

February 24, 2014

Employee's Temporary Impairment May Constitute a Disability

In late January, the U.S. Court of Appeals for the Fourth Circuit held in *Summers v. Altarum Institute Corp.* that an employee's "sufficiently severe temporary impairment may constitute a disability." This opinion applied the expanded definition of disability contained in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) to include temporary impairments.

While exiting a commuter train on October 17, 2011, the employee fractured both legs and tore the quadriceps-patellar tendon in his right leg. The employee had two surgeries and was prohibited from putting any weight on his leg for six weeks. The employee received short-term disability benefits, but the employer did not respond to his requests regarding a return to work with accommodations. While the employer did not expressly reject the employee's proposed return-to-work plan, it also did not suggest any alternative reasonable accommodation or otherwise engage in any interactive dialogue with the employee. On December 1, 2011, the employer terminated the employee from employment.

The employee filed suit, alleging that his employer discriminated against him by terminating his employment because of his disability and by failing to accommodate his disability. The trial court dismissed both claims on a motion to dismiss, reasoning that a temporary condition lasting one year or less did not qualify as a disability. The Appeals Court reversed the decision.

The court noted that Congress enacted the ADAAA, in part, in response to a Supreme Court decision suggesting that a temporary impairment could not qualify as a disability. The court quoted the EEOC's ADAAA regulations which provide that "effects of an impairment lasting or expected to last fewer than six months can be substantially limiting" for purposes of establishing a disability and stated that the holding that the temporary nature of the plaintiff's impairment precluded the finding of a disability is contrary to the language and purpose of the ADAAA.

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In its conclusion, the court ruled that "[u]nder the ADAAA and its implementing regulations, an impairment is not categorically excluded from being a disability simply because it is temporary."

The decision of the court emphasizes the need for employers to make an individualized assessment and engage in the interactive dialogue with an employee claiming a disability and a need for an accommodation.

For additional information regarding this, or any other labor or employment law matter, please contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis P.C.

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