

Recent Decision on Temporary Disability Under the ADA Should Give Employers Pause

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On January 23, 2014, the U.S. Court of Appeals for the Fourth Circuit (based in Virginia) held in *Summers v. Altarum Inst., Corp.* that a temporary injury, if sufficiently severe, may qualify as a “disability” under the Americans With Disabilities Act. This is the first federal appeals court to rule that a temporary injury may be a potential disability under the ADA following the 2008 enactment of the Americans With Disabilities Amendments Act (ADAAA).

In *Summers*, the plaintiff sustained injuries that impaired his ability to walk for approximately seven months. The plaintiff initially received short-term disability benefits, and within a few weeks he proposed a plan to work remotely during his recovery. The employer never addressed the plaintiff’s request to work remotely, nor did it propose other alternative accommodations. Shortly thereafter, the employer terminated the plaintiff’s employment. The plaintiff filed a complaint alleging that he was fired on account of his disability and that his employer failed to offer reasonable accommodations. The district court dismissed the complaint, reasoning that the ADAAA did not cover temporary injuries.

On appeal, the Fourth Circuit concluded that a temporary injury may amount to a “disability” under the ADAAA. The appellate court rejected the district court’s interpretation of “disability,” stating that Congress intended for the definition to be broadly construed. In 2008, Congress broadened the scope of the ADA by enacting the ADAAA and had instructed the EEOC to develop appropriate regulations. The EEOC’s regulations provided that an injury lasting *less than six months* can constitute a disability so long as it substantially limits a major life activity. The Court of Appeals deemed this regulation a reasonable interpretation of the law.

Although *Summers* is a decision by one appellate court based in Virginia, there is a considerable chance that it will be followed by other courts. Employers therefore should be mindful of the fact that impairments of a limited duration may nevertheless amount to a disability under the ADA, triggering the law’s protections and the requirement to discuss a reasonable accommodation.

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