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ADA Compliance After 2nd Circ. Short-Term Injury Ruling

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The number of lawsuits alleging discrimination on the basis of disability is likely to increase following the June 30 decision by the U.S. Court of Appeals for the Second Circuit in Hamilton v. Westchester County, holding that disabilities lasting less than six months are covered under the Americans with Disabilities Act.[1][2]

Concluding that the district court erred "categorically" in holding that short-term injuries — like the plaintiff's dislocated knee and torn meniscus, in this case — were not qualifying disabilities under the ADA, the appeals court remanded the case for further proceedings on the ADA claim.

The Second Circuit follows the U.S. Court of Appeals for the First, Fourth and Seventh Circuits, which had already reached that conclusion.

As a result, it is likely that more ADA claims will be filed and survive dismissal motions in the federal courts in the Second Circuit.

It also will likely have similar consequences for claims under the New York State Human Rights Law, or NYSHRL,[3] as New York courts have consistently found federal authority interpreting the ADA to be persuasive when construing the state's own law, as well as local laws such as the New York City Human Rights Law.[4]

Private plaintiff ADA claims already form a significant portion of the federal courts' civil caseloads.

According to the Federal Judicial Caseload Statistics compilation for the year ending March 31, 2019,[5] new nonemployment ADA claims in the district courts increased by 2,478, to 11,290. These include suits involving access to public services, programs and activities, as well as access to public accommodations in private locations.

For the year ending March 31, 2020, another 562 new nonemployment ADA claims were made.[6]

Overall, nonemployment ADA claims increased by roughly 34.5% in that two-year period. By contrast, employment-related ADA claims in the same two-year period increased by only 107, or about 4.16%.

How does the Hamilton decision impact the wide range of entities subject to the disability laws?

Historical Background

Disability rights advocates have long worked to gain equal access to public and private services.

Some of the earliest successful efforts were the so-called white cane laws, which required drivers to give the right of way to visually impaired individuals carrying a white cane with a red tip.

But further progress was long in coming, notwithstanding the civil rights movement that gained momentum in the 1960s.

Congress ultimately passed the Rehabilitation Act in 1973,[7] which prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment and in the employment practices of federal contractors.

Because it applied only to federal programs and agencies, however, the Rehabilitation Act did not produce the widespread effect required to ensure general access for persons with disabilities.

The ADA was enacted in 1990 and was a far more ambitious statute. All the same, the ADA was narrowly interpreted.

In 2002, the U.S. Supreme Court held in Toyota Motor Manufacturing Kentucky Inc. v. Williams that a qualifying disability under the ADA must be permanent or long-term.[8] Under that standard, the plaintiff's complaint here — filed only 19 days after his injury — would have been dismissed as not involving a qualifying disability.

Finding that the ADA had not fulfilled its promise, Congress adopted the ADA Amendments Act in 2008[9] to overturn Toyota Motor's holding and broaden what qualifies as a substantial limitation on mobility.

Subsequently issued regulations made clear that an impairment of less than six months' duration can be "substantially limiting."[10]

The Hamilton Case

The Second Circuit's Hamilton opinion by U.S. Circuit Judge Denny Chin states there is a plausible inference that Hamilton's injury was ongoing and likely to last substantially longer than the time, 19 days after his injury, when he filed his claim.

The case was remanded for further proceedings on the ADA claim, although Hamilton's other claims were dismissed.

According to the facts of the case, Davonte Hamilton, who was incarcerated in the Westchester County Jail, was hurt playing basketball when he stepped on crumbled concrete in the recreational yard.

After his accident, the jail closed the courtyard but did not repair it. Meanwhile, Hamilton was left to get around with a knee stabilizer and later an elastic bandage; a medical recommendation that he be given an MRI test was not followed.

Hamilton's injury forced him to use crutches to move around the prison, which caused him both numbness and throbbing pain.

Because his cell was accessible only by stairs, he could no longer go outside for recreation.

The injuries also hampered Hamilton in climbing over a 30-inch step to reach the showers. Moreover, once inside, there were no mats, benches or railings to help individuals with a disability navigate the slippery shower floors.

The district court dismissed the plaintiff's claims, finding that Hamilton's injury, only 19 days old when he filed his complaint, was temporally too short to constitute a qualifying disability under the ADA.

Although given an opportunity to amend his complaint, Hamilton did not do so and his case was dismissed.

But he did appeal successfully, with the Second Circuit remanding for further proceedings, finding that "Hamilton's claim could not be dismissed as a matter of law simply because the injury causing these limitations was temporary."

Pragmatic Conclusions

It has been suggested that lawsuits involving ADA employment claims differ significantly from those involving other ADA claims, both in volume and result, in part because of the procedures that claimants must follow.

