



Federal Court Allows COVID-Based Disability Discrimination Lawsuit to Proceed

Insights

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A federal court in Pennsylvania recently refused to dismiss a lawsuit alleging that an employer violated the Americans with Disabilities Act (ADA) by firing a worker because she tested positive for COVID-19. Notably, the plaintiff alleged that she was fired on the same day she disclosed her diagnosis to her supervisor. The September 16 decision provides a timely example of a “regarded as” discrimination claim, where an employer allegedly takes an adverse action based on its belief of a worker’s impairment — which may or may not line up with the worker’s actual abilities. What can employers learn from this recent ruling?

Factual Background

Terrapin House, Inc. is a small residential facility in Allentown, Pennsylvania. It provides 24-hour care for residents with severe medical conditions. In August 2020, it hired Ninoshka Matias as a Direct Support Professional. In late November, Matias reported to her supervisor (via text message) that she was feeling ill and, expressing concern for the residents of Terrapin House, stated that she needed to be tested for COVID-19 before returning to work. Matias relayed that she had scheduled a test and that she was losing her senses of taste and smell: telltale symptoms of COVID-19.

Matias later told her supervisor she was feeling better, but when her test results came back, she relayed that she had tested positive for the coronavirus. Later that day, Terrapin House sent Matias a letter informing her that it was terminating her employment effective immediately because she “was not a good fit.” According to Matias, she had never previously been disciplined during her employment there.

Matias filed a charge of discrimination with the EEOC and then sued Terrapin House in the United States District Court for the Eastern District of Pennsylvania. She pleaded claims of discrimination under the Families First Coronavirus Response Act, the ADA, and the Pennsylvania Human Relations Act (PHRA). She alleged that Terrapin House discriminated against her on the basis of disability by terminating her employment because she tested positive for COVID-19. Matias attached to her complaint screenshots of the text messages between her and her supervisor by which she communicated her symptoms and positive test results.

The Employee’s Claim of “Regarded As” Discrimination

Ordinarily, a plaintiff must make three showings to establish a prima facie case of disability discrimination: (1) that she has a disability within the meaning of the ADA; (2) that she is otherwise qualified to perform the job's essential functions, either with or without a reasonable accommodation; and (3) that she suffered an adverse employment action. Terrapin House moved to dismiss Matias's claims under the ADA and the PHRA, contending that she had failed to allege facts that would satisfy these elements.

Specifically, Terrapin House argued that a mere diagnosis of COVID-19 does not substantially limit one or more "major life activities" and therefore does not qualify as a "disability" under the ADA. It pointed to a recent case in the same district where the court dismissed a COVID-based ADA claim because the plaintiff failed to allege facts regarding his symptoms or impairments and specify what "major life activity" he was unable to perform as a result.

The court rejected the employer's argument. It found that COVID-19 does qualify as a disability, at least in some circumstances. The court relied on a guidance document jointly issued this past summer by the U.S. Departments of Justice and Health and Human Services. The document — titled "Guidance on 'Long COVID' as a Disability Under the ADA, Section 504, and Section 1557" — explains that some people infected with COVID continue to experience symptoms that can last months after first being infected, or may have new or recurring symptoms at a later time. These cases of "long COVID" can qualify as a disability for purposes of the ADA. But the guidance stressed that an individualized assessment is necessary to determine whether a person's long COVID condition or any of its symptoms substantially limits a major life activity in particular cases.

The court noted that the "common symptoms" of these longer forms of COVID-19 include "loss of taste or smell," and that Matias had reported these symptoms to her supervisor. With this disclosure, along with the results of her COVID test, the court found that Matias had "plausibly alleged that Terrapin regarded her as having an impairment that can substantially limit major life functions."

In a "regarded as" discrimination claim, an employer takes an adverse action against an employee because it *believes* the employee has a disability. It may be liable regardless of whether the employee actually has the disability — and regardless of whether the employer even believes that the disability limits any major life activity. For example, if an employer mistakenly believes that a worker has HIV and fires them for that reason, then it does not matter whether the worker is actually HIV positive. The ADA allows such claims because in addition to protecting individuals with disabilities, the statute is also intended to prohibit intentional discrimination. This includes discrimination based upon a mistaken belief.

Because Matias had plausibly alleged a "regarded as" discrimination claim, the court held that she need not show that having COVID-19 actually resulted in a substantial impairment of any major life activity in her case. It was enough for her to allege that Terrapin House may have *thought* it did when firing her. The court denied the motion to dismiss and the case is currently still pending.

Takeaways

Disability discrimination cases can be trickier than those involving other forms of discrimination. They are very fact-based and often turn on individualized determinations regarding the specific plaintiff in each case. You should never make assumptions about a worker's health conditions or what impact those conditions might have on the worker's abilities. And you should certainly avoid discharging an employee on the same day the employee discloses a medical condition.

You should also pay attention to guidance documents issued by federal agencies regarding COVID-19. While they may not have the force of law, courts and other tribunals often use them as persuasive guidance in analyzing generally applicable laws in the COVID context. The court's use of such guidance here heavily influenced its decision to allow Matias's case to proceed past the pleadings stage.

Finally, you should remain mindful that the substance of communications with their employees matters much more than the form. Text messaging may be less formal and more convenient than email, but they carry the same weight when used in court. Here, Matias disclosed her symptoms and diagnosis to her supervisor via text message, and screenshots of those texts ended up attached to the complaint and cited by the court.

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or the author of this Insight.

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