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SUPREME COURT ISSUES PAIR OF DECISIONS: ONE PRO-EMPLOYER AND ONE PRO-EMPLOYEE

Narrowing the Definition of Disability: *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*

The Americans with Disabilities Act ("ADA") requires an employer to provide, among other things, "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability." The ADA defines "disability" in three ways:

1. a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. a record of such an impairment; or
3. being regarded as having such an impairment.

Two years ago, the U.S. Supreme Court decided *Sutton v. United Air Lines, Inc.*, which answered the question of what it means to be "disabled" within the meaning of the ADA when an employee claims he suffers from an impairment that "substantially limits" the major life activity of working. In the recently and unanimously decided *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Supreme Court clarified the definition of "disability" by examining what it means to have an impairment that substantially limits a "major life activity" other than working, in this case, the major life activity of performing manual tasks. The Court concluded that an individual is substantially limited in the major life activity of performing manual tasks when his or her impairments prevent or restrict him or her from performing tasks that are of "central importance" to most people's daily lives.

Ella Williams, an assembly line worker in Toyota's Georgetown, Kentucky, automobile assembly plant, claimed she was entitled to reasonable accommodations from her employer because her carpal tunnel syndrome and related impairments substantially limited the major life activity of performing manual tasks, primarily "repetitive work with hands and arms extended at or above shoulder level for extended periods of time." Reversing and remanding the Sixth Circuit's grant of partial summary judgment in favor of Ms. Williams, the Supreme Court concluded that the record evidence was insufficient to determine whether Ms. Williams was "disabled" within the meaning of the ADA, thereby entitling her to the Act's protections.

The Court first noted that merely having an impairment does not make one disabled for purposes of the ADA. "Substantially" in the phrase "substantially limited" means "considerable" or "to a large degree." "Major" in the phrase "major life activities" means "important." Consequently, to be "substantially limited" in the "major life activity of performing manual tasks," and thus "disabled" within the meaning of the ADA, the Court held that an individual must suffer from an impairment that "prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."

The Court stressed that the terms "substantially"

and "major" are to be interpreted strictly. When it enacted the ADA in 1990, Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities." From this legislative finding, the Court reasoned that if "Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher." Thus, under the Supreme Court's analysis, impairments that interfere in only a minor way with the performance of manual tasks generally or that significantly interfere with tasks that are not "central" to most people's daily lives do not qualify as "disabilities" within the meaning of the ADA.

The Court also stressed that it is insufficient for individuals attempting to prove disability status under the ADA merely to submit evidence of a medical diagnosis of an impairment. Congress intended the existence of a disability to be determined on a case-by-case basis. Thus, the disability analysis must focus on the effects of an impairment on that individual, specifically. An individualized assessment of the effect of an impairment is particularly necessary when an impairment, such as carpal tunnel syndrome, is one whose symptoms vary widely from person to person. Given the large potential differences in the severity and duration of the effects of carpal tunnel syndrome, an individual's carpal tunnel syndrome diagnosis, on its own, does not establish that the individual is disabled within the meaning of the ADA.

Although largely a victory for employers faced with employee claims of ADA covered disabilities, *Williams* does have some negative implications. In reversing the decision of the court of appeals, the Supreme Court criticized the lower court for focusing its disability analysis only on the plaintiff's inability to perform manual tasks associated with her job. The Court reasoned that manual tasks unique to any particular job are not necessarily important parts of most people's daily lives. Therefore, the lower court should have concentrated less on the plaintiff's ability to perform the specific repetitive motions associated with her job, which may not be particularly important for most people, and more on plaintiff's ability to perform other tasks, such as household chores, bathing, and brushing her teeth, which the Court concluded are more central. What this means is that employers attempting to grapple with the difficult question of an employee's disability status for purposes of determining its obligations to provide reasonable accommodations will now have to consider what an employee can do, both on and off the job.

