

Does a brief, temporary condition constitute a disability?

by Jodi R. Bohr
Tiffany & Bosco, P.A.

The Americans with Disabilities Act (ADA) defines disability in three ways: (1) "a physical or mental impairment that substantially limits one or more major activities"; (2) "a record of such impairment"; or (3) "being regarded as having such an impairment." The purpose of the 2008 ADA Amendments Act (ADAAA) was to reject the U.S. Supreme Court's narrow interpretation of the definition of disability under the ADA and to "reinstate a broad scope of protection." Specifically, the ADAAA states that the phrase "substantially limits" must be construed broadly in favor of expansive coverage.

What if impairment is brief and temporary? Is an employee disabled under the ADAAA when the condition is transitory in nature, limited to recovery from surgery? Relying on other courts across the country, an Arizona federal court ruled that the duration of impairment is one factor relevant to determining whether that impairment limits a major life activity substantially enough to constitute a disability under the ADAAA.

What you need to know

Antonio Valenzuela was a sales representative for Alexander Automotive Group, selling new and used Toyotas in Yuma. During his employment, he visited an eye doctor because he was experiencing cloudy vision and headaches. The visit resulted in an unexpected eye surgery, which impaired his ability to drive, walk, and see while he recuperated. As a result, he needed time off work to recover.

After approximately six weeks of medical leave, Valenzuela returned to work without restrictions. Within about five more weeks, the dealership terminated his employment for "lack of performance." His discharge coincided with the release of the sales report for the preceding quarter—including the time he was on medical leave—which showed that he hadn't met minimum quarterly sales goals.

Valenzuela sued Alexander Automotive for, among other claims, disability discrimination and retaliation for exercising his rights under the ADA. The dealership maintained that Valenzuela couldn't show discrimination because he wasn't disabled under the ADA. The dealership also asserted that he couldn't show retaliation because he didn't engage in protected activity and couldn't establish a causal link between his alleged protected activity and his discharge. The dealership asked the court to enter judgment in its favor on this basis without conducting a trial.

Can a brief impairment be a disability?

The dealership didn't dispute that Valenzuela had eye surgery or that his postsurgery condition impaired his ability to see, walk, and work—all of which are major life activities. Instead, it argued that his postsurgery condition was so brief and temporary (about six weeks) that it couldn't qualify as a disability under the ADA. Valenzuela responded that the ADA no longer imposes strict temporal limitations on substantially limiting impairments and that the transitory nature of his condition was just one factor to be considered when deciding whether he was disabled.

The court agreed with Valenzuela, noting that the ADAAA affords broad and expansive coverage. It ruled that—unless Valenzuela and the dealership reached a settlement—whether the brevity of his condition renders his limitations insubstantial is a question for a jury to decide on his ADA discrimination claim.

Protected activity, causation, and pretext?

On the ADA retaliation claim, the dealership argued that Valenzuela didn't engage in protected activity. The court quickly rejected that argument, noting that medical leave can be considered a reasonable accommodation for the purposes of the ADA and that requesting a reasonable accommodation is protected activity. He took medical leave as a reasonable accommodation and, therefore, engaged in protected activity under the ADA.

Even though there was a basis for a jury to find that Valenzuela was disabled or had engaged in protected activity, the dealership had another argument to fall back on. It asserted that he couldn't establish a causal link between his alleged disability and related protected activity and his discharge by relying, as he did, on temporal proximity alone. Remember, the discharge came within five weeks of his return from medical leave. Again, the court disagreed.

The court noted that the causal link can be inferred by timing alone and focused on two facts supporting a causal link. Valenzuela was discharged within two months of learning about his alleged disability and five weeks after he returned from leave. His employment was terminated based on a sales report that didn't adjust performance expectations to account for his potentially protected medical leave.

Finally, Alexander Automotive argued that it had a legitimate business reason for Valenzuela's discharge—his repeated failure to meet average monthly sales targets. To establish that this reason was pretextual (an excuse for illegal discrimination), Valenzuela presented sufficient evidence that sales goals and expectations were inconsistent and that a similarly situated employee (with regard to performance) who did not take medical leave was not fired.

Lesson learned

Regular readers may note that ADA lawsuits have been featured frequently in recent issues. This is because the federal judges in Arizona have been issuing a great number of disability-related decisions, indicating a corresponding uptick in disability-related claims. The ADAAA broadened the definition of disability to expand coverage. You must take care to understand the ADA, how to engage in the interactive process, and how to take adverse action for unrelated reasons against an employee protected by the ADA.

Notably, in Valenzuela's case, the dealership didn't prorate his sales goals to account for his six-week medical leave. Employees granted medical leave under the ADA, the Family and Medical Leave Act (FMLA), or Arizona's new paid sick time law cannot suffer adverse action for absences using protected medical leave. The dealership should have taken his medical leave into account and prorated his sales goals when evaluating his performance. Its failure to do so was one of the many factors considered by the court in ruling that a jury would get to decide this case if it was not settled

(which it was, less than a week after the court issued the ruling).

Jodi R. Bohr is an attorney with Tiffany & Bosco, P.A. and a contributor to Arizona Employment Law Letter. She practices employment and labor law, with an emphasis on litigation, class actions, and HR matters, and is a frequent speaker on a wide range of employment law topics. She may be reached at jrb@tblaw.com or 602-255-6082.