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EMPLOYMENT LAW QUARTERLY

REVIEWING RECENT DEVELOPMENTS IN THE EMPLOYER-EMPLOYEE RELATIONSHIP

CARPAL TUNNEL VISION: *U.S. Supreme Court Limits Scope of Disability under ADA*

by Michele L. Jakubs*

The United States Supreme Court unanimously limited the scope of what constitutes a disability under the Americans With Disabilities Act ("ADA").

In *Toyota Motor Manufacturing v. Williams*, the Court held that an employee who suffered from carpal tunnel syndrome was not disabled for purposes of the ADA. In that case, the plaintiff worked on a quality control team and initially performed all of her regular job duties. However, the employer decided to rotate the quality control employees through all phases of the quality control process. During her rotation, plaintiff wiped each car on the production line. As a result, the plaintiff had to hold her hands and arms at shoulder height for several hours.

The plaintiff, previously diagnosed with carpal tunnel syndrome, suffered pain in her neck and shoulder shortly after the employer changed her job duties. The employer denied the plaintiff's request to return her to her former duties to accommodate her medical condition. The employer ultimately terminated the plaintiff for poor attendance. The employee filed suit against the employer alleging violations of the ADA and the Kentucky Civil Rights Act.

The United States Supreme Court, in analyzing the plaintiff's claims, clarified the definition of a "disability" under the ADA. The Court determined that a disability must substantially limit the performance of manual tasks. That limitation occurs when the impairment "prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives." Further, the impairment must impact the individual on a permanent or long-term basis. The Court also determined that an individual cannot rely on a medical diagnosis of a disability, but must prove that the impairment substantially limits major life activities. That determination must be made on a case by case basis.

In determining whether a person is substantially limited in his or her ability to perform manual tasks, the Court decided that the appropriate question is "whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job." Manual tasks are part of a person's daily life (e.g., household work, bathing, etc.). "Manual tasks unique to any particular job are not necessarily important parts of most people's lives."

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The Court concluded that working with hands and arms extended to shoulder level for several hours at a time is not a manual task that is of central importance to most people's daily lives. As a result, the Court remanded the case to the Sixth Circuit Court of Appeals to determine if the employee was disabled under its clarified definition of a disability.

The United States Supreme Court's decision severely restricts the scope of claims that fall under the ADA. The revised ADA analysis requires that an individual have a substantial impairment in performing manual tasks that are of central importance to most people's lives, not just tasks associated with an individual's job. The impairment must also be long-term or permanent in nature. While narrowing the class of individuals who fall under the protection of the ADA, this standard requires employers to perform a more detailed evaluation of an employee claiming a disability. This evaluation must now include a review of the restrictive effect on the employee's job duties and on the employee's daily life activities.

For more information concerning qualifying conditions or providing accommodations under the ADA, please contact Michele L. Jakubs at (216)696-4441 or mlj@zrlaw.com.

**Michele L. Jakubs, Z&R's newest Employment & Labor Department member, practices in the areas of labor relations, equal employment opportunity, employment discrimination, the Fair Labor Standards Act, and state wage and hour laws.*

THREE'S A CROWD—*EEOC Not Bound by Arbitration Agreements*

by Stephen S. Zashin*

The United States Supreme Court recently held that the Equal Employment Opportunity Commission ("EEOC") can pursue judicial relief on behalf of an employee who agreed to arbitrate any workplace disputes. In *EEOC v. Waffle House,* the Court ruled that an arbitration agreement between an employee and employer does not bar the EEOC from filing a lawsuit against the employer seeking injunctive and monetary relief for the employee.

In *Waffle House*, the employee signed a mandatory arbitration agreement with the employer. Sixteen (16) days after he began working for the employer, while working, the employee had a seizure. Shortly thereafter, the employer discharged the employee. The employee never sought to initiate any arbitration proceedings. Instead, he filed a charge of discrimination with the EEOC alleging that his employer terminated him in violation of the Americans with Disabilities Act ("ADA").

Following a failed attempt to conciliate, the EEOC filed an enforcement action in federal court. The complaint alleged that the employer violated the ADA and requested injunctive relief and damages for the employee. The district court denied the employer's motion to stay the action and compel arbitration or to dismiss the action. The Fourth Circuit Court of Appeals held that the arbitration agreement precluded the

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EEOC from seeking victim-specific relief, but did not bar the EEOC from seeking injunctive relief.

The United States Supreme Court reversed the Fourth Circuit's finding and held that the arbitration agreement between the employee and the employer did not bar the EEOC from bringing suit to obtain specific relief for the employee. The Court held that the EEOC is the "master of its case" and that the EEOC, not the courts, must determine "whether public resources should be committed to the recovery of victim-specific relief."

The Court concluded that the Federal Arbitration Act ("FAA"), which requires courts to consider arbitration agreements as it would other contracts, did not bind the EEOC (which was not a party to the arbitration agreement). According, to the Court, "[t]he EEOC has the authority to pursue victim-specific relief regardless of the forum that the employer and employee have chosen to resolve their disputes."

In making its decision in this case, the Court left more issues open than it resolved. The Court acknowledged that the arbitration agreement might affect the employee's right to intervene in the EEOC's action (i.e., become a party to the court litigation). The Court also recognized, but left unresolved, the effect on such litigation if the employer and employee pursued arbitration to final judgment before the court action.