First, in the employment context, employers are often made aware of an issue when a request for an accommodation is made by the employee.

Second, as with other employment discrimination statutes, ADA employment claims first must be presented to the U.S. Equal Employment Opportunity Commission or a state agency with a work-sharing agreement.

The government agency acts as a gatekeeper for claims, often helping to facilitate a resolution for claims with merit. And claimants may choose not to proceed after the EEOC does not accept their claims; those who do may find that the courts come to the same conclusion the EEOC did.

In ADA Title II and Title III cases, however, there is no requirement that claims be presented to the EEOC or any other administrative body before proceeding to court.

And while ADA plaintiffs seeking to remove barriers to full use of a public or private facility cannot be awarded fines or damages under the ADA, they can recover attorney fees and costs. When a small business is sued, the prospect of having to pay not only its own legal fees but also the plaintiff's may be a powerful incentive to settle.

The ADA also does not require notice or an opportunity to cure before a lawsuit can be brought.

For small businesses that do not routinely deal with litigation, this may be baffling. Disability rights advocates say that 30 years is long enough for businesses to have learned what the law requires and to have complied. All the same, many businesses simply assume, for example, that leased premises comply with the law, so it can be a rude awakening to find they do not.

Finally, businesses also may learn the hard way that they operate in a state, city or county which has adopted a local statute mirroring the ADA that does provide for the award of statutory damages to a successful plaintiff. This is true, for example, under the NYSHRL and in New York City.[11]

Regardless of whether the claim is one based on employment under Title I or accommodations under Titles II or III of the ADA, the lesson from the Hamilton case is that covered entities must think more broadly about what constitutes a disability and be prepared to address and provide accommodations for shorter term but nonpermanent injuries.

A Looming Question

Along with much of the world, the U.S. has weathered nearly a year and a half of the COVID-19 pandemic.

While there has been great progress, in some respects great uncertainty remains about the long-term consequences of the disease — for example, among those suffering from what has come to be known as long-haul COVID-19.

In some cases, the consequences are seriously debilitating and would seem to meet the ADA standard for a disability. Will ADA claims be brought on behalf of long-haul COVID-19 sufferers? What accommodations would be deemed appropriate?

Presumably, under the logic of Hamilton, even shorter durations of the virus may lead to a need to provide accommodations.

Cases claiming discrimination based on the disability of COVID-19 already have been filed in federal and state courts in New York City, with some courts directly holding, and some assuming without addressing, that COVID-19 is a qualifying disability under the relevant statutes.[12]

These recent cases provide a preview of what the COVID-19 pandemic could add to the mix with respect to disability cases in New York.

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[1] 42 U.S.C. § 12101 et seq.

[2] Hamilton v. Westchester County, No. 20-1058-pr (2d Cir. June 30, 2021). https://www.ca2.uscourts.gov/decisions/isysquery/d9f2f0e7-781e-4f1d-a1d4-65d0714b5c9d/1/doc/20-1058_opn.pdf#xml

[3] N.Y. Exec. Law § 296 et seq.

[4] McGrath v. Toys "R" Us, Inc., 3 N.Y.3d 421, 429 (2004)

[5] https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2019 ("Federal Judicial Caseload Statistics 2019"). See also https://www.uscourts.gov/statistics/table/c-2/federal-judicial-caseloadstatistics/2019/03/31.

[6] https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020 ("Federal Judicial Caseload Statistics 2020"). See also https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020-tables.

[7] 29 U.S.C. § 901 et seq.

[8] Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002).

[9] Pub. L. No. 110-325, 122 Stat. 3553.

[10] See 28 C.F.R. Section 35.108(d)(ix).

[11] N.Y.Admin Code 8-101, et seq.

[12] See, e.g., Velez v. Girraphic LLC, 20 Civ. 5644 (JPC) (S.D.N.Y. May 10, 2021) (denying defendant's motion to dismiss that asserted that COVID-19 was not disability under NYCHRL); Alvelo v. The Geo Group, Inc., Index No. 708019 (Sup Ct. Queens Co.) (bringing discrimination claims under NYSHRL and NYCHRL based on COVID-19, filed April 7, 2021); Rodriguez v. SMA Distributors, LLC, et al., Index No. 607537/2020 (Sup. Ct. Nassau Co.) (filed July 24, 2020) (same); DelValle v. Theodore Docu, M.D., PC., et al., Index No. 157337/2020 (Sup. Ct. New York Co.) (filed Sept. 11, 2020). See also Payne v. Woods Servs., Inc., No. 20-4651, 2021 Us Dist Lexis 28198 (E.D. Pa. Feb. 16, 2021) (apparently accepting that COVID could be a qualifying disability under the ADA, but dismissing plaintiff's claims for failure to allege that COVID limited any major

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