Allowing the EEOC to Sue Even if an Individual Claimant Agrees to Arbitrate: *EEOC v. Waffle House, Inc.*

Since the U.S. Supreme Court's 1991 landmark decision in *Gilmer v. Interstate/Johnson Lane Corp.,* which upheld for the first time private agreements to arbitrate statutory discrimination suits, arbitration agreements have become increasingly popular with American employers. The American Arbitration Association estimates that it alone has been designated to administer arbitration agreements covering more than 3.5 million employees and countless more employees are covered by arbitration agreements enforced by other alternative dispute resolution organizations. Despite the huge popularity of arbitration agreements, however, one important question remained unresolved after *Gilmer*: what effect such agreements would have on the Equal Employment Opportunity Commission's ("EEOC") right to enforce the non-discrimination laws.

The federal courts of appeals adopted two competing approaches to resolving the impact of private arbitration agreements on the EEOC. One line of circuit court authority held that private agreements to arbitrate employment disputes had no impact on the EEOC. The theory was that, because the EEOC is not a party to an agreement signed by an employee, basic contract principles dictate that the EEOC cannot be bound. However, a competing line of circuit court authority held that, although the EEOC retains the right to sue employers for broad-based injunctive relief, the EEOC is precluded from seeking victim-specific relief

(*e.g.*, backpay and damages) when the complaining employee has signed an arbitration agreement. The theory was that injunctive relief to eradicate discriminatory conduct is a governmental enforcement function that the EEOC is statutorily authorized to exercise. However, the EEOC's enforcement action loses much of its governmental quality at the point where it seeks victim-specific relief. At that point, the liberal federal policy favoring private arbitration agreements manifested in the Federal Arbitration Act ("FAA") takes precedence and precludes the EEOC from recovering damages and other monetary relief on behalf of the employee.

In *EEOC v. Waffle House, Inc.*, the U.S. Supreme Court agreed to resolve the dispute and, on January 15, 2002, in a 6 to 3 decision, sided with those circuit courts holding that private agreements to arbitrate employment disputes have no effect on the EEOC. The Court started with the plain language of Title VII and observed that the EEOC unambiguously has the right to obtain both broad injunctive relief and victim-specific monetary relief in enforcement actions under the statute. Nothing in Title VII suggests that the existence of an arbitration agreement between private parties materially changes the EEOC's statutory function or the remedies that are otherwise available.

The Court next examined the FAA and observed that, although the FAA ensures the enforceability of private agreements to arbitrate, only parties to such agreements are bound. The FAA does not purport to place any restrictions on *non-parties*, like the EEOC. Therefore, arbitration agreements do not restrict the EEOC's choice of forum and, consequently, its right to sue in court for any remedy authorized under Title VII.

Although appearing to be a defeat for employers, *Waffle House* has little practical impact. *Waffle House* indisputably nullifies arbitration agreements in cases where the EEOC decides to sue. However, EEOC enforcement actions are rare. In fiscal year 2000, EEOC cases constituted less than 2% of all discrimination claims filed in federal court. Indeed, even among those cases where the EEOC has found probable cause at the administrative stage, the agency subsequently filed suit less than 5% of the time. Accordingly, disputes between private individuals will remain the norm and well-drafted arbitration agreements will continue to enjoy judicial support in such cases.

Moreover, employers can do nothing to prevent EEOC enforcement, either through artful drafting of arbitration agreements or otherwise. *Gilmer* implied, and subsequent judicial authority has confirmed, that arbitration agreement provisions that purport to limit a party's right to file a charge of discrimination with the EEOC will not be enforced. Indeed, *Waffle House* underscored that the Court has "generally been reluctant to approve rules that may jeopardize the EEOC's ability to investigate and select cases from a broad sample of claims." Fortunately for employers, however, subsequent EEOC enforcement action after administrative proceedings have concluded is unlikely, making *Waffle House's* impact relatively small.

If you have any questions about these decisions or about the Americans with Disabilities Act generally, please call Bruce R. Alper (312/609-7890), James E. Bayles, Jr. (312/609-7785) or any other Vedder Price attorney with whom you have worked.

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