ROBINSON & COLE LLP
Labor, Employment & Benefits

Interacting with Others Is a Major Life Activity under the ADA

Audrey Jacques has suffered from psychiatric problems, including major depression, from the time she was a teenager. DiMarzio, Inc., an electric guitar manufacturer, hired Jacques as a packager and assembler of guitar components. After working for several years, Jacques informed the plant manager that she suffered from depression and was taking Prozac. Jacques was diagnosed with chronic bipolar disorder. DiMarzio viewed Jacques as a competent and productive employee but felt that her behavior in the workplace was problematic. Specifically, Jacques had many confrontations with co-workers and supervisors, exhibited racial prejudice, had difficulty dealing with supervisors, and frequently teased and ridiculed one co-worker. DiMarzio fired Jacques as a result of her numerous conflicts with supervisors and coworkers. Jacques sued DiMarzio for violating the Americans with Disabilities Act, claiming that her termination was the result of discrimination based on her bipolar disorder, based on her record of a disability, or because she was regarded as disabled as a result of her difficulty in interacting with others. The trial court instructed the jury that interacting with others is a major life activity under the ADA. DiMarzio appealed, arguing that interacting with others is not a major life activity.

In Jacques v. DiMarzio, Inc. (10/5/04), the U.S. Court of Appeals for the Second Circuit ruled that interacting with others is a major life activity under the ADA. The Second Circuit explained that a "plaintiff is 'substantially limited' in 'interacting with others' when the mental or physical impairment severely limits the fundamental ability to communicate with others" and suggested that, for example, acute cases of agoraphobia, autism, and depression would satisfy this standard. The court also pointed out that a person whose basic ability to communicate with others is not substantially limited but whose communication is merely "inappropriate, ineffective, or unsuccessful" would not satisfy this standard.

"Sex Stereotyping" Theory of Discrimination under Title VII Recognized

Michael Sabo worked in a manufacturing position for Grief Brothers Corporation. Sabo is homosexual but this fact was not known to his employer or his co-workers. He claims that, during his time on the job, he was subjected to pervasive same-sex harassment by his male coworkers because he did not conform to the "stereotypical view of masculinity." Sabo claims he was targeted because he wore an earring in his left ear, refused to participate in sexually explicit discussions about women, and refused to participate in other offensive behavior. Sabo claims the environment became unbearable, forcing him to quit.

Sabo filed a charge of sex discrimination against Grief Brothers with the U.S. Equal Employment Opportunity Commission. Subsequently, the EEOC filed suit on his behalf against Grief Brothers. Grief Brothers argued that the sex stereotyping theory is invalid under Title VII. In Equal Employment Opportunity Commission v. Grief Brothers Corp. (9/30/04) the U.S. District Court for New York refused to dismiss Sabo's claims, finding that "nonconformance with gender stereotypes is a viable theory of sex discrimination (either same-sex or between sexes) under Title VII."

Hostile Work Environment Claim Not Barred by Both Sexes' Exposure to Offensive Material

Lisa Petrosino worked as an Installation and Repairs technician for Bell Atlantic. She, her coworkers, and supervisors met each morning at the garage for 30 minutes before going out on their assignments. Petrosino had occasional additional contact with coworkers and supervisors during each work day. After her resignation, Petrosino sued Bell Atlantic, alleging that she had been subjected to a hostile work environment. Petrosino alleged that the garage and other work areas were permeated with sexually offensive remarks and sexual graffiti, much of which exhibited a low regard for women. Petrosino was the only female I&R technician at the garage during the last seven years of her employment with Bell Atlantic but she conceded that male employees at the garage were similarly subjected to sexual comments and graffiti.

The trial court dismissed Petrosino's claims, finding that she could not establish a hostile work environment because the offensive conduct was directed at male and female employees alike. However, in Petrosino v. Bell Atlantic (9/29/04), the U.S. Court of Appeals for the Second Circuit reversed the trial court. The court of appeals noted that although the offensive conduct was also directed at specific men it was not directed at men as a group. By contrast, the appeals court noted that the comments and graffiti demeaned women as a group. As a result, the court of appeals ruled that Petrosino could proceed with her claim because a jury could find that the offensive conduct was "more demeaning of women than men."

Computer Help Desk Analyst May Proceed With Collective Action under the FLSA

Mario Richards works as a Customer Support Analyst Level I for Computer Sciences Corporation. CSC is an information technology company that provides outsourcing, consulting, and systems integration to its clients. CSC's clients have access to CSC's telephone help desk for assistance with technology problems, and the CSC employees staffing the telephones provide trouble-shooting and problem-solving services. As a CSA Level I, Richards handled basic problems for customers over the telephone. Calls involving more complex problems were handled by a CSA Level II. Richards sued CSC under the Fair Labor Standards Act claiming that he is due overtime pay for the time he spent each work day setting up and breaking down his computer work station. The FLSA permits an employee to sue an employer on behalf of other similarly situated employees, and Richards requested that the court permit him to proceed with such a "collective action" on behalf of himself and the other CSA Level I and II employees.

In Richards v. Computer Sciences Corp. (9/28/04), the U.S. District Court for Connecticut granted both Richards's motion to proceed with the collective action and his motion to serve notice on the potential class members. CSC claimed that the duties of the CSAs Level I and Level II were not similar enough for a collective action. Richards concede that CSAs Level II have more authority and responsibility than CSAs Level I. The court found that the CSA Level II duties were not different from the CSA Level I duties, but were merely "more expansive." Accordingly, the court found that Richards had satisfied the threshold issue of establishing that CSAs Level I and II were "similarly situated" because "all computer trouble-shooters engaged in substantially similar functions and exercising related functions."

Employer Ordered to Reinstate and Provide Back Pay to Domestic Violence Victim

Gina Reynolds was hired by the New York Department of Correction, subject to a two-year probationary period. As a result of her husband's abuse, Reynolds moved out of her house and eventually became homeless after alternate living arrangements fell through. Reynolds informed the DOC that she was homeless and requested time off to look for a place to live. Her request was granted. Soon afterward, the DOC placed her on sick leave due to the stress of her situation. The DOC's policy requires that employees on sick leave provide a valid address, and that, subject to limited exceptions, all employees on sick leave remain in their "residence or place of confinement." The DOC sends monitors on surprise visits to the homes of employees on sick leave to verify compliance with the policy. Reynolds explained that she was homeless but the DOC still required an address, so she provided the address of her abusive husband. During several surprise visits the DOC determined that Reynolds was not at that address. After Reynolds found housing in a domestic violence shelter, she provided her new address to the DOC. The shelter, however, would not release information about its residents to any third parties unless they agreed to keep the information confidential. Although the DOC conducted several surprise visits to the shelter, it was unable to determine Reynolds's presence or absence there because the DOC monitor did not agree to sign a confidentiality agreement. Reynolds was terminated after another unsuccessful attempt by the DOC to verify her residence at the shelter.

Reynolds sued the DOC alleging that she was terminated because she was a victim of domestic violence. The New York City administrative code prohibits employment discrimination against victims of domestic violence. In Reynolds v. Fraser (9/23/04), the Supreme Court of New York determined that Reynolds satisfied the definition of domestic violence victim and that the DOC had violated the law by terminating her. The court was not swayed by the fact that the DOC showed that Reynolds had performance and attendance problems at various times during her employment. The court ordered the DOC to reinstate Reynolds and provide her with back pay.

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