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FROM: T. G. Grumbles
DATE: October 25, 1991

Interoffice
Communication

SUBJ: ADA IMPACT

VISTA

Attached is another article describing one attorney's opinion of the potential impact of the Americans with Disabilities Act.

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Process safety managers need to ensure that safety programs are audited routinely, and that any near misses or safety incidents are investigated quickly, he said.

"You need an open, non-threatening people environment" where workers will willingly discuss any near-misses without threat of retribution by management, he said. "It's also important to be timely—the trail gets cold fast so we move in quick," he said. "When there's an [incident] we'll have a safety team there Saturday afternoon following a Saturday morning accident," he said.

During incident investigations, management should keep teams to an appropriate size, Ripple said. "Many times two or three is of appropriate size," he said. "Get the right people there, and let 'em do their job."

Ripple repeatedly said that near misses provide companies with a second chance to review potential accidents. He said chemical processes often lead to many more near misses than actual explosions or fires.

"Most incidents gave previous near miss warnings," he said.

Legislation

LITIGATION UNDER NEW DISABILITIES LAW SEEN RELYING ON HEALTH AND SAFETY STAFF

NEW ORLEANS—(By a BNA Staff Editor)—Corporate safety and health officials should be prepared for a central role in a "hotbed of litigation" expected next year when plaintiffs begin filing discrimination claims against employers under the Americans with Disabilities Act, an attorney told a conference Oct. 7.

Thomas Schneid, an associate professor and attorney at Eastern Kentucky University, said safety and health officials should begin preparing for enormous changes in the workplace brought on by the new law, which he said was "the most significant piece of legislation" affecting the workplace since the Civil Rights Act and the Occupational Safety and Health Act were approved by Congress more than 20 years ago.

Addressing a session at the National Safety Congress, Schneid joined other speakers in predicting that, while the legislation will be far-reaching in its effects, companies can avoid litigation by preparing policies before the law takes effect in 1992.

The disabilities law provides civil penalties for plaintiffs who sue employers for discriminating against the disabled, and will cover all employers with 25 or more workers as of July 26, 1992, Schneid said.

Employers of 15 or more workers will be covered by the act as of July 26, 1994.

"This means you have six or eight months here to get prepared," he told safety and health officials at the conference.

Company safety and health officials will have a large role under the legislation, because safety and health considerations provide one of the few exceptions to the law, Schneid said. For instance, employers can legally decline to hire a disabled worker if the applicant would endanger other employees in the workplace, he said.

"However, the burden will fall right onto the safety person" to provide policies for determining those exceptions and the documentation needed if a plaintiff sues the employer, Schneid said. "The hotbed of litigation in the future is the safety and health exception," Schneid said.

Scope Of The Act

Schneid said one in every four workers in the United States will be protected under the law, which covers a wide range of disabled workers. It will affect nearly all workplaces, including private employers and labor unions. It also will affect some areas traditionally exempted from worker protection legislation, such as churches and other religious facilities, social and recreational functions, and professional symposiums.

"Nearly any physical or mental limitation qualifies and about anything you can think of will almost qualify here" under the law, Schneid said. Workers who have had substance abuse problems in the past are somewhat protected under the legislation because the act treats former drug use as a disability as long as the employee is not currently using drugs and is in rehabilitation, Schneid said.

Under the law, employers will no longer be permitted to request a pre-employment physical for prospective hires or ask questions about previous illnesses until the applicant is offered employment.

"You can still test [the applicant] but only after you make an offer" of employment, Schneid said.

The act prevents employers from asking for other information before extending a job offer, Schneid said. For instance, employers will be prevented from asking applicants if they have ever filed a workers' compensation claim.

Those questions may be asked during a physical examination following the employment offer but before an employer offers a specific position, he said.

Reasonable Accommodations

The law also requires that employers make "reasonable accommodations" for any disabled worker covered under the act, Schneid said. Generally, disabled applicants cannot be refused a position when an employer would only have to make a "reasonable accommodation" to integrate that employee into the workplace, Schneid said.

Employers, attorneys, and plaintiffs can be expected to argue the definition of "reasonable accommodation" within months of the July 1992 effective date, Schneid said. Generally, employers should recognize that "you don't have to modify the entire workplace" for one disabled worker under the new law.

However, employers should be prepared to document a decision against hiring a disabled worker by showing conclusively that the worker would have endangered the safety of other workers or that modifying the workplace for the applicant would have been exceptionally costly, Schneid said.

The disabilities law includes a provision allowing attorneys to recover legal fees, Schneid said, which is expected to encourage litigation under the act. Schneid predicted that attorneys will file between 12,000 and 15,000 claims in the six months following the effective date of the legislation.

Electromagnetic Fields

GROWING STUDIES LINKING ELECTRIC LINES TO CANCER IN WORKERS, CHILDREN, SPEAKERS SAY

NEW ORLEANS—(By a BNA Staff Editor)—Early studies linking electromagnetic fields to increased cancer rates for children and utility workers are incomplete but raise legitimate concerns, electric power researchers said at a conference Oct. 9.