Supreme Court Limits Employer Obligations Under ADA And FMLA

On June 10, 2002 the U.S. Supreme Court issued its third important decision of 2002 that significantly affects employer obligations under the Americans With Disabilities Act and Family and Medical Leave Act. Employers are strongly advised to review their ADA and FMLA policies and procedures to make certain that they comply with and benefit from the Supreme Court’s 2002 rulings.

Direct Threat To Employee Provides Employer Defense To ADA Claim

In *Chevron v. Echazabal*, the Supreme Court overruled the Ninth Circuit Court of Appeals by holding that an employer can refuse to employ an individual if putting the person in the job would create a direct threat to the health or safety of the individual. In this case the applicant had an abnormal liver that Chevron’s doctors said would be harmed by continued exposure to toxins at Chevron’s refinery. Chevron refused to employ the applicant and he sued Chevron under the ADA asserting that Chevron unlawfully refused to hire him because of his liver condition.

The ADA prohibits discrimination against a qualified individual with a disability. The ADA bans the use of qualification standards that screen out or tend to screen individuals with a disabilities; however, the ADA creates a specific employer defense if the qualification standard is “job-related” and “consistent with business necessity.” Under the ADA a qualification standard could specifically include “a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.” The EEOC, and now the Supreme Court, allows employers to carry the defense one step further by screening out applicants with disabilities that pose risks to other employees or themselves.

The Court allowed Chevron to exclude the applicant from employment based on the medical opinion of its company doctors. The Court was careful to note that an employer cannot exclude applicants from positions based on stereotypical or paternalistic notions of medical conditions or disabilities. Employers should make certain before they exclude an applicant or employee from a position because of a “direct threat” to the individual or others that they base the decision on the medical opinion of a doctor and the sound direction of employment counsel or human resources professionals.

**Employer Action Step** – Employers should review their employee handbook and employment policies to make certain that a valid and effective ADA policy is present. ADA policies should include statements that the employer:
- Will not discriminate against a qualified individual with a disability;
- Will make reasonable accommodations;
- Has an identified method to request accommodations;
- Cannot employ an individual in a position or provide an accommodation that will result in a direct threat to the health or safety of the individual or others in the workplace.

“Disabled” Employee Must Show That Disability Substantially Limits Employee In Broad Class Of Jobs Or Everyday Manual Tasks

Merely having a medical condition or impairment does not make an individual “disabled” under the ADA. In *Toyota Motor v. Williams* the Supreme Court held that to be “disabled” under the ADA an employee must establish that her impairment substantially limits a major life activity, and, with respect to the major life activity of performing manual tasks,
the employee must establish that her impairments prevent or restrict her from performing tasks that are of central importance in most people’s daily lives, not merely tasks associated with a specific job. The Court has previously held that when the major life activity at issue is working, an employee must establish that she is unable to work in a broad class of jobs. The Court continues to draw meaningful boundaries to limit who is “disabled” under the ADA.

In the Toyota Motor case the employee was diagnosed with carpal tunnel syndrome, myotendinitis, and other musculoskeletal disorders that prevented her from performing some of the manual tasks associated with her assembly line position. The Court held that whether the employee was disabled under the ADA had to be based on an individualized assessment of the employee’s medical condition, whether the condition was permanent or of a long duration, and whether the condition “substantially” or “to a large degree” limited a major life activity. The Court specifically held that when the condition at issue, such as carpal tunnel syndrome, has large potential differences in the severity and duration of the effects, a simple diagnosis on its own does not indicate whether the individual is disabled within the meaning of the ADA.

Employer Notice Obligation Under FMLA Explained

The FMLA’s central provision is simple enough – provide eligible employees 12 weeks of unpaid leave in a one year period following certain qualifying events. The Department of Labor’s regulations implementing the FMLA, however, are perceived by many employers to be onerous and unrealistic. The Supreme Court rejected one of those regulations by invalidating the requirement that an employer give an employee an additional 12 weeks of leave, regardless of the amount of leave the employer had already granted the employee, simply because the employer failed to provide the employee with written notice that the leave was being counted as FMLA leave. The Court left open the possibility that an employee may be able to show that an employer’s failure to give notice had a detrimental effect on the employee’s FMLA rights entitling the employee to damages and reinstatement.

Employer Action Step – Employers must take note that the Court did not invalidate all of the Department of Labor’s FMLA regulations. Employers should review their FMLA policies and procedures to make certain that appropriate certifications, notices and forms are being used and that FMLA leave is being carefully monitored. Please contact one of the Snell & Wilmer employment attorneys listed below to receive Snell & Wilmer’s Comprehensive FMLA Compliance Package.

Caution: Employers with employees in California, should be aware that California’s medical condition statute provides broader protection to employees than the ADA. Accordingly, employers should seek advice of counsel prior to implementing any policies or decisions as they relate to an employee covered by the ADA in California.

For additional information about the ADA and FMLA and the Supreme Court’s recent decisions please contact:

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