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Employment Law Update

Dickie McCamey
ATTORNEYS AT LAW

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Fourth Circuit holds that employee who can work 40 hours is not disabled under the ADA.

In keeping with the holdings of the Third Circuit Court of Appeals, as well as the First, Fifth, Sixth, and Eighth Circuits, the Fourth Circuit has held that an employee who is able to work a 40-hour week but not capable of working overtime is not substantially limited under the ADA.

The Americans with Disabilities Act prohibits a covered employer from discriminating against a qualified individual with a disability because of the disability. The Act, among other things, requires employers to provide reasonable accommodations under certain circumstances. Since the ADA was enacted, courts have been struggling with the question of whether work constitutes a major life activity as defined by the ADA. Congress resolved the issue in the 2008 amendments to the ADA by adding the term "working" to the definition of major life activity. However, the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

In the case presented to the Fourth Circuit, the employee worked as a maintenance engineer. His job required him to work rotating 12-hour shifts in order to maintain the company's 24-hour production process. The employee took a medical leave of absence and, upon returning to work, presented a note from his doctor stating that he could work a normal 8-hour day, 40-hour week but could not work overtime. The employee's job required that he work the 12-hour shifts which resulted in more than a 40-hour week. When the employer notified the employee that he could not return to the position because of his work restrictions, he filed an ADA claim alleging that the employer failed to provide reasonable accommodations. The company took the position that the employee was not a qualified individual under the ADA. Numerous courts have addressed the issue of whether an employee who can work a 40-hour week but no overtime because of an impairment is protected by the ADA. The Fourth Circuit joined those courts in holding that an employee with those restrictions is not substantially limited in a major life activity under the ADA and, thus, the employer is not required to provide reasonable accommodations.

This case underscores the ongoing evolution of cases under the ADA. Courts are continuing to address new fact situations and are facing the need to reconcile the new amendments with the facts presented to them. Employers must be vigilant about working to understand how the new amendments to the ADA impact their workforce and their employment decisions.

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If you have any questions or comments regarding this information, or would like to discuss other labor and employment issues, please contact Terri Imbarlina Patak at 412-392-5613 or via e-mail at tpatak@dmclaw.com, Thomas H. May at 412-392-5437 or via e-mail at tmay@dmclaw.com, or any other Dickie, McCamey & Chilcote lawyer with whom you have worked.

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