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Client Advisory Equal Opportunity Commission Update

On Feb. 26, 2007, the Equal Employment Opportunity Commission (“EEOC”) issued the fact sheet: “Questions and Answers about Health Care Workers and the Americans with Disabilities Act.” The Q&A Fact Sheet provides a detailed reminder to healthcare employers concerning ADA compliance. It offers examples of what persons qualify for ADA protection, what leeway the employer has to refuse an employee request for a “reasonable accommodation” to an “essential function” of a job, and when the employer may claim a “direct threat” to patients exists from an employee’s continued work. The Q&A Fact Sheet signals the EEOC’s intent to increase ADA enforcement efforts in the healthcare industry.

The EEOC’s Q&A Fact Sheet notes that healthcare is now the largest industry in the American economy, employing more than 13 million individuals in 2004 and continuing to grow. The EEOC claims that healthcare workers are nearly twice as likely to suffer an injury in the workplace, than workers are in other industries. Health care jobs often involve potential exposure to airborne and blood borne infectious disease, sharps injuries, and other dangers. Many health care jobs can also be physically demanding and mentally stressful.

Although the rules under Title I of the ADA and Section 501 of the Rehabilitation Act are the same for all industries and work settings, the EEOC’s Q&A Fact Sheet illustrates how the ADA might apply to particular situations involving job applicants and employees in the health care field. Topics discussed include:

- When someone is an “employee” covered by the ADA (as opposed to an independent contractor);
- When someone is an “individual with a disability” under the ADA;
- How to determine if a health care applicant or employee with a disability is qualified for ADA purposes;
- What types of reasonable accommodations health care workers with disabilities may need and the limitations on a health care employer’s obligation to provide reasonable accommodation;
- When an employer may ask health care applicants or employees questions about their medical conditions or require medical examinations; and
- How a health care employer should handle safety concerns about applicants and employees.

Health care employers should consider taking the issuance of the new Q&A Fact Sheet as an opportunity to review the ADA and their compliance procedures. The new publication, part of a series of Q&A documents about specific disabilities in

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the workplace and specific industries, is available on the EEOC's web site at <http://www.eeoc.gov/press/2-26-07.html> If my firm can be of assistance in your review of applicable policies and practices, please let me know.