

DEVELOPMENTS IN DISCRIMINATION LAW 2019-2020



**James H. Kizziar, Jr.
Amber K. Dodds**

Bracewell LLP

BRACEWELL

JUDICIAL DEVELOPMENTS ON DISABILITY ISSUES

BRACEWELL

POTENTIAL TO CONTRACT A DISEASE IS NOT A DISABILITY

- Employee terminated after employer gave notice she would not be allowed to return to work if she visited sister, who was working in Africa during Ebola outbreak
- Court: ADA does not cover employer perception of healthy person's potential to become ill and disabled in the future due to voluntary conduct

EEOC v. STME, LLC d/b/a/ Massage Envy

- Employee with high body mass index not hired after employer determined him “not medically qualified”
- Court: ADA regarded as prong “plainly encompasses only current impairments, not future ones”

Shell v. Burlington Northern
BRACEWELL

GENDER DYSPHORIA NOT A DISABILITY

- Employee with gender dysphoria began hormone replacement therapy
- Employee not allowed on foreign deployment due to safety concerns about her “rapidly developing female characteristics”
- Employee laid off because she could not deploy
- “Gender identity disorders not resulting from physical impairment” are expressly excluded by the ADA
- Court: gender dysphoria, which focuses on a clinical diagnosis rather than an individual's gender identity, excluded from ADA coverage

Doe v. Northrop Grumman

BRACEWELL

QUALIFIED INDIVIDUAL

- An individual with a disability is qualified if:
 - Meets prerequisites for position
 - Can perform the essential job functions, with or without reasonable accommodation
- Conduct qualified analysis at the time of the employment decision
- Qualification analysis cannot consider:
 - Whether individual may become unqualified in the future
 - Increased health insurance premiums or workers' compensation costs

BRACEWELL

WHEN ACCOMMODATIONS UNREASONABLY BURDEN CO-WORKERS, EMPLOYEE IS NOT QUALIFIED

- Fast food manager with mental health issues requested fixed day work shifts
- Company granted request temporarily, but insisted rotating shifts was essential function
- Court held that manager was not a “qualified individual” because he was unable to perform this essential function of the position
 - The fixed day shift accommodation would disproportionately burden other managers
 - Newspaper advertisement and job application included shift rotation
 - Temporary fixed shift assignment not a concession regarding rotating shifts

Sepulveda-Vargas v. Caribbean Restaurants, LLC

BRACEWELL

Also available as part of the eCourse

[2020 Federal Employment Law Updates](#)

First appeared as part of the conference materials for the
27th Annual Labor and Employment Law Conference session
"Developments in Disability Discrimination Law"