

Insights, News & Events

WORKER FIRED DURING COVID-19 ISOLATION CAN PROCEED WITH DISABILITY LAWSUIT, SAYS FEDERAL COURT

Insights

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A federal court just ruled that a nurse fired while isolating with a case of COVID-19 can proceed with her disability discrimination lawsuit against her former employer, further developing a body of law permitting COVID sufferers to bring ADA claims against their employers. The case at issue is still in its infancy, and the Alabama healthcare facility facing the charge has barely had a chance to present its defense. But what can employers learn from the February 22 decision?

Infection Leads to Isolation Leads to Termination

Lucious Brown worked as a certified nursing assistant for Roanoke Rehabilitation & Healthcare Center in eastern Alabama from September 2019 until her eventual termination in the summer of 2020. In late June 2020, Brown began feeling severely weak with fatigue, brain fog, high blood pressure, cough, difficulty breathing, fever, and swollen eyes. On July 1, her physician informed her that she had tested positive for COVID-19.

Her employer maintained a policy that required a 14-day isolation period for any employee who tested positive, which was in line with CDC guidelines at the time. Thus, she began to isolate at home and presumed

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she would not be required – or permitted – to return to work until at least July 14.

It's important to understand that the allegations as recounted in the court's decision are taken from Brown's side of the story only, and that the healthcare facility may dispute this version of events. But according to Brown, her supervisor contacted her on July 7 and instructed her to return to work to again be tested for the virus – in direct contradiction of both CDC guidance and company policy. Brown declined, indicating that she was still isolating and still experiencing severe COVID-19 symptoms. Three days later, Brown's supervisor again reached out to her and repeated the instruction that she was to report to work to take a COVID-19 test. Once again, Brown told the supervisor that she was still suffering from virus symptoms. The following day, the supervisor contacted Brown for a third time, informing her that if she didn't return to work on July 13, they would consider her to have "voluntarily quit." Despite the third and final instruction to return to work, Brown did not return to work because she alleges she still suffered from severe COVID-19 symptoms.

Brown claims that the healthcare facility terminated her employment that day, the 13th day of her 14-day isolation period. The day after her termination, because she continued to suffer from the same symptoms, Brown re-tested for COVID-19 and once again tested positive.

Lawsuit and Crux of Claims

In September 2021, Brown filed a disability discrimination claim against her former employer in Alabama alleging that her discharge violated the Americans with Disabilities Act (ADA). As a gateway to proceed with any such claim, a plaintiff must allege that they have a "disability." They can do this in one of three separate ways, and Brown alleged that she satisfied two possible pathways. The arguments raised by Brown to satisfy this initial step are that she had an **actual disability** and that she was **regarded by her**

employer as having an impairment that would qualify under the ADA.

- **Actual Disability:** A plaintiff must show they have a physical or mental impairment that substantially limits one or more of their major life activities. These include, but are not limited to, *breathing, concentrating, thinking, and working.*
- **Regarded As:** A plaintiff is “regarded as” disabled when they are perceived as having a physical or mental impairment by their employer, regardless of whether the impairment actually exists or is perceived to limit a major life activity. An individual cannot be regarded as having such an impairment, however, if the impairment is “transitory and minor.”

Another important point: courts have been instructed by Congress to interpret the ADA in “favor of broad coverage of individuals” to the “maximum extent permitted” by the statute’s terms. Accordingly, courts have noted that the bar to be considered “disabled” under the ADA is not a high one. Despite these hurdles, the employer filed a Motion to Dismiss at the outset of the case to argue that Brown couldn’t even muster a legal argument that would permit her claim to proceed.

Actual Disability

The court rather easily concluded that Brown advanced sufficient arguments to satisfy the legal standards and allow her claim to get to the next stage of litigation.

- Recent guidance by the [Department of Health and Human Services and Department of Justice](#) indicates that certain forms of COVID-19 may be considered a disability under the ADA, and [the EEOC also recently issued guidance](#) as to whether COVID-19 can qualify as an actual disability. The upshot from these guidance documents: COVID-19 can be a disability, so long as the condition is sufficiently severe to impair major life activities.

- In this case, Brown gave specifics as to how her particular COVID-19 condition at the time of her termination impaired her ability to breath, concentrate, and work – all of which are statutorily recognized major life activities.
- Therefore, the court denied the employer’s Motion to Dismiss as to this argument.

Regard as Disabled

- The employer’s primary argument was that COVID-19 is a “transitory and minor” impairment as defined by the statute, so it could not have perceived Brown as disabled within the meaning of the ADA.
- While the court acknowledged that Brown’s virus may have been “transitory” – with an actual or expected duration of six months or less – it noted that the employer essentially ignored the “minor” component of the legal standard. Because Brown alleged that she told her supervisor that she was suffering from a severe and symptom-laden case of COVID-19, the court concluded that she raised sufficient allegations to demonstrate that her impairments were not minor.
- Therefore, the court also denied the Motion to Dismiss this claim.

Lessons Learned for Employers

The federal guidance cited by the court means that we will likely see many more decisions along these lines, permitting workers to advance ADA claims for virus-related conditions. Accordingly, you should take proactive measures to address potential COVID-19 claims, including the following:

- Train your managers and supervisors to consider COVID-19-related illnesses just as they would any other illness. This holds true as it applies to your sick leave policies, any federal or local leave obligations, and disability practices at your workplace.

- Where this issue is most likely to arise from an ADA perspective – and lead to litigation – is in the area related to accommodation requests and the interactive process.
- Thoroughly analyze company, department, and employee production/performance levels before, during, and after the pandemic to determine the feasibility of alternative schedules, remote work, and other “accommodations” likely to be requested by employees suffering from COVID-related disabilities;
- Review your company’s ADA request-for-accommodation processes and procedures to ensure compliance with the latest guidance pertaining to COVID-19;
- Update medical inquiry forms (e.g., ADA Interactive Process forms) and develop COVID-specific forms to be completed by the employee’s healthcare provider; and
- Continue to train managers and supervisors on the importance of avoiding inappropriate and potentially disability-related inquiries regarding COVID-19, along with protecting confidentiality of employee medical information.

Conclusion

Although employees with COVID-related impairments may not always be able to establish that they are disabled or entitled to a reasonable accommodation under the ADA, you should take proactive steps to prepare for what is likely to be an onslaught of such claims following the federal guidance – and decisions such as these.

We will continue to monitor developments related to COVID-19. Make sure you are subscribed to [Fisher Phillips’ Insight system](#) to get the most up-to-date information. For further information about COVID-19-related litigation being filed across the country, and to

run your own analyses of our litigation data, you can also visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#). If you have questions about how to ensure your reasonable accommodation policies comply with the ADA and other applicable laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Leaves and Accommodation Practice Group](#).