

## **EMPLOYMENT LAW “SOUND BITES”: AMERICANS WITH DISABILITIES ACT CASES**

The following decisions, not all of which are precedential for Illinois employers, are intended to help educate employers on subjects relating to disability discrimination cases.

### **“Substantially Limiting” Condition**

The United States District Court located in the Northern District of Illinois recently ruled that a former employee with idiopathic pulmonary fibrosis failed to establish that she was substantially limited in breathing, although the evidence showed that the employee’s lung volume was 60 percent of normal, she was on a transplant list for a new lung, required medications and oxygen and was breathless when walking and climbing stairs. The court reasoned that reduced pulmonary functioning and lung volume and being on a transplant list described characteristics of her condition rather than limitations on her daily ability to breathe, prescriptions and oxygen are corrective measures and not limitations, and she had not been using oxygen during the day until after she was discharged. The linchpin of the court’s decision was the employee’s testimony that she was not substantially limited in her ability to breathe.

### **Public Accommodations**

A Federal Court in California recently ruled that blind customers who cannot use Target Corporation’s Website can sue for discrimination under Section III (the Public Accommodations section) of the Americans with Disabilities Act (“ADA”).

### **Morbid Obesity**

The Sixth Circuit Court of Appeals recently ruled that non-physiological morbid obesity is not an impairment under the ADA.

### **Essential Functions**

The Eleventh Circuit Court of Appeals held that a hearing-impaired employee of a retail store failed to show that he could perform the essential functions of a “loss prevention associate,” whose job is to identify and apprehend shoplifters. The court found that the employee could not communicate instantaneously with other loss prevention associates throughout the store using walkie-talkies and an intercom while observing the suspect; thus, the employee was not a “qualified individual with a disability” under the ADA.

### **Failure to Accommodate Employees Who Were Released to Work**

The Equal Employment Opportunity Commission recently conciliated a claim against JPMorgan Chase & Co. in the amount of nearly \$2.2 million dollars on behalf of a group of 222 former employees who were not reinstated after being medically released to return to work after leaves of absence exceeding six months. Bank One's policy protected employees' jobs for leaves of less than six months but not more. When the employees attempted to return to work, if their jobs had been filled during their absence, the employees had 30 days to find another position within Bank One or their employments were terminated. This case demonstrates that the ADA's "reasonable accommodation" provision can extend well beyond the FMLA's 12-week guarantee of job security and prohibits a hard and fast rule of denying reinstatement after a set period of time.

### **Dismissal of Bipolar Employee for Egregious Workplace Misconduct Does Not Violate State Disability Discrimination Law**

The Massachusetts Supreme Judicial Court dismissed the disability discrimination suit of a bipolar Harvard University Museum receptionist, finding that her increasingly bizarre on-the-job behavior, culminating in an arrest for disorderly conduct, showed she was not a "qualified handicapped person" under state law. The court further held that such behavior precluded the employee from performing the essential functions of the position, with or without reasonable accommodation.

### **Diabetic Postmaster Who Sought Assistant Deemed Not Disabled**

The Seventh Circuit Court of Appeals affirmed a lower court's decision that a Wisconsin postmaster with progressively worsening Type 2 diabetes did not have to be provided with an assistant because his condition (pain, diabetic ulcers on both feet) did not constitute a disability. The court held that the record did not show that the employee was prevented (or severely restricted) from performing any major life activities such as walking, sleeping, eating, or sexual reproduction.

For further information regarding these cases or disability law in general, please contact Joan M. Eagle at 312-845-5439 or [jeagle@schwartzcooper.com](mailto:jeagle@schwartzcooper.com) or any other member of Schwartz Cooper's Labor & Employment Practice Group.