

THE AMERICANS WITH DISABILITIES ACT AND STATE WORKERS' COMPENSATION LAWS IN THE HANDS OF THE COURTS

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I.

INTRODUCTION

The Americans with Disabilities Act (“ADA”) was passed in 1990. Before it became law, and even after, there was significant analysis and speculation about what impact the ADA would have on how employers hire employees, fire employees and treat injured employees. While many questions remain unanswered by the courts, this article summarizes and analyzes several reported decisions involving the ADA and state workers’ compensation laws.

II.

ADA IN A NUTSHELL

The ADA makes it unlawful for an employer to “discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”¹

III.

THE ADA AND STATE WORKERS' COMPENSATION LAWS:
NOT MUTUALLY EXCLUSIVE

Employers charged with violating the ADA have sought to escape liability by claiming that “exclusive remedy” provisions of state workers’ compensation laws bar suit under the ADA. The courts, however, have found that state workers’ compensation laws and the ADA are not mutually exclusive. Thus, the employee is not required to select one cause of action at the expense of the other. By the same token, courts have rejected employees’ attempts to broaden the remedial provisions of state workers’ compensation laws by arguing that the state laws are in conflict with the ADA. The following cases are illustrative.

In *Fail v. Community Hospital*,² the employee sued a former employer alleging violations of the ADA because she was terminated after suffering injuries which prevented her from performing tasks essential to her position. At trial, the plaintiff testified for the first time that her knee problem might have resulted from a work-related injury. To justify her failure to file a workers’ compensation claim, however, plaintiff offered that she could not recall when and how the injury actually had occurred. The hospital sought to amend its answer by adding the affirmative defense that plaintiff’s claim was a work-related injury; thus, her exclusive remedy lay under the Colorado Workers’ Compensation Act.

The Colorado Court of Appeals held that the ADA is not an exclusive remedy and does not prevent a plaintiff from additionally seeking workers’ compensation benefits.³ Furthermore, “an ADA plaintiff is not required to exhaust other remedies before filing his or her ADA claim, and the exclusive remedy provisions of a workers’ compensation statute does [sic] not preempt [a claim under] the ADA.”⁴

This same issue was addressed in *Wood v. County of Alameda*.⁵ In that case, the court undertook an exhaustive analysis of the ADA and concluded: (1) that Congress did not intend the ADA to preclude access to state remedies; (2) that the ADA's express purpose was to maximize the plaintiff's options and provide a "floor" rather than a "ceiling" for remedies, and (3) that Congress did not intend that the ADA defer to any state statute.

Likewise, in *Barry v. Burdines*,⁶ the plaintiff alleged that the Florida workers' compensation statute, which conditions the duration of wage loss benefits upon the degree of permanent impairment, violated the ADA because it arbitrarily segregated disabled individuals and deprived them of an individualized assessment of their disabilities. Burdines, on the other hand, argued that the ADA was inapplicable because compensation under the Florida Workers' Compensation Act was not an employer-controlled benefit of employment. The court held that the Florida's workers' compensation statute was subject to the ADA. The court further noted that the Florida statute was consistent with the ADA. Thus, the ADA did not preempt it.

The California courts faced a similar challenge in *Langridge v. Oakland Unified School District*.⁷ That case concerned a school employee who was not reinstated after she sustained a work-related injury and was assessed with a permanent partial disability. The plaintiff sued under the California Fair Employment and Housing Act, but the trial court sustained the defendant's demurrer on grounds that the California Workers' Compensation Act offered the employee her exclusive remedy under the circumstances.

Plaintiff Langridge argued on appeal that the preemption of her claim violated the Supremacy Clause of the United States Constitution because such preemption obstructed the anti-discrimination objectives of the ADA. The California Court of Appeal affirmed the trial court's decision, holding that workers' compensation exclusivity operated not to permit work-related disability discrimination in conflict with the ADA, but to forbid such discrimination (as does the

ADA). The exclusivity rule simply defined and restricted the state remedies otherwise available. The Supremacy Clause was not implicated since Langridge had proceeded only under the FEHA, and not the ADA.

In *Trans Mart, Inc. v. Brewer*,⁸ the Alabama Court of Civil Appeals held that, when deciding the degree of an employee's disability under the Alabama Workers' Compensation Act, a trial court need not consider the effects of the ADA. A Trans Mart employee had been determined to be permanently and totally disabled. On appeal, the employer argued that the court should consider the employee's capacity for vocational retraining or gainful employment in light of the ADA. Finding for the employee, the appellate court held that such a consideration would limit the remedies then available to injured employees under the Alabama Workers' Compensation Act. Furthermore, such a limitation would directly contravene the ADA, which provides that the ADA does not limit or reduce the "law of any State . . . that provides greater . . . protection for the rights of individuals with disabilities. . . ." ⁹

IV.

