

Federal Court Upholds EEOC's Position That Temporary Injury may be Disability Under ADAAA

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In an apparent case of first impression for any federal appellate court, the 4th Circuit Court of Appeals sided with the Equal Employment Opportunity Commission (EEOC), holding that a temporary injury may be a disability under the Americans with Disabilities Act Amendments Act (ADAAA).

In *Summers v Altarum Institute Corporation*, the plaintiff fell and injured himself while exiting a commuter train in 2011. He was transported to a hospital where doctors determined that he had fractured his left leg and tore a tendon in his left knee. He endured two surgeries and was unable to walk normally for seven months.

In its holding, the 4th Circuit's analysis focused on whether the plaintiff's temporary injuries were a disability under the Americans with Disabilities Act (ADA) as amended in 2008. Granting dismissal to the employer, the district court had relied on a 2002 U.S. Supreme Court decision in *Toyota Motor Manuf, Ky, Inc v Williams*, in which it was suggested that a temporary injury could not qualify under the ADA.

In reversing the district court, the 4th Circuit noted that, in 2008, Congress amended the ADA, in part, to overrule this decision. Since then, the EEOC had promulgated regulations interpreting the amendments. Of particular relevance, the court focused on an EEOC regulation that states:

"[E]ffects of an impairment lasting or expected to last fewer than six months can be substantially limiting" for purposes of proving an actual disability. 29 CFR 1630.2(j)(1)(ix)

The EEOC provides the example that "if an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, the employee is substantially limited in the major life activity of lifting and, therefore, covered under the first prong of the definition of disability." 29 CFR 1630.2(j)(1)(ix)(app)

The employer argued that "Congress' intent 'not to extend ADA coverage to those with temporary impairments expected to fully heal is evident,' because such a 'dramatic expansion of the ADA would have been accompanied by some pertinent statement of Congressional intent.'" The court disagreed, stating that the consequences would be less "dramatic" than envisioned. "Prohibiting employers from discriminating against temporarily disabled employees will burden employers only as long as the disability endures. Temporary disabilities require only temporary accommodations."

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The appellate court reasoned that while the 2008 amendment to the ADA “imposes a six-month requirement with respect to ‘regarded-as’ disabilities, it imposes no such durational requirement for ‘actual’ disabilities, thus suggesting that no such requirement was intended.”

Employers likely disagree with the court's analysis concerning the lack of “dramatic” consequences caused by a requirement under the ADA to accommodate employees with temporary injuries.

This interpretation requires employers to consider, for example, whether a leave of absence should be granted to an employee during their first year of employment when the Family and Medical Leave Act (FMLA) is unavailable, or to an employee who has exhausted a FMLA leave. This interpretation also burdens employers with providing an accommodation unless they can prove it would cause an undue hardship, which is not an easy burden.