DBTAC: SOUTHEAST ADA CENTER

Americans with Disabilities Act
Case Law Developments
2008-2009

Since the passage of the Americans with Disabilities Act (ADA) in 1990, the Federal courts have heard thousands of cases involving ADA and Rehabilitation Act claims. It is important to understand that courts use the same analysis for employment cases under the Rehabilitation Act as they use for ADA Title I employment cases. The decisions of the Circuit Courts of Appeals and the U.S. Supreme Court hearing these cases have affected implementation and enforcement of the ADA. This document summarizes important decisions for 2008-2009, providing precedent or influence in these and other Federal courts in the Southeastern United States.

The U.S. Circuit Courts of Appeals with jurisdiction over states in the Southeast Region include:

- Fourth Circuit — North Carolina (NC), South Carolina (SC)
- Fifth Circuit — Mississippi (MS)
- Sixth Circuit — Kentucky (KY) and Tennessee (TN)
- Eleventh Circuit — Alabama (AL), Florida (FL), Georgia (GA)

Access to the complete versions of the ADA Case Law Alerts and Briefs presented in this paper are available from the Southeast DBTAC at: www.sedbtac.org/legalissues.php?idpg=54&audience=All#CLresults

Additional Legal Updates & Issues are available from the Southeast DBTAC at www.sedbtac.org/legalissues.php?idpg=14.

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Fifth (5th) Circuit Court of Appeals

Carmona v. Southwest Airlines Co.

536 F.3d 344

Decided July 16, 2008

Edward Carmona was a flight attendant who had psoriasis and psoriatic arthritis, which caused him to take 6-12 days of leave under the Family and Medical Leave Act each month. Mr. Carmona also took unexcused leave for illness and was disciplined for taking the unexcused leave. When Mr. Carmona injured his thumb and took 4 additional days of leave, he was fired under the leave policy of Southwest's collective bargaining agreement for taking too many days of leave. Mr. Carmona sued Southwest under the ADA, claiming Southwest should have accommodated him for his psoriasis and psoriatic arthritis by not counting his FMLA leave when applying its leave policy. The circuit court found that, because Carmona was seeking to enforce his statutory rights under the ADA, rather than his contractual rights under the collective bargaining agreement, and that the statutory rights were independent of the collective bargaining agreement rights, he was not required to go through the arbitration process called for by the collective bargaining agreement.

Equal Employment Opportunity Commission v. Agro Distribution, LLC.

555 F.3d 462

Decided January 15, 2009

The EEOC filed suit on behalf of Henry Velez, who had no sweat glands. As a result, in hot weather, he must cool himself with water or a fan more than the average person. Mr. Velez worked for Agro Distribution as a truck driver, where he assisted with manual labor. He periodically had to take breaks to cool himself. When a new manager took over the facility, Velez was required to load and unload barrels of cattle feed. Mr. Velez requested that he not be required to load barrels in the morning because of the heat, but the new manager refused. When Velez did not show up to load barrels, he was terminated. The lower court ruled against the EEOC and the appeals court agreed. The appeals court found that Mr. Velez did not have a disability because he regulated his body temperature in essentially the same manner as the average person. The court also found that Velez was not denied a reasonable accommodation because he was permitted to take breaks and, rather than engage in the interactive process, he simply did not show up to load barrels.

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Sixth (6th) Circuit Court of Appeals

McKnight v. General Motors Corp.

550 F.3d 519

Decided May 2, 2008

Leroy McKnight and 2 other General Motors employees accepted early retirement in GM's pension plan. They also applied for and received Social Security Disability Insurance Benefits. GM's pension plan reduced the amount of their pensions by the amount of SSDI benefits they received. The circuit court concluded that the plaintiffs could not sue, because, as retired "totally disabled" former employees, they were not "qualified individuals" under the ADA because they could not perform the essential functions of their former jobs.

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Eleventh (11th) Circuit Court of Appeals

Woodruff v. School Board of Seminole County, Florida

304 Fed. Appx. 795

Decided December. 19, 2008

Marilyn Woodruff was a pre-K instructional assistant with bone, knee, back, and mental health conditions. She received accommodations allowing her to take sitting breaks and to use a wheelchair or cane when needed. She took several leaves of absence and provided a doctor's note indicating that she could not walk or stand for long periods and that she needed a desk job. She filed 2 claims with the Equal Employment Opportunity Commission (EEOC). She requested to be assigned to a secretary position and applied for several desk jobs, for which she was not chosen. The lower court found that the school was not required to transfer Woodruff to a secretary position because doing so would have violated the school's collective bargaining agreement and because the secretary position was at a higher pay grade than Woodruff's current position. The court also upheld the school's decision not to hire Woodruff for any of the other desk jobs she applied for because she was not the most qualified applicant.

The appeals court upheld the district court's decision regarding the transfer to a secretary position. However, the appeals court reversed the lower court's decision regarding Woodruff's qualification for the other positions she applied for, because some evidence showed that she could do those jobs and because the school board had found her "minimally qualified" for several of the positions.

Allmond v. Akal Security, Inc.

304 Fed. Appx. 795

Decided December 19, 2008

Wilbur Allmond was a security officer for Akal Security, a contractor for the U.S. Marshalls Service in the federal courthouse in Columbus, Georgia. After the bombing of the federal building in Oklahoma City, the Marshals Service instituted a test of officers' hearing without the use of hearing aids. Mr. Allmond (who did not use a hearing aid) failed the hearing test and was terminated. Mr. Allmond sued to challenge the hearing aid ban, claiming that it screens out or tends to screen out people with disabilities. The defendants argued that the ban was lawful because it was job-related and consistent with business necessity.

The appeals court found that the hearing aid ban was job-related because the government's detailed analysis of the essential functions of the security officer job indicated that a certain level of unaided hearing was needed to perform the essential functions of the job. The court also found that the hearing aid ban was consistent with business necessity because hearing aids may malfunction, break, or become dislodged, thus requiring officers to rely on unaided hearing. Because of the "tremendous harm" that could result if a security officer could not perform the essential hearing functions of the job at a given moment, the court found the ban to be consistent with business necessity.

Additional information is located on the Southeast DBTAC website at www.sedbtac.org/ada/publications/legal/Allmond_v_Akal_Security.doc.

Wofsy v. Palmshores Retirement Community

285 Fed. Appx. 631

Decided July 16, 2008

Edward Wofsy has asthma and was employed as a bus driver by the defendant retirement community. Mr. Wofsy requested that the defendant accommodate him by limiting his route to the local area. The appeals court found that Mr. Wofsy did not show that he had a disability because his asthma was not a substantial limitation on a major life activity and was well controlled by medication. The court also found that, because he refused to drive outside the local area, Mr. Wofsy could not perform an essential function of the driver job. The appeals court also ruled against Mr. Wofsy on his retaliation claim because Mr. Wofsy received warnings months before he requested an accommodation.

Additional information is located on the Southeast DBTAC website at www.sedbtac.org/ada/publications/legal/Wofsy_v_PalmShores.doc.

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