BASIS FOR DISABILITY DISCRIMINATION CLAIMS BY OBESE INDIVIDUALS

The broad principle for these claims is provided in the ADA Amendments Act of 2008, effective January 1, 2009, which states “The definition of disability…shall be construed in favor of broad coverage of individuals…to the maximum extent permitted…”

The EEOC regulations of March 25, 2011 provide “the definition of the term impairment does not include physical characteristics such as…weight…that are within normal range and are not the result of a physiological disorder.”

The EEOC Compliance Manual, effective November 21, 2009 was updated to include the statement “[B]eing overweight, in and of itself, is not generally an impairment…On the other hand, severe obesity, which has been defined as body weight more than 100% over the norm, is clearly an impairment.”

This may mean that in the future more suits alleging a disability claim under the ADA based on obesity will be brought and more claims will survive summary judgment. This is yet another area for review and concern for employers in making employment decisions.

NO COMPARATIVES – NO PREGNANCY DISCRIMINATION

In Arizanovska v. Wal-Mart Stores, Inc., No. 11-3387, June 12, 2012, 7th Circuit, the plaintiff alleged that the defendant discriminated against her on account of her pregnancy and her national origin because the employer would not create a light-duty position after the plaintiff experienced bleeding during her pregnancy and obtained a weight-lifting restriction from her physician. However, the plaintiff failed to identify any similarly situated co-worker outside of her protected classifications who received more favorable treatment. The record showed that the employer consistently applied its policy of not creating new light-duty positions for any non-pregnant employee who was under medical restrictions.

NO COMPARATIVES – NO NATIONAL ORIGIN DISCRIMINATION

In Naficy v. Illinois Dept. of Human Services, 2012 WL 4070115 (7th Cir. 2012), the employee brought a Title VII national original discrimination claim against the Illinois Department of Human
Services (IDHS). The employee’s claim was precluded because the employee’s proposed comparators did not constitute similarly-situated employees. The co-employees were not similarly-situated in relation to the employee’s reassignment to a part-time social worker position as part of the layoff procedure because both of the proposed comparators differed from the employee in critical respects. The employee and one of the comparators had different language abilities that qualified the proposed comparator for a full-time position for which the employee was not qualified. The other proposed comparator, unlike the employee, opted out of the “bumping” process, which placed that comparator in a fundamentally different position than the plaintiff when it came to layoffs.

NO TITLE VII NATIONAL ORIGIN CLAIM WHERE THE EMPLOYEE WAS IN CONFLICT WITH HER SUPERVISOR

In Guimaraes v. SuperValu, Inc., 2012 WL 967967 (8th Cir. 2012), the court ruled that the employee failed to show that her employer discriminated against her based on her national origin in violation of Title VII. This was because the employee’s supervisor may have lawfully targeted the employee because of a personality conflict between the employee and the supervisor; because the employee critiqued the supervisor’s management style; because the supervisor honestly did not believe the employee was competent or because the employee was trying to get a green card.

NO ADA VIOLATION WHERE THE PLAINTIFF OFFERED NO INFORMATION FOR AN ACCOMMODATION

In Hoppe v. Lewis University, No. 11-3358, August 31, 2012, 7th Circuit, the plaintiff, professor’s ADA action alleged that the employer failed to accommodate her adjustment disorder and then removed her from teaching one class in retaliation for seeking accommodation for her disability. The facts were that while the employee’s doctor wrote a note on behalf of the plaintiff seeking a change in her office location, the plaintiff failed to establish any ADA violation. This was because the employee’s doctor failed to provide the employer with necessary information about a requested change in office location as an accommodation. Further, the employer nevertheless offered the employee three options for changing her office location. Additionally, the employee failed to prove a causal connection between her request for accommodation and withdrawal of the class she was teaching where the employee failed to present evidence indicating that the decision-maker with respect to removal of her class was aware of the employee’s accommodation request.

McKenna Storer has offices located at:

33 N. LaSalle Street 666 Russel Court
Suite 1400 Suite 303
Chicago, IL 60602 Woodstock, IL 60098
(312) 558-3900 (815) 334-9690

This Employment Bulletin is intended to provide information of general interest and does not constitute legal advice. Readers should consult with their counsel before taking any action based on the information in this publication. All rights reserved. Copyright 2012, McKenna Storer.

For information, contact James P. DeNardo at 312.558.3922 or Kristin Tauras at 312.558.3923.