

Is Everyone Disabled? Temporary Disabilities and the Ever-Expanding Definition of “Disability”

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Following the amendments to the Americans with Disabilities Act (ADA)—the ADA Amendments Act of 2008 (ADAAA)—employers were told to refrain from asking employees whether they were disabled. The employer community took this instruction with a grain of salt, knowing that although the scope of employees covered under the amendments was significantly greater, there were certain conditions that did not constitute a disability. More recent case law may be proving that theory wrong and, instead, showing that “all” (or almost all!) employees are disabled.

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Expanding the Definition of “Disability”

In 2014 the normally conservative Fourth Circuit Court of Appeals kicked open an unlocked door when it decided *Summers v. Altarum Institute, Corporation*, No. 13-1645 (January 23, 2014). The *Summers* court was the first to apply the ADAAA’s expanded definition of disability. In *Summers* the plaintiff had a leg injury that rendered him unable to walk for a matter of months. Under the ADA (as we had known it) this was a temporary disability that was not covered by the law.

The Fourth Circuit’s decision announced a new day—creating continuing issues for employers in determining whether an employee has a disability for which accommodation must be explored.

In sum, nothing about the ADAAA or its regulations suggests a distinction between impairments caused by temporary injuries and impairments caused by permanent conditions. Because Summers alleges a severe injury that prevented him from walking for at least seven months, he has stated a claim that this impairment “substantially limited” his ability to walk.

The court ruled out consideration of mitigating measures that would have allowed Summers to work and found that short-term impairments fall within the scope of coverage as long as they are “sufficiently severe.”

In March of this year, the Supreme Court of the United States addressed another Fourth Circuit decision in *Young v. United Parcel Service, Inc.* Although this case—which was brought by a pregnant employee who claimed that her employer denied her light duty work but offered it to employees who had suffered on-the-job injuries—focused more on the Pregnancy Discrimination Act, it certainly reminded employers of the impact of the ADAAA and the changes it has brought. Most pregnancy-related disabilities are now likely protected by the ADA and subject to its reasonable accommodation requirements.

Key Takeaways

Employers now must more carefully address each situation in which an employee has an impairment that is affecting his or her ability to perform the essential functions of his or her job. These disability rulings and the strong movement toward including some temporary conditions in the statutory definition of “disability” make it even more important that employers address each of these situations individually. It is also important that employers assess the specific facts and information regarding each situation and employee.

It seems that the days that employers could make decisions based on generalizations about an injury are gone. Today such behavior would likely result in a claim that the employer violated the ADA. Although employers must now accommodate sufficiently severe temporary conditions, they should keep in mind that temporary disabilities should only require temporary accommodations.

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