

Recent Supreme Court Decisions Favor Employers

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At the end of its 1999 term, the United States Supreme Court issued important rulings that give both clarity and comfort to employers, one under the Americans with Disabilities Act of 1990 (“ADA”) and one under Title VII. In the former, the employees lost and in the latter, the employee won, but in truth, both decisions favor employers.

In the first opinion, arising out of three separate ADA cases, the Court held that people whose disabilities can be mitigated or corrected by medicine or medical devices cannot state a claim for protection for disability discrimination under the Americans with Disabilities Act of 1990. Justice Sandra Day O’Connor, in a 7-2 decision, held that courts must assess individuals in their mitigated states for 3 reasons: first, the statute’s definition of “disability” as “a physical or mental impairment that substantially limits a major life activity” uses the present indicative tense, “substantially limits,” requiring the person to be “presently - not potentially or hypothetically substantially limited.” A corrected impairment, Justice O’Connor wrote, while still an impairment, does not substantially limit a major life activity. Second, the ADA requires an “individualized” inquiry into the effect of the impairment on the person’s life. Justice O’Connor wrote that if people were viewed in their unmitigated states, courts and employers would have to speculate on their condition, perhaps looking to general information rather than actual impact. Third and “critically,” the Act’s findings that some 43 million Americans have disabilities are inconsistent with a definition that includes people in their uncorrected states, because the latter definition would bring the total to as many as 160 million people. The facts of the three cases involved: a) twin sisters with severe myopia, corrected to 20/20 vision with glasses (*Sutton v. United Air Lines*); b) a mechanic who used medication to control high blood pressure (*Murphy v. United Parcel Service*); and c) a truck driver blind in one eye (*Albertsons, Inc. V. Kirkingburg*).

In the second opinion, *Kolstad v. American Dental Association*, the plaintiff sued for Title VII sex discrimination and won actual damages of \$52,718. However, the trial judge dismissed her punitive damages claim for lack of evidence. On appeal, a three-judge panel of the District of Columbia Circuit upheld liability and reversed the district court’s punitive damages ruling. A sharply divided *en banc* panel reversed the three judge panel, holding that punitive damages can only be awarded upon a finding that discrimination was **both** intentional and egregious. The Supreme Court reversed, in a 7-2 decision written by, again, Justice O’Connor. The Court held that Title VII allows punitive damages to be awarded when an employer has engaged in intentional discrimination and has done so with “malice or with reckless indifference” to a person’s federally protected rights. The terms “malice” and “reckless” ultimately focus on the actor’s state of mind, not conduct, and pertain to the employer’s knowledge that “it may be acting in violation of federal law, not its awareness that it is engaging in discrimination.” The opinion did not stop there, however. The Court went on, by a 5-4 vote, to hold that agency principles place limits on an employer’s liability for the acts of its agents in punitive awards under Title VII. Employers may not be vicariously liable when their managerial agents discriminate, if the employer has made a good-faith effort to comply with Title VII, such as having a written anti-discrimination policy and

a complaint procedure in effect. *Kolstad* is consistent with the Court's key sexual harassment rulings last term in which the justices created an affirmative defense for employers who also make good-faith efforts to comply with Title VII.

The obvious impact of these decisions is crucial to employers' daily decisions regarding their employees. First, an employer **MUST** have a clear, communicated policy against discrimination of all kinds **AND** must provide its employees an effective complaint procedure that is also clear and communicated to all employees. Second, employers can set appropriate qualification standards, particularly those designed to ensure public safety. In making their assessments of whether someone is "disabled" under the ADA decisions regarding individuals who may have disabilities, employers may consider mitigating measures, such as prescription medicine or medical devices. Third, employers may avoid the business-breaking threat of punitive damages with well-thought out policies and reasonable efforts to eradicate discrimination from their employment decisions. Rogue managers who make decisions in contravention of the employer's policy can no longer subject the employer to punitive damages, as long as the employer has made good faith efforts to comply with Title VII. Employers who need assistance with their employment policies or job descriptions, or with drafting new ones, should contact an attorney as soon as possible.