

# Broad Definition of "Disability" Endorsed By Fourth Circuit

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In its recently published opinion in *Summers v. Altarum Institute, Corp.*, No. 13-1645, decided January 23, 2014, the United States Court of Appeals for the Fourth Circuit became the first federal appellate court to hold that a sufficiently severe temporary impairment may constitute a disability under the Americans with Disabilities Act of 1990 ("ADA" or "the Act") by applying the expanded definition of "disability" set forth in the 2008 amendments ("ADAAA" or "2008 Amendments") to the ADA.

In *Summers*, plaintiff, a senior analyst for defendant government contractor, sustained severe injuries to both legs in an accidental fall, which doctors estimated would leave him unable to walk for seven months. Plaintiff initiated discussions with defendant about a plan to gradually return to work from home part-time during his recovery. Defendant, however, not only failed to engage plaintiff in an interactive process by never responding to plaintiff's requests to devise a return-to-work plan, but instead terminated plaintiff's employment.

Plaintiff filed suit in the Eastern District of Virginia, alleging wrongful discharge on account of disability and failure to accommodate. The district court dismissed plaintiff's claims with prejudice, finding that a "temporary condition, even up to a year, does not fall within the purview of the [ADA]," and further suggesting that plaintiff was not disabled because he could have worked with the assistance of a wheelchair. Plaintiff appealed, challenging only the dismissal of his wrongful discharge claim.

The Fourth Circuit reversed the district court, holding held that, while short-term impairments may qualify as disabilities under the ADAAA only if they are "sufficiently severe," plaintiff's allegations that his accident left him "unable to walk for seven months" and that "without surgery, pain medication, and physical therapy, he 'likely' would have been unable to walk for far longer" met the "sufficiently severe" standard necessary to sustain his claim. In reaching its decision, the Court emphasized that the 2008 Amendments were enacted to broaden the definition of disability "[i]n response to a series of Supreme Court decisions that Congress believed improperly restricted the scope of the ADA," including *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), in which the Supreme Court suggested that a temporary impairment could not qualify as a disability under the ADA. Noting that that the ADAAA's implementing regulations, as promulgated by the Equal Employment Opportunity Commission, "expressly provide that effects of an impairment lasting or expected to last fewer than six months can be substantially limiting for purposes of proving an actual disability" (internal quotations omitted), the Fourth Circuit held that the district court's analysis, while "an entirely reasonable interpretation of *Toyota* and its progeny," was no longer valid following the adoption of the ADAAA.

The Fourth Circuit further found that the district court's conclusion that plaintiff could not be disabled because he could have worked with a wheelchair "inverts the appropriate inquiry" under the ADA, as a court "must first establish whether a plaintiff is disabled by determining whether he suffers from a substantially limiting impairment," and "[o]nly then may a court ask whether the plaintiff is capable of working with or without an accommodation." The Court concluded that the district court's analysis was erroneous, noting that "[i]f the fact that a person could work with the help of a wheelchair meant he was not disabled under the [ADA], the ADA would be eviscerated."

The *Summers* decision is the first instance of a circuit court conducting a thorough analysis of the Congressional intent behind the 2008 Amendments and applying the ADAAA's expanded definition of disability, specifically in the context of a temporary impairment. The court's analysis makes clear that in the Fourth Circuit an individual suffering from a *sufficiently severe* temporary impairment can be covered by the broadened definition of disability under ADAAA and may therefore be subject to the protections and affirmative obligations required under the Act.