

## The Supreme Court Significantly Narrows ADA Definition of “Disability;” Inquiry Extended to “Daily Life” Tasks

By Bennett Pine and Shawn E. Phillips

**O**n January 8, 2002, the United States Supreme Court issued a unanimous opinion that will further hinder individuals asserting disability discrimination claims against employers under the Americans with Disabilities Act (“ADA”). In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (“*Toyota Motor*”), the Court limited the term “disability” to include only those which affect daily life activities rather than those activities which only are necessary to perform a certain job. “When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people’s daily lives, not whether the claimant is unable to perform the tasks associated with [the claimant’s] specific job,” the Court stated. As examples of such tasks, the Court referred to bathing, brushing one’s teeth, and the ability to perform household chores.

In *Toyota Motor*, the plaintiff alleged that she was disabled from performing her automobile assembly line job by carpal tunnel syndrome and related impairments, and sued her former employer for failing to provide her with a reasonable accommodation as required by the ADA. The district court granted the employer’s motion for summary judgment, and the United States Court of Appeals for the Sixth Circuit reversed, holding that the plaintiff was required to and did in fact demonstrate that her manual disability involved a “class” of manual activities affecting her ability to perform tasks as work. The Supreme Court reversed the decision of the Sixth Circuit, providing for a more restrictive interpretation of the term “disability.”

The ADA defines a “disability” as “a physical or mental impairment that substantially limits one or more of the major life activities” of an individual. In interpreting the terms “physical impairment” and “major life activity,” the Court looked to regulations issued by the Equal Employment Opportunity Commission (“EEOC”) and the Department of Health, Education and Welfare (“HEW”). The HEW regulations include

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### Employee Promise to Arbitrate Claims Does Not Bar EEOC Court Action for Employee Specific Relief

**O**n January 15, 2002, the Supreme Court, in a decision which may cloud the finality of employment arbitration awards, held in *EEOC v. Waffle House, Inc.* that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as backpay, reinstatement, and damages, in an ADA enforcement action. Looking to the ADA, Title VII of the Civil Rights Acts of 1964, and the Federal Arbitration Act, the high court determined that the federal policy favoring arbitration does not trump the plain language of Title VII which grants the EEOC the authority to pursue victim-specific relief “regardless of the forum that the employer and employee have chosen to resolve their disputes.” Simply put, after a charge of discrimination is filed with the EEOC, Title VII makes the EEOC “the master of its own case.” The majority opinion, delivered by Justice John Paul Stevens and joined by Justices Sandra Day O’Connor, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer, was followed with a lengthy

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"performing manual tasks" as an example of a "major life activity." The regulations, however, do not define "significant" or "major," which the Court noted are commonly defined as "to a large degree" and "important," respectively. From these regulations and definitions, the Court interpreted "disability" to mean that the claimant must be unable to perform the variety of tasks central to most people's daily lives. The Court also reasoned that because the ADA provides protection outside of the workplace, i.e. in public facilities and transportation, a court's inquiry should not be limited to the effect of the disability on work-related tasks. Finally, the Court said that "the impairment's impact must also be permanent or long term."

This decision is just another step in the Court's recent progression toward narrowing the scope of individual rights under the ADA. For example, in *Sutton v. United Air Lines, Inc.* and *Murphy v. United Parcel Service, Inc.*, both of which were decided on June 22, 1999, the Supreme Court limited the scope of potential plaintiffs in disability suits by articulating a new element, the existence of mitigating measures, in determining whether an individual's impairment qualifies her as "disabled" within the meaning of the ADA. Specifically, the Court stated

that "[a] person whose physical or mental impairment is corrected by medication or other measures does not have an impairment that presently 'substantially limits' a major life activity." Taken together, the recent decisions by the Court regarding the ADA limit the concept of who is or may be considered disabled under the statute, should limit the number of frivolous claims, and make it easier for employers to defeat ADA claims. ■