The Supreme Court's decision is not as ominous as it may appear. In 2000, the EEOC filed less than 300 lawsuits out of approximately 80,000 charges of discrimination (i.e., .3%). In 2001, the EEOC filed less than 400 lawsuits out of approximately 81,000 charges of discrimination (i.e., .5%). By contrast, individual employees filed over 21,000 discrimination lawsuits in 2000.

Even the Supreme Court recognized that "permitting the EEOC access to victim-specific relief in cases where the employee has agreed to binding arbitration, but has not yet brought a claim in arbitration, will have a negligible effect on the federal policy favoring arbitration." Nonetheless, the decision may alter whether employers choose to disclose the existence of alternative dispute resolution programs in responding to charges of discrimination from the EEOC and state administrative agencies.

For more information on how to create and implement an arbitration program or to respond to a federal or state administrative agency, please contact Stephen S. Zashin at (216)696-4441 or ssz@zrlaw.com.

***Stephen S. Zashin**, a member of the firm's Employment & Labor Department and an OSBA Certified Specialist in Labor and Employment law, has extensive experience in all aspects of workplace harassment, employment discrimination and wrongful discharge issues.*

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FIRM NEWS...*Jakubs joins and Zashin becomes an OSBA Certified Specialist*

by Helena J. Oroz*

Zashin & Rich has two (2) exciting developments. First, Zashin & Rich recently welcomed a new addition to its Employment and Labor department. Michele L. Jakubs has joined the firm to practice in the areas of labor relations, equal employment opportunity, employment discrimination, and all other employment related torts. Michele works extensively with the Fair Labor Standards Act and state wage and hour laws. Michele also develops litigation prevention strategies through client guidance, policy development and training.

Prior to joining Zashin & Rich, Michele practiced in the areas of insurance coverage and insurance defense litigation. She has practiced law in the state and federal courts throughout Ohio. Michele earned her law degree from the Cleveland-Marshall College of Law, magna cum laude, and her undergraduate degree from the Ohio State University. She is a member of the American and Ohio State Bar Associations.

Second, Stephen Zashin became one of only 51 Ohio attorneys recently certified by the Ohio State Bar Association (OSBA) as Specialists in Labor and Employment law. Stephen fulfilled several requirements to earn this speciality certification, including demonstrating a substantial and continuing involvement in Labor and Employment law. In that regard, Stephen regularly practices in the areas of employment discrimination, employee privacy, wrongful discharge and unfair competition. He has authored several publications and frequently lectures on all areas of Labor and Employment law.

Zashin & Rich extends a warm welcome to Michele and a hearty congratulations to Stephen.

**Helena J. Oroz, a law clerk with Z&R for the past two years, is the Contributing Editor of the Employment Law Quaterterly.*

OSHA ALERT—*OSHA Adds a Wrinkle to its Documentation Requirements*

by Robert C. Hicks*

Effective January 1, 2002, OSHA will require its 1.4 million covered employers to utilize OSHA's new record keeping procedures for tracking workplace injuries and illnesses. OSHA expects that the new procedures will simplify the record keeping process, protect employee privacy and yield more accurate injury and illness data. Such data is very important in light of OSHA's recent promise to beef up the number of OSHA visits in an effort to target workplaces with the highest injury and illness rates.

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OSHA will delay the enforcement of the new procedures for 120 days. Covered employers should note, however, that only employers who make a good faith effort to meet the new record keeping obligations receive the benefit of the delayed enforcement period. Generally, "covered employers" includes all employers except those with 10 or fewer employees during all of the last calender year or those whose business is classified in a specific low hazard retail, service, finance, insurance or real estate industry.

At a minimum, covered employers must do the following in order to comply with OSHA's new record keeping requirements for tracking workplace injuries and illnesses:

(1) Prepare a summary of workplace injuries and illnesses for the year 2001 on the summary page of the OSHA Form 200, certify and post the summary for the entire month of February 2002;

(2) Record new workplace injuries and illnesses occurring as of January 1, 2002 on thenew OSHA Form 300 that replaces the old OSHA Form 200;

(3) Complete an incident report for work related injuries and illnesses on the new OSHA Form 301 that replaces the old OSHA Form 101;

(4) Prepare a summary of workplace injuries and illnesses that occur each year on the new OSHA Form 300(A) that replaces the summary page on the old OSHA Form 200; and,

(5) Post the new OSHA Form 300(A) for a period of three (3) months beginning on February 1, 2003 (i.e., until April 30 of each year).

For more information about workplace injuries or illnesses or OSHA's new record keeping procedures please contact Rob Hicks at (216)696-4441 or rch@zrlaw.com.

**Robert C. Hicks practices in the areas of employment discrimination, wrongful discharge, unfair competition and occupational health and safety.*

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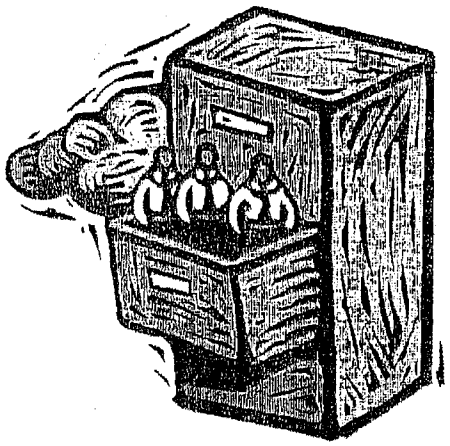

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Contributing Editor to *Employment Law Quarterly*: Helena J. Oroz.