

# DEVELOPMENTS IN DISCRIMINATION LAW 2021-2022



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

**Bracewell LLP**

BRACEWELL

1

## IMPAIRMENTS

- **“Disability” is defined as:**
  - A physical or mental impairment that substantially limits one or more major life activities or
  - A record of a physical or mental impairment that substantially limited a major life activity ("record of"), or
  - When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as").
- **“Physical or mental impairment” is not defined**

BRACEWELL

2

## TEMPORARY IMPAIRMENT MAY RISE TO LEVEL OF A DISABILITY

- Electrician injured his elbow, resulting in inability to perform work duties for 3 months and lift minimal weight for 2 months
- Following 3 months light duty, the electrician was terminated 2 days after clearance to return to full duty
- District court found temporary condition was not a disability, but Tenth Circuit reversed
- Even though temporary, impairment was a disability during the time period it “substantially impacted his life” and “disrupted his ability to perform manual tasks”

*Skerce v. Torgeson Electric Co.*

BRACEWELL

3

## A TEMPORARY CONDITION MAY NOT BE A DISABILITY

- Employee fell in the parking lot and injured her ankle
- Doctor diagnosed her with “left ankle and shin pain” and released her to return to work that day, with restrictions on climbing stairs
- Employee failed to return to training, alleging that there was no elevator to take her to the second floor
- Employee was allowed to restart training once her restrictions lifted, but was eventually terminated for a variety of issues
- Court found no disability because the one-week restrictions were not “substantially limiting”
- Even if there was a disability, employer had accommodated her by allowing the training to be restarted

*Jennings v. Towers Watson*

BRACEWELL

4

## IMPAIRMENTS HELD NOT TO BE DISABILITIES

- Mechanic with partial blindness was not able to perform his night-shift duties or work in poorly lit areas
- Condition was not a disability where the mechanic could drive his personal vehicle at night and was able to perform normal daily activities
- Inability to perform “unique aspects of a specific job” was not a substantial limitation  
*Green v. United Parcel Service*
- Employee who was 4’6” tall requested a shorter table or a step stool because she could not perform her work at the provided table
- She was terminated because she was “not a good fit” and “asked too many questions”
- Court determined that her height, alone, was not a disability unless it resulted from a physiological disorder or condition

*Colton v. Fehrer Auto*

BRACEWELL

5

## IMPAIRMENTS: EMPLOYEE’S BURDEN TO SHOW SUBSTANTIAL LIMITATIONS

- Employee had various chronic health issues, which resulted in requests for time off and frequent tardiness
- Employer granted accommodations, but ultimately fired employee for “insubordination and defensiveness”
- In litigation, employee provided only her declaration and deposition testimony to support the limiting effects of her health conditions
- Court: employee failed to establish she was disabled where she:
  - Provided no evidence, other than her own testimony, of the effects of her medical conditions
  - Did not articulate how long or how often she experienced symptoms

*Munoz v. Selig*

BRACEWELL

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Developments in Disability Discrimination Law 2021-2022

Also available as part of the eCourse

[2022 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the  
29<sup>th</sup> Annual Labor and Employment Law Conference session  
"Developments in Disability Discrimination Law"