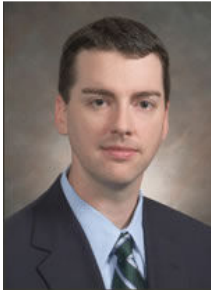


## **Workers' compensation and the Americans with Disabilities Act: are injured employees disabled?**

**By: Robert J. Baker, Esquire**



Robert J. Baker, Esquire is an associate with The Chartwell Law Offices, LLP. His practice concentrates in the defense of Pennsylvania employment law matters and human resources consultation on behalf of employers. Mr. Baker previously worked as a human resources generalist, where he gained extensive experience in human resources and employee relations. Additionally, Mr. Baker maintains his PHR certification and membership in the Society for Human Resources Management and Human Resources Professionals of Central Pennsylvania.

Mr. Baker can be contacted, by telephone at (717) 909-5170, or by email at [rbaker@chartwelllaw.com](mailto:rbaker@chartwelllaw.com).

The Americans with Disabilities Act ("ADA"), prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities and applies to employers with 15 or more employees. The ADA ensures equal opportunity in selecting, testing, and hiring qualified applicants with disabilities; job accommodation for applicants and workers with disabilities when such accommodations would not impose undue hardship; and equal opportunity in promotion and benefits.

In addition to the ADA, employees with disabilities also may be covered by state or local law; thus, in a workers' compensation context, violation of the ADA may result in the filing of a complaint alleging discrimination based on disability with the Equal Employment Opportunity Commission ("EEOC") individually or jointly with the Pennsylvania Human Relations Commission ("PHRC") and/or the local Human Relations Commission.

When considering whether an employee is protected by the ADA after experiencing a work-related injury, the term disability itself must be examined. Disability is defined as: (1) a person who has a physical or mental impairment that substantially limits one or more major life activities, (2) a person with a record of a physical or mental impairment that substantially limits one or more major life activities, and (3) a person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities.

Physical or mental impairment includes physiological disorders, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin and endocrine. Impairment also includes any mental or psychological disorder.

When conducting an ADA analysis, it must be determined whether the disability impacts major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing and learning must be considered. It is important to note that the activity need not have a public or a daily character to be considered a major life activity.

Further, when analyzing the essential job functions, the fundamental job duties for position that the individual with the disability holds or desires must be reviewed; marginal functions of the position are not considered or analyzed. To be qualified for a position, the employee must possess the skill, experience, education and other job-related requirements of the position sought or held and must be able to perform the essential functions of position, with or without accommodation.

Reasonable accommodation may result in a modification or adjustment to a job, the work environment or the process in which tasks are performed that enables a qualified disabled individual to perform the tasks or duties in an equal employment opportunity. Equal employment opportunity means

an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.

The EEOC provides guidance regarding ADA implications for work-related injuries.<sup>1</sup> The EEOC advises that only injured workers who meet the ADA's definition of an individual with a disability to be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker must also be qualified to be protected by the ADA. The EEOC explains that work-related injuries do not necessarily cause physical or mental impairment severe enough to substantially limit a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact.

Indeed, the case law supports the guidance provided by the EEOC. In situations where an employee sustained a work-related injury, the courts have held that limitations that are of limited duration are insufficient to support a disability claim. George v. Genuine Parts Co., 207 WL 217684 (W.D. Pa. Jan. 25, 2007) (full recovery within months is insufficient to show a substantial limitation); McDonald v. Commonwealth of Pennsylvania, Department of Public Welfare, Polk Center, 62 F.3d 92, 95 (3d Cir. 1995). Thus, an individual does not suffer a disability under the ADA when they suffer from an injury of a temporary nature. Goetz v. Samuel Aaron, Inc., 1999 PA Super 127, 731 A.2d 169 (1999); Davis v. Pitney Bowes, et al., 1997 U.S. Dist. LEXIS 16258.

Further, the courts have held that an inability to lift a designated amount of weight does not constitute a disability because the lifting restriction does not significantly restrict major life activities. See Williams v. Channel Master Satellite System, Inc., 101 F.3d 346, 349 (4th Cir. 1996) (holding as a matter of law that a 25 pound lifting restriction does not constitute a significant restriction on one's ability to lift, work, or perform any other major life activity) (citing Aucutt v. Six Flags Over Mid-America, 85 F.3d 1311, 1319 (8th Cir. 1996) (holding 25 pound lifting restriction did not significantly restrict major life activities)). See also, Thompson v. Holy Family Hospital, 121 F.3d 537, 540 (9th Cir. 1997) (holding plaintiff's lifting restrictions of 25, 50, and 100 pounds are not substantially limiting); Ray v. Glidden Co., 85 F.3d 227, 229 (5th Cir. 1996) (holding the inability to perform heavy lifting does not render a person substantially limited in the major activities of lifting or working).

In a workers' compensation context, if an employee has a permanent physical restriction, the employer may be in a position that requires it to make an effort to offer reasonable accommodation to an injured or disabled employee. Prior to enactment of the ADA, if an employee received a permanent 50 pound lifting restriction as a result of a work-related injury, the employer could have legitimately terminated that employee if they were unable to do the job. However, since the enactment of the ADA, the employer may now be required to offer that employee reasonable accommodations and retain that individual as an employee. As that employee continues to work, however, the company faces a continuing obligation and liability if that employee should sustain another work place injury aggravating or accelerating that pre-existing condition.

Therefore, application of the ADA to occupational injuries must be made on a case-by-case basis. Such an analysis must be made in conjunction with employer's policies and procedures. It is further recommended that policies and procedures are developed to address ADA compliance and workers' compensation injuries if the employer does not have such policies. Mr. Baker may be contacted with questions or concerns regarding the ADA or workers' compensation issues. He is also available to assist in the revision/drafting of policies.

---

<sup>1</sup> <http://www.usdoj.gov/crt/ada/q%26aeng02.htm>