**Practice Tip:**

*While the Supreme Court decision in Toyota Motor sounds a major victory for employers, the decision also raises a number of questions to be answered by future cases: May an employer question prospective or current employees about the impact of a disability on non-work related activities? Will the Court's opinion be extended to non-manual job functions and a broad range of stress-related and other psychological impairments? How will "permanent" or "long term" impairments be assessed?*

*Employers should also be aware that individuals may avail themselves of the broader protections still available under many state and local laws.*

*Members of our Labor and Employment Law Group would be happy to answer your questions about these Supreme Court rulings or other issues facing employers under the Americans with Disabilities Act.*

## Legal Review of Layoff Decisions: Time Well Spent

By Dona S. Kahn & Pablo Quiñones

**T**hese days with reductions-in-force being contemplated across the board, it is important to minimize your company's exposure to lawsuits by those who are slated for layoff, alleging discrimination in their selection.

Our firm is regularly retained by law firms and corporations, which want someone outside their organization to look over proposed layoffs to ensure that the layoff decisions were undertaken for legitimate, nondiscriminatory reasons. Law firms, in particular, are often faced with critical partnership decisions that will almost always benefit from independent review.

There are many reasons to have someone outside your organization do the review. Here are the ones we consider most important:

**1. Punitive damages:** Large sums for punitive damages can be awarded in discrimination cases for personnel decisions that are found to be made

in reckless disregard of the law. Judges, however, will almost never submit this issue to a jury when outside counsel reviewed the layoffs and either "blessed" the proposed actions, or made suggestions for changes which the employer adopted.

**2. Neutral review:** An outside person has no prejudices or biases about any of the people involved and can therefore read performance reviews and compare employees with a completely open mind, enabling him or her to spot facts that a jury may find suspect.

**3. Intra-department turf war:** Disputes between department heads about whose people are more valuable to the company or firm are eliminated or at least diminished by having an outside person review the material and make recommendations.

**4. Confidentiality:** Discussions with personnel of the company and the outside reviewer can be

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more candid since all of it will be handled either confidentially or with great discretion.

**5. Time saving:** The process, if done by an outside reviewer, is not as time consuming for the company and is more cost effective.

Depending on the circumstances, the outside reviewer studies the proposed actions, the performance reviews of each person in the universe of those considered for layoff, the race, sex, age, and date of hire of each person and any documentation deemed relevant. Several hours are then spent interviewing the decision-makers to ascertain the appropriateness of the criteria applied, for example, the need for the layoff, and the factors considered in deciding whom to layoff.

It is then a simple matter for the reviewer to make certain the criteria, if appropriate, has been applied in a uniform non-discriminatory manner and that similarly situated employees have been treated similarly and fairly.

The whole process, depending on the size of the pool of employees at risk, can take from two to four days, time well spent, which will often form the basis of the granting of summary judgment for the defendant should litigation ensue.

Another service an outside reviewer can provide is investigating charges of discrimination by an employee. Having an attorney from a firm which does not handle your litigation is preferable so that the attorney of your choice is not disqualified from representing you in court because the attorney is a fact witness, having conducted the investigation.

Further, the fact that an investigation was done in response to a complaint made pursuant to a company policy on discrimination and remedial action taken can form the basis of the granting of a motion for summary judgment for the company.

It is also true that employees are not as distrustful of the motive and biases of a neutral third party, making settlement much more likely. ■

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dissenting opinion by Justice Clarence Thomas, who opined that the majority opinion will "discourag[e] the use of arbitration agreements," "discourage employers from entering into settlement agreements," and place "those employers utilizing arbitration agreements at a serious disadvantage." The decision may slow the trend of using arbitration to resolve employment disputes spurred by the Supreme Court's decision last year in *Circuit City Stores v. Adams*, which upheld the use of mandatory arbitration in the workplace. ■

**Practice Tip:**

*Although the EEOC pursues litigation in an extremely small number of all discrimination claims filed, employers who put mandatory procedures in place must also be aware of a possible "second bite of the apple" by the EEOC in such matters.*



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