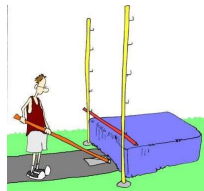


Americans with Disabilities Act: 2020 Legal Update

Scott P. Moore
Sara A. McCue

The Basics

- Disability
 - Definition
 - Threshold for "disability" under the ADA is low



The Basics

- All employees must be "qualified person with a disability"
 - Able to perform the essential functions of the job with or without reasonable accommodation

COVID-19

- Common requests for accommodations during COVID-19
- Guidance from the Equal Employment Opportunity Commission ("EEOC")

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Caselaw

Definition of Disability:
"Regarded as"...

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"Regarded as"

Babb v. Maryville Anesthesiologists P.C., 942 F.3d 308 (6th Cir. 2019)

- Defendant employer openly expressed concern about employee's degenerative retinal condition.
- Sixth Circuit noted that employer did not attempt to show employee's vision was a "minor and transitory" impairment.
- Sixth Circuit found there was a factual dispute about why employer fired employee (i.e., mere hours after employer decided to terminate employee, coworker wrote an email stating that employer was firing employee because of impaired vision).

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"Regarded as"

- "Regarded as" versus "potential future disability"



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Remote Work as an Accommodation

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Remote Work

***Bilinsky v. Am. Airlines, Inc.*, 928 F.3d 565 (7th Cir. 2019), as amended (Aug. 9, 2019)**

- General consensus is that regular attendance at work site is an essential function BUT...
 - “[I]tigators (and courts) in ADA cases would do well to assess what’s reasonable under the statute under current technological capabilities, not what was possible years ago”
- Work from home trend going forward?

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Previously Accommodated Employees

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Can I ask an employee to resubmit?

Equal Employment Opportunity Commission v. Wal-Mart Stores, Inc. and Wal-Mart Stores East, L.P., 2019 WL 6035754 (W.D. Wis. Oct. 10, 2019)

- Employee had been working there for 16 years with a job coach as accommodation
- New manager took over, suspended employee, and told her to resubmit medical paperwork if she wanted to keep her accommodation
- \$5.2 million in damages

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Cases Related to Restrictions

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Requiring No Restrictions

Equal Employment Opportunity Commission v. Corizon Health Inc., and Corizon LLC, No. 2:18-cv-02942-PHX-DLR (D. Ariz. Sept. 18, 2018)

- In lawsuit, EEOC claimed employer discriminated by requiring employees to be 100% healed or to be free from any medical restrictions prior to returning to work
- EEOC claimed many employers have these problematic policies

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"Restrictions" Do Not Always Mean "Disability"

Booth v. Nissan N. Am., Inc., 927 F.3d 387 (6th Cir. 2019), cert. denied, 205 L. Ed. 2d 271 (Nov. 4, 2019), reh'g denied, No. 19-252, 2020 WL 130036 (U.S. Jan. 13, 2020)

- Employee requested transfer to new position and was denied because position duties conflicted with his work restrictions
- Employee claimed disability discrimination in violation of the ADA
- Sixth Circuit: "[J]ust because a plaintiff has work restrictions does not mean he is disabled."

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Knowledge of Need for Accommodation



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"Read the handbook!"

Garrison v. Dolgencorp, LLC, 939 F.3d 937 (8th Cir. 2019)

- Employee indicated need to take leave of absence
- Supervisor said to "read the employee handbook"
- Employee told supervisor she was experiencing anxiety and depression
- Supervisor said she would have protected employee's job if employee was entitled to FMLA
- Eighth Circuit said employee did enough to make supervisor aware of need for accommodation
- No summary judgment for employer

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Qualified Individual with Disability

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Violations of Workplace Policy

Clark v. Champion Nat'l Sec., Inc., 947 F.3d 275 (5th Cir. 2020)

- Employer terminated employee for violating "alertness" policy.
- Fifth Circuit found employee was not a qualified individual under the ADA, as employee handbook detailed expectations that might result in immediate termination, including failure to maintain alertness.
- Moreover, even if he were a qualified individual, the Fifth Circuit stated that employee's failure-to-accommodate claim failed on a more fundamental level: He failed to point to any requests that were not subsequently accommodated (i.e., never requested an accommodation for loss of consciousness due to diabetes).

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Title III of the ADA

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Website Accessibility

***Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir.), cert. denied, 140 S. Ct. 122, 205 L. Ed. 2d 41 (2019)**

- Customer argued that the Domino's website and mobile application were not fully accessible, as they were not compatible with customer's screen reading software.
- Even without specific guidelines from DOJ, employer could be held liable for failure to make its website and application accessible to blind customers.

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Emerging Issues



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Gender Dysphoria

- ADA definition of disability?
- What do the courts say?

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Medical Marijuana

- Controlled Substances Act/ADA
- State law

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Questions?

Scott P. Moore
spmoore@bairdholm.com
(402)636-8268

Sara A. McCue
smccue@bairdholm.com
(402)636-8276

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