Creating Uncertainty for Employers Again…The ADA

Labor & Employment Law Update

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Making sure your company is complying with the ADA just got a little bit more difficult (as if it wasn't already difficult enough).

The Appellate Court for the Seventh Circuit recently issued two rulings that have added to the complexity of the ADA. In *Spurling v. C & M Fine Pack, Inc.,* 13-1708, 2014 WL 107968 (7th Cir. Jan. 13, 2014), the plaintiff had been fired after repeatedly falling asleep while on the job. After the district court granted summary judgment, the appeals court reversed finding that the company had notice that the employee was suffering from a medical condition that was covered by the ADA. It further held that the company should have explored possible accommodations, including providing additional time for the employee to be medically evaluated. The effect of *Spurling* is that employers must be more cognizant and careful when dealing with employees who report that a medical condition is impacting their ability to work.

While the decision in *Spurling* requires employers to be more careful when a medical condition is reported to them, the decision in *Gogos v. AMS Mech. Sys., Inc*., 737 F.3d 1170 (7th Cir. 2013), shows how far the door has been opened as to what qualifies as a disability by the 2008 amendment to the ADA. The 2008 amendments expanded the law and recognized for the first time that an impairment could rise to the level of a protected "disability" even if it was transitory, minor or temporary in nature. Indeed, a condition that is episodic, in remission, or managed by medicine may rise to the level of a disability if the condition substantially limits a major life activity when active. In *Gogos*, the court held that the plaintiff's single incident of a blood pressure spike and intermittent blindness was covered by the ADA. In doing so, the court stated that the relevant issue is not the duration of the incident, but rather did the condition substantially impair a major life activity when the incident occurred. Thus, an employer could be required to accommodate an individual for a single incident, even if it didn't know the individual had a medical condition or was on medication to manage a medical condition prior to the incident.

These two decisions make clear that in light of the 2008 ADA amendments, employers must be even more careful when making determinations as to whether a condition is a disability or not, and what if any employment actions may be taken. As demonstrated by *Gogos*, duration is no longer a strong measure of whether a condition is a disability. Similarly, as illustrated by *Spurling*,

employers must be careful not to jump to conclusions or make employment decisions before allowing an individual with a medical condition to provide clear documentation of that condition and whether it is a disability under the ADA. Unfortunately the ADA does not have a bright-line test for employers to follow. Employers must make sure that their procedures for addressing issues relating to their employees' claimed medical conditions are up to date and follow current case law, and that supervisors and management are trained on how to respond as these issues arise.

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