Eleventh Circuit Rules that Employers Must Reasonably Accommodate Employees Who Are “Regarded as Disabled”

The U.S. Court of Appeals for the Eleventh Circuit, in D’Angelo v. ConAgra Foods, Inc., No. 04-10629 (11th Cir. 2005), recently held that the Americans With Disabilities Act (“ADA”) requires employers to provide reasonable accommodations for employees they regard as disabled, even if the employees are not actually disabled.

The D’Angelo decision increases the risk of ADA litigation for employers in the Eleventh Circuit. Now that an employee need not establish the existence of an actual disability in order to maintain a “reasonable accommodation” ADA claim, covered employers should ensure that adverse personnel actions are not based on misperceptions that an employee is disabled.

ADA Overview

The ADA prohibits discrimination in employment decisions against disabled individuals who, with or without reasonable accommodation, can perform the essential functions of the positions they hold or seek to hold. The ADA places an affirmative obligation on employers to make reasonable accommodations for the known physical or mental limitations of such qualified individuals with disabilities. The ADA defines individuals as “disabled” if they: (1) have a physical or mental impairment that substantially limits one or more major life activities (including work); (2) have a record of such an impairment; or (3) are regarded as having such an impairment.

The Facts of the D’Angelo Case

Cris D’Angelo began working for ConAgra in an entry level position in its Singleton Seafood processing plant in October of 1998. Shortly before she began working for ConAgra, Ms. D’Angelo’s physician diagnosed her with vertigo and began treating her for this condition. Ms. D’Angelo did not mention her condition to ConAgra until after she was hired and began experiencing intense symptoms of vertigo (including dizziness and nausea) while performing her work.

After she informed her supervisors of these intense episodes of vertigo early in her employment, ConAgra relieved Ms. D’Angelo from performing the specific assignments she had identified as triggering her condition. Thereafter she managed to perform her work satisfactorily and was twice promoted. However, Ms. D’Angelo once again began to experience episodes of vertigo in September of 2001, when a new supervisor, who had no knowledge of her condition, assigned her to monitor a conveyor belt. Complaining that working at the conveyor belt made her feel sick because of her vertigo, Ms. D’Angelo asked her supervisor for a different work assignment. In response, her supervisor requested that she provide documentation of her condition from a medical professional. Ms. D’Angelo complied with request, providing ConAgra with a note from her doctor explaining that she suffered from vertigo and that this condition “affects her when her eyes have to look at moving objects such as belts.” The note further explained that “she should avoid this situation
since it could cause her to fall and sustain injury.” After considering the medical restrictions placed on Ms. D’Angelo, ConAgra determined that her vertigo prevented her from performing the essential functions of her position without serious risk her own safety and that of her co-workers. Finding that no positions existed within its Singleton Seafood plant that would not require Ms. D’Angelo to look at moving objects, ConAgra terminated her employment.

Ms. D’Angelo filed suit against ConAgra alleging that by terminating her rather than granting her a “reasonable accommodation” (i.e., assigning her to a position that did not require her to work on or near a conveyor belt), ConAgra had discriminated against her on the basis of her vertigo, which she claimed constituted both an actual and a regarded disability under the ADA. The district court granted ConAgra summary judgment as to both Ms. D’Angelo’s “actually disabled” and “regarded as disabled” claims, finding that her vertigo was not an actual disability under the ADA and that someone who is merely regarded as disabled but not actually disabled is not entitled to a reasonable accommodation.

The Eleventh Circuit’s Decision

On appeal, the Eleventh Circuit agreed with the district court’s holding that Ms. D’Angelo was not “actually disabled” within the meaning of the ADA, because her vertigo only limited her ability to perform the single particular job of working at a conveyor belt and therefore did not “substantially limit” her in the major life activity of working. However, the Eleventh Circuit rejected the district court’s holding that individuals, such as Ms. D’Angelo, who are regarded by their employers as having a disability are not entitled to a reasonable accommodation under the ADA.

Relying on the ADA’s definitions of “qualified individual,” “disability,” and “discrimination,” the Eleventh Circuit concluded that the plain language of the ADA requires employers to provide reasonable accommodations for employees who are merely regarded as disabled. The Court noted that the ADA defines “a qualified individual with a disability” as “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” “Disability,” in turn, is defined by the ADA to include individuals who are regarded as having a disability. The Court found that in light of the ADA’s definition of disability, its prohibitions on discrimination should apply equally to those who actually are disabled and those who are merely “regarded as” disabled. Furthermore, the Court noted that discrimination under the ADA includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee.” Accordingly, the Eleventh Circuit held that the ADA could only be read to include a requirement that employers make reasonable accommodations for individuals regarded as having disabilities who, with or without such reasonable accommodation, can perform the essential functions of their employment positions.