NO RETROACTIVE APPLICATION OF ADA

Courts have rejected attempts by employees to retroactively apply the ADA. In *Way v. Fred Meyer, Inc.*,¹⁰ the Oregon Court of Appeals refused to apply the ADA to a workers' compensation claim brought by an employee prior to enactment of the ADA. The court relied on *O'Bryant v. City of Midland*, a *per curiam* opinion holding that the ADA does not have retroactive effect.¹¹

A similar result obtained in *Zeno v. HWT Properties*.¹² In that case, the Louisiana Court of Appeal, First Circuit, determined that the ADA could not be applied retroactively to preempt

provisions of the state workers' compensation law, even when the injury occurred after the date the ADA became applicable to the employer.

The employee in *Zeno* had misrepresented her medical history by omitting a prior back injury in a pre-employment questionnaire. The questionnaire was completed before the ADA became effective. After the ADA became effective, the employee sustained a back injury within the scope of her employment and sought workers' compensation benefits. "Based on the[] misrepresentations by [Zeno, the employer] moved for summary judgment, contending that pursuant to [Louisiana Workers' Compensation laws], plaintiff's failure to truthfully answer the medical questionnaire should result in the forfeiture of worker's compensation benefits."¹³

The Office of Workers' Compensation granted the employer's motion for summary judgment, but on appeal, Zeno argued the preemptive effect of the ADA. She claimed that the provision in the Louisiana workers' compensation law "allowing an employer to inquire about previous injuries, disabilities or other medical conditions directly conflicts with," and is thus preempted by, the ADA, "which provides that [an employer] shall not make inquiries of a job applicant about any disability or the nature or severity of such disability."¹⁴

The appellate court affirmed the award of summary judgment to the employer, noting that a claimant's entitlement to workers' compensation benefits is governed by the law in effect at the time of the injury. Since the salient facts giving rise to plaintiff's forfeiture of benefits occurred at the time she completed the medical questionnaire, and not at the time of injury, the court concluded that "the law in effect at the time she completed the questionnaire is the law which applies to the issue of forfeiture of benefits."¹⁵ There is no provision in the ADA for retroactive application. Thus, if a claimant "fail[s] to truthfully answer [a] medical questionnaire, she forfeits her right to assert any future claim for workers' compensation benefits for a directly related medical condition."¹⁶

V.

SPEAKING OF APPLICATIONS FOR EMPLOYMENT . . .

Although the ADA prohibits an employer from asking certain questions about an employee's health or physical condition, at least one court has determined that the ADA does not extinguish the false representation defense to a workers' compensation claim. In particular, the Georgia Supreme Court has ruled that the ADA does not invalidate the false representation defense to workers' compensation claims when potential employees misrepresent their physical condition and employers rely on that misrepresentation.¹⁷ The court noted that allowing an employee to obtain workers' compensation benefits when an employer relied on the employee's misrepresentation to its detriment would be tantamount to rewarding the employee for his or her misrepresentation. The ADA did not intend that result.

The court further held that the false representation defense remains available to the employer even if a question regarding an employee's physical condition is prohibited under the ADA. An employee may refuse to answer the question, but the employee may not provide a false answer and later claim workers' compensation benefits.

VI.

EMPLOYEES CANNOT MAKE INCONSISTENT CLAIMS UNDER
THE ADA AND STATE WORKERS' COMPENSATION LAWS

Many employers are pleasantly surprised that the courts view workers' compensation and ADA claims with some interdependency. Rather than examining each claim individually, courts are

requiring consistency as between claims brought by an employee under workers' compensation laws and actions brought by that same employee under ADA laws.

In *Hensley v. Punta Gorda*,¹⁸ the plaintiff asserted that she had sustained a work-related psychological injury that prevented her from returning to work. The Florida Workers' Compensation Act, however, provides that purely psychological injuries are not compensable; thus, Hensley's workers' compensation claim was denied. On appeal, Hensley argued that the ADA preempted that specific provision. In response, the First District Court of Appeal found that Hensley's claim for protection under the ADA was inconsistent with her request in the same proceeding for either temporary total or temporary partial disability benefits. "Disability under the Florida Workers' Compensation Law presupposes that claimant is unable, by reason of her injury, to successfully perform all the functions of her previous job."¹⁹ Because Hensley claimed that she was unable to return to work, she was not a "qualified individual" under the ADA. Thus, she could not seek relief under the employment provisions of the ADA.²⁰ The court also observed that the objectives of the workers' compensation laws and the ADA differed, such that the ADA did not preempt the provision of Florida law which barred recovery for purely psychiatric injuries.

