

Temporary Impairment a Disability under ADA

By Hope Eastman

Take-away: Temporary but sufficiently severe impairments, whether caused by injury or permanent conditions, should be considered disabilities for purposes of the ADA and for triggering the employer's obligation to engage in the interactive process.

On January 23, 2014, in *Summers v. Altarum Institute, Corporation*, (Case No. 13-1645, 4th Cir., January 23, 2014), the United States Court of Appeals for the Fourth Circuit held, in a case of first impression, that a temporary impairment, if sufficiently severe, can qualify as a disability under the ADA and the ADAAA, triggering a reasonable accommodation obligation for the employer.

Employers in the Fourth Circuit who have traditionally viewed temporary impairments as outside the realm of requiring reasonable accommodations must rethink their approach. Individuals with temporary impairments must be considered in employers' evaluation of impairments constituting a disability and the reasonable accommodation dialogue. The Court upheld the EEOC's "decision to define disability to include severe temporary impairments[.]"

Some facts illustrate the severity of the injuries. The plaintiff was traveling to a client's work site when he fell exiting a commuter train. His severe injuries required surgery and would keep him off his feet for seven months. While he was hospitalized, he sent emails to his employer, suggesting that he take short-term disability for a few weeks, work part-time remotely, and eventually work full-time remotely. His employer did not respond. After exhausting his short-term disability, he was fired by his employer.

The plaintiff had two claims under the ADA, one for wrongful discharge and one for failure to accommodate, both of which were rejected by the United States District Court for the Eastern District of Virginia. He appealed only the wrongful discharge claim. The District Court rejected the wrongful discharge claim because it found that a temporary condition lasting one year or less did not constitute a disability.

Interestingly for employers, the District Court dismissed his failure to accommodate claim because the burden is on the employee to request a "reasonable" accommodation and his request to work at home temporarily was unreasonable because it eliminated an essential job function (working on-site for clients). Although this claim was not appealed, the Court in a footnote went out of its way to indicate that even a request for an unreasonable accommodation triggers the employer's duty to engage in the interactive process.

The Court of Appeals reversed the dismissal of the wrongful discharge claim and remanded it to the District Court. It held that a temporary impairment *does* qualify as a disability when the impairment was temporary but sufficiently severe to substantially limit a major life activity, in plaintiff's case, the ability to walk.

Additionally, the Court of Appeals flatly rejected the employer's attempt to distinguish between temporary impairments caused by injuries and temporary impairments caused by permanent conditions. In the Court of Appeal's view, there is no basis in the ADAAA or the EEOC's regulations for such a distinction.