

DEVELOPMENTS IN DISABILITY DISCRIMINATION LAW

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THE OUTLINE: Comprehensive Overview, Addressing Topics in Detail

- Impairments
- Major Life Activities
- Substantial Limitations
- QUID Definition
- Essential Job Functions
- Actionable Discrimination
- "Regarded As" Claims
- Misconduct
- Direct Threat
- Interactive Process
- Reasonable Accommodation
- Hostile Work Environment
- Medical Exams
- Association Discrimination
- Procedural/Litigation Issues

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Disability Law Talk

with
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ADA TRENDS: CHARGES FILED

- 2016: Highest level (28,073)
- 2017: Decline begins (26,838)
- 2018-20: Lower still (3-year avg: 23,489)
- 2021: Lowest in over a decade (22,843)
- 2022: Highest since 2017 (25,004)

After a steady trend of decline (19% drop over prior 5 years), cases are on the rise again with a 9.1% increase since 2021

Mental health impairments continue to increase as condition cited, particularly anxiety disorder, depression and PTSD

(See Appendices A and B)

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ADA TRENDS: ACCOMMODATION

- As with last year's update regarding mental health, legal trends mirroring societal trends
 - General flexibility "expected" by today's workers
 - Examples: Working remotely, part time work, leaves of absence . . .
 - Presumption (by employees) that accommodations are reasonable

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DISABILITY LAW UPDATE: CASES

Cuellar v. GEO Group, No. 22-50135, 2023 WL 4535079 (5th Cir. July 13, 2023)

(Discussed on page 33 of outline – future references in slides to outline pages will be "p. xx")

- Key Issue: Is the employee's (contrary) opinion about what is an essential function part of consideration?
- Key Facts:
 - Function in question (16+ hour shift requirement) requested to be *permanently* reduced to 12 hour max shifts due to employee sleep apnea
 - Employee pointed to *temporary* modifications to other employees' schedules as supportive of his conclusion

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First appeared as part of the conference materials for the
31st Annual Labor and Employment Law Conference session
"The Evolving Law of Disability Discrimination and Accommodation"