

Sixth Circuit Court of Appeals Limits Application of the ADA

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On November 3, 2010, the U.S. Court of Appeals for the Sixth Circuit issued a decision in the case of *Bates v. Dura Automotive Systems Inc.* that appropriately limits the protection provided by portions of the Americans with Disabilities Act ("ADA") to individuals who are actually "disabled," as defined by the ADA. In the *Dura* case, concerning an employer's regulation of its employees' use of legal prescription drugs, the Sixth Circuit Court of Appeals held that the provision of the ADA at issue (addressing employer policies that "screen out or tend to screen out" individuals with disabilities) only provides a cause of action for affected employees who actually have a recognized disability. As such, the mere fact that an employer policy has the potential to screen out such employees is insufficient, said policy must actually adversely affect an individual with a disability before suit can be brought under this provision.

As set forth above, the *Dura* case involved an employer's policy regulating its employees' use of legal prescription drugs. The employer, in the manufacturing industry, determined that the workplace accident rate at one of its plants was higher than that of otherwise-comparable plants, and suspected that drug use (either legal or illegal) might be the cause. Accordingly, the employer designed a program whereby it began testing employees for substances it believed could be dangerous in the workplace. In addition to illegal substances, employees were also screened for substances commonly found in a variety of prescription medications, where those substances could adversely affect employee safety or performance. If an employee tested positive due to use of a prescription medication, the employer provided the employee an opportunity to transition to a medication without the substance at issue. However, the employer refused to consider its employees' doctors' notes asserting that the prescribed medications would not interfere with safety or performance, and, if an employee persisted in taking prescription medication that contained a banned substance, he or she was discharged.

Seven employees who were discharged pursuant to this policy, due to their use of prescription medications with substances banned by the employer, subsequently filed suit under a number of provisions of the ADA. One of these provisions, § 12112(b)(6), prohibits an employer from discriminating against a qualified individual with a disability by:

using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity...

The employer filed a motion to dismiss the former employees' claims under this section, as six of the seven plaintiffs were not "qualified individual[s] with disabilit[ies]" under the ADA. While the federal district court in Tennessee ruled against the employer, the Sixth Circuit reversed, holding that "the plain text of subsection (b)(6) only covers individuals with disabilities," as it "specifically refers [only] to 'qualified individual[s] with disabilit[ies].'" Accordingly, only such qualified individuals with disabilities, pursuant to the ADA, may make a claim under subsection (b)(6), and the claims of the non-disabled plaintiffs in this case were therefore dismissed. However, the Sixth Circuit did not address the substantive issue of the case --

whether the employer's drug policy is job-related and consistent with business necessity -- as that issue was not before it at this time.

In conclusion, the *Dura* case reinforces the basic principle that employee use of legal prescription drugs is harder to control than employee use of illegal drugs, despite the fact that even legal prescription drugs can have adverse effects. If an employer's policy with respect to prescription medication has a tendency to "screen out" individuals with a disability, then it must be both "job related" and "consistent with business necessity," or it risks being classified as unlawful disability discrimination. However, pursuant to the *Dura* case, only "disabled" individuals who are actually screened out as a result of such a policy will have standing to actually file suit. The mere fact that a policy has the potential to screen out such employees is insufficient, the policy must actually adversely affect an individual with a disability before suit can be brought under this provision.