In *Jackson v. County of Los Angeles*,²¹ Jackson brought a workers' compensation claim, but continued to satisfactorily perform his job as a police officer while that claim was pending. He missed no work because of the injury and neither requested nor required any accommodation to perform his job. The terms of his workers' compensation settlement required a course of employment free from emotional stress and strain. Since his position as a police officer involved a significant degree of stress and strain, no accommodation could be made for him. He refused other positions offered to him and was placed on long-term medical leave. He later asserted that the county had violated the ADA by failing to accommodate his disability and by terminating his

employment when he was placed on medical leave. Jackson also alleged that the county had treated him as if he had a disability, when in fact he did not. The appellate court ruled that the doctrine of judicial estoppel prevented Jackson from bringing the discrimination claim, asserting that he was a “qualified individual with a disability” under the ADA, while at the same time asserting in his workers’ compensation action that he required a work place free from emotional stress and strain.

Finally, the case of *Cobb v. Coyne Cylinder Co.*²² presents an interesting interplay between the ADA and the Alabama Workers’ Compensation Act. Cobb worked for Coyne Cylinder Co. and sustained several injuries during the course of his employment. In 1995 he filed a claim against his employer under the ADA, asserting that his past injuries limited his abilities to push, pull, lift or carry. Thus, he was foreclosed from a broad range of jobs that he could perform before he became disabled.

On April 23, 1996, Cobb sustained an additional injury at work and filed a workers’ compensation claim as he had done many times in the past. The treating doctor discovered no new injury and testified that Cobb’s pain was probably related to continuing problems caused by a previous injury. In contrast, the trial court found that Cobb suffered a new injury but no permanent impairment as a result of that injury, and it denied benefits. The Court of Civil Appeals affirmed, relying in part on Cobb’s own ADA claim. Under the Alabama Workers’ Compensation Act, a pre-existing injury that does not impact the employee’s work performance before the disabling injury is not considered a pre-existing condition for purposes of the Act. By virtue of the ADA claim, Cobb could not successfully contend that his condition before the April 23, 1996 injury did not impact his performance.

VII.

CONCLUSION

The cases cited and discussed above illustrate many theories under which state workers' compensation laws and the ADA can peacefully co-exist. Instead of posing another challenge for Human Resource Managers and the attorneys who advise them, the ADA has become a tool for Human Resource Managers and the attorneys who represent them in corporate litigation.

ENDNOTES

- 1 42 U.S.C. § 12112(a) (1999).
- 2 946 P.2d 573 (Colo. Ct. App. 1997), *aff'd*, Community Hosp. v. Fail, 969 P.2d 667 (Colo. 1998).
- 3 *See id.* at 581 (citing 42 U.S.C. § 12201(b) (1994)). *See generally* Equal Employment Opportunity Commission, Enforcement Guidance No. 915.002 (February 12, 1997).
- 4 *Id.* at 581 (citing Mangin v. Westco Sec. Sys., Inc., 922 F. Supp. 563 (M.D. Fla. 1996)); Wood v. County of Alameda, 875 F. Supp. 659 (N.D. Cal. 1995).
- 5 875 F. Supp. 659, 663 (N.D. Cal. 1995).
- 6 675 So. 2d 587 (Fla. 1996).
- 7 31 Cal. Rptr.2d 34 (Ct. App. 1994), *abrogated by*, City of Moor Park v. Superior Ct., 77 Cal. Rptr.2d 445 (Ct. App. 1998) (also superceded by statute).
- 8 630 So. 2d 469 (Ala. Ct. App. 1993).
- 9 *Id.* at 472, (citing 42 U.S.C. § 12201(b) (1999)).

10 868 P.2d 792 (Or. Ct. App. 1994), *reh'g denied*, 873 P.2d 322 (Or. 1994).

11 9 F.3d 421 (5th Cir. 1993). *See also* Lamay v. Roswell Independent School, 882 P.2d 559
(N.M. Ct. App. 1994).

12 657 So. 2d 1063 (La. Ct. App. 1995).

13 *Id.* at 1064.

14 *Id.* at 1065 (citing 42 U.S.C. § 12112(d)(2)(A) (1999)).

15 *Id.* at 1066.

16 *Id.*

17 Caldwell v. Aarlin/Holcombe Armature Co., 481 S.E.2d 196, 198-99 (Ga. 1997).

18 686 So. 2d 724, 725 (Fla. Dist. Ct. App. 1997).

19 *Id.* at 726 (citing Fla. Stat. Ann. § 440.02(11) (West 1994)) (“‘Disability’” means
incapacity because of injury to earn in the same or any other employment the wages employee
earned at the time of injury”).

20 686 So. 2d 724, 727 (citing Reiff v. Interim Personnel, Inc., 906 F. Supp. 1280, 1292 (D.
Minn. 1995)) (“Claimant’s representation that he is ‘totally disabled’ and ADA’s definition of
“qualified individual with a disability” are ‘mutually exclusive.’”).

21 *See* 70 Cal. Rptr.2d 96, 108 (Ct. App. 1997).

22 719 So. 2d 219 (Ala. Ct. App. 1998).

(Authors’ bios)

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