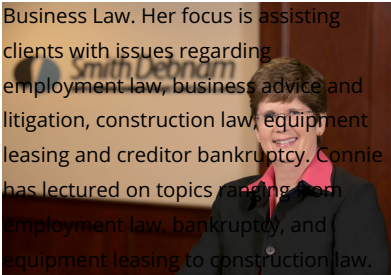


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ABOUT THE AUTHOR

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New guidance on Temporary Disabilities Act under ADA

February 20, 2014 | by

Let's assume that you have an employee who breaks his leg. His consulting physician tells him that he won't walk normally for a period of at least seven months. Without surgery, bed rest, pain medication, and physical therapy, your employee's physician advises him that he may not be able to walk for more than a year after the accident. Essentially, your employee will heal, but it will take some time.

Does your employee qualify as disabled under the Americans with Disabilities Act?

According to the United States Fourth Circuit Court of Appeals, which includes North Carolina in its jurisdiction, the answer is yes. The Court ruled in the case of *Summers v. Altarum Institute* on January 23, 2014 that the 2008 amendments to the Americans with Disabilities Act (ADAAA) extend protections to employees with severe temporary impairments.

The ruling serves to revise a wrongful discharge claim brought by a senior analyst who was discharged in the wake of an injury that left him unable to walk for several months. His job required him to travel to his client's offices to conduct statistical research, write reports, and make presentations. His client preferred that he work on-site but permitted him to work remotely from home when "putting in extra time on a project." While his employer provided him with short-term disability benefits, it did not follow up on his request that they discuss how he might successfully return to work or engage in any interactive process with Summers to determine if there were any reasonable accommodations that could be made. In determining that this temporary injury qualified as a disability under the ADAAA, the Fourth Circuit specifically held that:

The amended Act provides that the definition of disability shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by its terms . . . Although impairments that last only for a short period of time are typically not covered, they may be covered if sufficiently severe . . . Summers alleges that his accident left him unable to walk for several months and that without surgery, pain medication, and physical therapy, he "likely" would have been unable to walk for far longer. The text and purpose of the ADAAA and its implementing regulations make clear

that such an impairment can constitute a disability.

In evaluating this decision, it is notable that the Fourth Circuit, which has a reputation for being a conservative, employer-friendly court, is the first appellate court to apply the ADAAA's expanded definition of "disability." This decision is consistent with the EEOC's recent guidance providing that an impairment lasting less than six months can constitute a disability.

The take-away from this decision is that employers need to be more receptive than ever to accommodating employees with temporary injuries.

If you have questions or concerns about this court decision or other legal issues, please feel free to contact [Connie Carrigan](mailto:ccarrigan@smithdebnamlaw.com) at ccarrigan@smithdebnamlaw.com.

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