



Employers Likely to Face New Challenges in the Wake of the ADAAA

A federal district court in Indiana has become the first court to address and interpret the newly enacted ADA Amendments Act (“ADAAA” or the “Amendments Act”) at the summary judgment stage. The court held that an employee with cancer in remission is considered “disabled” under the Amendments Act.

The Americans with Disabilities Act (“ADA”) requires employers to make accommodations for disabled employees. The ADAAA was signed by George W. Bush in September 2008 and went into effect in January 2009. Congress passed the new measure in response to several judicial rulings that narrowed the broad scope and protections of the original ADA.

Congress’s goal in passing the ADAAA was, in part, to make it easier for an individual seeking protection under the ADA to establish that he or she has a “disability”, as defined by that Act. The recent Amendments Act retained the ADA’s basic definition of a disability as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. However, the Amendments Act greatly expanded the interpretation of “major life activities” to include “caring for oneself, performing manual tasks, seeing, hearing, eating . . .” as well as the “the

operation of a major bodily function, including . . . functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.” The Amendments Act also explicitly states that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”

Before the passage of the ADAAA, a number of federal courts held that cancers – including breast cancer, prostate cancer, lymphoma, leukemia and Hodgkins disease – were not disabilities within the meaning of the ADA. For example, in Gordon v. E.L. Hamm & Associates, 100 F.3d 907 (11th Cir. 1996), plaintiff Gordon was diagnosed with malignant lymphoma and treated with chemotherapy. This chemotherapy caused numerous side effects, including weakness, dizziness, swelling of feet and hands, numbness, loss of body hair, and vomiting. While the court noted that these side effects might constitute physical impairments, it held that such impairments did not substantially limit Mr. Gordon in a major life activity.

The Amendments Act has altered this analysis. In Hoffman v. Carefirst of Fort Wayne Inc., d/b/a Advanced Healthcare, No. 09-CV-251 (N.D. Ind. Aug. 30, 2010), plaintiff Hoffman, a service technician, was diagnosed with Stage III renal



carcinoma in November 2007 and underwent surgery to remove his left kidney. Hoffman worked his usual schedule at Advanced Healthcare throughout 2008, but in January 2009, while his cancer was in remission, Hoffman's supervisor told him he would need to work overtime. Although all of the other technicians also were being asked to work overtime, Hoffman immediately objected and told his supervisor that it would put him "in the grave."

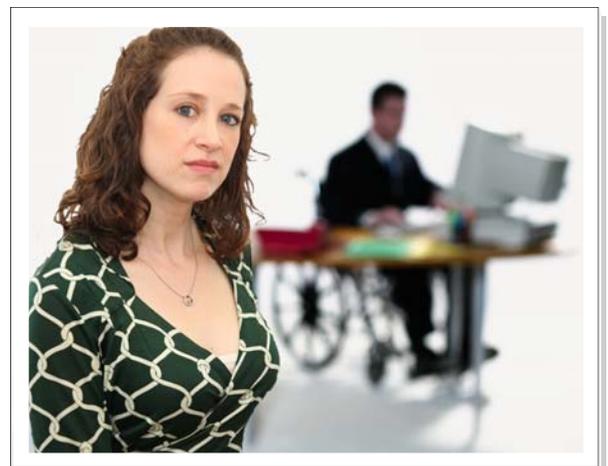
The next day, Hoffman, who claimed that he suffered from some fatigue, provided a handwritten note from his doctor stating that Hoffman was unable to work more than forty hours per week. After Hoffman and Advanced Healthcare were unable to reach a resolution, Hoffman considered his employment constructively terminated, and he sued the company under the ADAAA. The court held:

Because [the ADAAA] clearly provides that 'an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active,' and neither side disputes that Stage III Renal Cancer, when active, constitutes a disability, this Court must find that Hoffman was 'disabled' under the ADAAA. In other words, under the ADAAA, because Hoffman had cancer in remission (and that cancer would have substantially limited a major life activity when it was active), Hoffman does not need to show that he was substantially limited in a major life activity at the time of the alleged adverse employment action.

Other federal courts have upheld broad interpretations of what constitutes a "disability" under the ADAAA at the dismissal stage. In Horgan v. Simmons, 704 F.Supp.2d 814 (N.D. Ill. 2010), the court held that an employee's HIV positive status substantially limited a major life activity--the function of his immune system. In Gil v. Vortex, LLC, 697 F. Supp. 2d 234

(2010), a federal court in Massachusetts denied a motion to dismiss a disability claim where the plaintiff complained that his complete blindness in one eye inhibited two major life activities, seeing and working. The court ruled that although Gil might have done a better job providing details in his complaint describing the precise nature of his "substantial limitations," enough information was pled to satisfy the relaxed disability standard of the Amendments Act.

Following the passage of the Amendments Act, a flood of disability discrimination lawsuits have been filed. The first quarter of 2010 saw a 40% increase in the number of ADA-related lawsuits compared to the first quarter of 2009. Thus, employers need to review their policies and guidelines to ensure they are in compliance with the ADAAA and their obligations to provide reasonable accommodations and equal employment opportunities to disabled employees, including those who suffer from an impairment that is in remission. 



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