The Eleventh Circuit also noted that its decision was consistent with the Supreme Court’s interpretation of the Rehabilitation Act’s reasonable accommodation requirements in School Board of Nassau County v. Arline, 480 U.S. 273, 107 S.Ct. 1123, (1987). In Arline the Supreme Court had held that an employee who demonstrates that she is regarded as handicapped by her employer qualifies as a “handicapped individual” under the Rehabilitation Act, 29 U.S.C. § 701 et seq., and is therefore entitled to reasonable accommodation. Noting that the ADA’s definition of “disability” is drawn almost verbatim from the Rehabilitation Act’s definition of “handicapped individual,” the Eleventh Circuit held that “since the Rehabilitation Act require[s] employers to accommodate employees who [are] disabled in the regarded-as sense, we can find no principled basis for concluding that the more expansive ADA does not.”
Split in the Circuits – Supreme Court to Review?

The Eleventh Circuit is the only federal Court of Appeals to join the minority view espoused by the Third Circuit in *Williams v. Phila. Hous. Auth. Police Dep’t*, 380 F.3d 751, 772-76 (3d Cir. 2004). The Fifth, Sixth, Eighth and Ninth Circuits have reached the opposite conclusion, finding that requiring employers to accommodate individuals who are merely regarded as disabled would produce anomalous results that Congress could not have intended. See, e.g., *Kaplan v. N. Las Vegas*, 323 F.3d 1226, 1232-33 (9th Cir. 2003); *Weber v. Strippit, Inc.*, 186 F.3d 907, 916-17 (8th Cir. 1999) (noting that providing accommodations to individuals merely regarded as disabled would entitle some impaired, but not actually disabled, individuals to reasonable accommodations based on their employers’ misperceptions of their impairments, while other similarly situated employees whose impairments are perceived accurately are not entitled to such accommodations). This split in the Circuits raises the possibility that the Supreme Court will step in to resolve the issue.

Protective Measures Employers Should Consider

Until this issue is resolved by the Supreme Court, employers in areas outside of the 5th, 6th, 8th and 9th Circuits, and particularly those in the 3rd and 11th Circuits, should exercise caution when making adverse personnel decisions with regard to employees suffering from impairments that do not rise to the level of an actual disability as defined by the ADA. In particular, it is important that employers in these jurisdictions ensure that such decisions are not based on a misperception that an employee is disabled.\(^1\)

The practical effect of the D’Angelo decision most likely will be felt in those situations where an employer initially has accommodated an employee’s impairment but subsequently fails or refuses to provide further or additional accommodations. Where the subsequent decision is made with full knowledge of the prior accommodation and full appreciation of the legal risks involved, there may be nothing the employer can do to reduce the risk of litigation. However, as the facts of the D’Angelo case demonstrate, many times the subsequent decision not to accommodate is made by a supervisor who has no knowledge of the prior accommodation and who fails to involve others in the organization with a need to know. This latter situation can be avoided by implementing and demanding strict adherence to internal workplace controls and reporting obligations. For example, employers should consider requiring that both the employee requesting an accommodation and the supervisor to whom the request has been made inform the appropriate human resources officials of the request and underlying circumstances. Employers also should consider, subject to maintaining appropriate and necessary confidentiality, having appropriate designated human resources personnel ensure that whenever an impaired employee is assigned to a new supervisor, the new supervisor is informed of the employee’s condition and any previous accommodations made to the employee. Such steps will go a long way toward ensuring that employees receive consistent treatment for their impairments (perceived and actual) and reducing the risk of “regarded-as” disability discrimination claims.

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1. In support of this finding, the Court noted that in spite of her vertigo Ms. D’Angelo had performed her work in a manner that was fully satisfactory to ConAgra up through the date of her discharge and that she had twice received promotions.

2. Additionally as the Eleventh Circuit notes in D’Angelo, the First Circuit has assumed without expressly deciding that the ADA requires reasonable accommodations for employees regarded as disabled. *Katz v. City Metal Co.*, 87 F.3d 26, 32-34 (1st Cir. 1996).

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