others in the workplace. The new regulations will require the employer to explore reasonable accommodations before doing so as it includes the language “where the hazard cannot be eliminated or reduced by reasonable accommodation.”

*Undue Hardship Definition:* While the amended laws would still allow employers to consider cost when determining whether accommodating a disabled individual would cause “undue hardship,” the new regulations would require employers to consider available resources that may offset the cost, including tax credits or outside funding.

*Language Regarding Pre-Existing Condition Coverage:* The last change is largely semantic. To avoid confusion or possible contradiction with respect to coverage of pre-existing conditions mandated by recent health care reform, the language allowing employers to offer medical coverage excluding pre-existing conditions is deleted. In its place, the proposed language states that employers may offer medical insurance that limits coverage for certain procedures or treatments, “as long as these activities are not being used as a subterfuge to evade the purposes of the subchapter.”

The official public comment period on the amended disability regulations expired on March 19, 2011. Employers are advised to stay tuned to this blog for information regarding the status of the legislation in the coming months.

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### About Beth Lincow Cole

Employment Law Attorney Beth Lincow Cole has skillfully helped business owners and managers head off the unwanted and unnecessary lawsuits that can arise in the workplace. Drawing on her successful legal experiences both in and outside the courtroom, Beth Lincow Cole understands how to protect employers. By developing solid pre- and post-employment procedures for her clients, she assures that they are legally protected.

Beth Lincow Cole has worked for large regional and national law firms, focusing solely on employment issues, on behalf of management within a wide range of industries. Whether you are a start up company with basic questions about personnel files or a larger company with questions about an employee's Family Medical Leave, Beth Lincow Cole can help. Drawing on her experiences, she counsel's companies in the following practice areas:

- Defense in administrative agency matters such as before the DOL, EEOC, PHRC or NJDCR
- Department of Labor Audits
- Discrimination
- Downsizing/Reduction in Force
- Drug Testing
- Employment Contracts and Severance Agreements
- Employment Law Compliance
- FMLA and other family leave laws
- Independent Contractors/Contingent Workforce

Please contact the firm to find out how the Law Office of Beth Lincow Cole can protect your company.