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Laurie Wiedenhoff, Esq.

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Under new ADA Amendments, Cancer in Remission is a Disability

By Laurie Wiedenhoff, Esq.

When Congress amended the Americans with Disabilities Act through the ADA Amendments Act ("ADAAA" or "Act"), employers could only speculate how the legislation would affect day-to-day employment practices. And although the ADAAA has been in effect since January 1, 2009, thanks to the sometimes slow nature of litigation we are just starting to see courts interpret the Act's provisions. A few months ago, a federal court in Indiana became one of the first courts in the country to issue a decision interpreting the ADAAA, and its decision demonstrates why employers need to reconsider their old preconceptions about the ADA when it comes to handling claims of disability discrimination.

The case in question is [Hoffman v. Advanced Healthcare of Fort Wayne](#), 2010 WL 3522573 (N.D. Indiana, Aug. 31, 2010). Beginning in 2006, Hoffman worked as a service technician for a company later acquired by Advanced Healthcare. His position required him to be able to "multi-task, prioritize care, follow complex directions and remain flexible within normal working hours and available after hours and on call." It also required

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"light duty travel and an ability to work in varying locations." In November of 2007, Hoffman learned he had Stage III Renal Carcinoma. He soon underwent surgery, and he returned to work in early January 2008 without any specific limitations or restrictions on his ability to work or the hours he could work. He proceeded to work his normal schedule throughout the rest of 2008, missing work only for regular doctor visits.

In January 2009, Hoffman was informed that Advanced Healthcare acquired a new client and that all service technicians would need to work overtime on the project. This new schedule would have increased Hoffman's work hours to 65-70 hours per week. In addition, he would have to drive to the Advance Healthcare office once a week for a night shift and be on call on weekends. Hoffman initially agreed to new hours, stating to his supervisor, David Long, that he had to accept it because he wanted to keep his job. However, the next day Long expressed concern over the impact of the new schedule on Hoffman's health, and Hoffman agreed with Long's concern, stating that working the proposed hours would put him "into the grave." Hoffman then provided Advanced Healthcare a note from his doctor stating "[p]atient may not work more than 8 hours/day, 5 days/week. Dx: Stage III renal cancer."

After another conversation in which Hoffman said that he could not work the proposed hours, Long told Hoffman he had two options: resign or work the new schedule like the other service technicians. Hoffman refused to do either and said that Advanced Healthcare would have to fire him. Long said that he would get a termination letter from human resources by the end of the day. However, the letter never came, and a few days later Long then told Hoffman that he could work 40 hours a week instead of the new proposed overtime, but that to do so Hoffman would need to close up his home office and begin working out of the Fort Wayne office, which was an hour's commute from Hoffman's home. Hoffman refused, stating that he had already been fired the previous Friday, and regardless, he refused to add two to three hours of unpaid commute to his day. A few weeks later, Hoffman learned that his cancer had gone into remission, and that it had been in remission at all times during his conversations with Long about the proposed schedule. Eventually, Hoffman sued Advanced Healthcare, claiming that his termination violated the ADA.

The main question the parties argued was whether Hoffman's cancer - which was in remission at all important times in the case - was a disability under the newly revised ADA. Advanced Healthcare argued that because Hoffman did not have specific limitations or restrictions on his ability to work or hours of work when he returned to work in January 2008 and because Hoffman's cancer was in remission at the time of his termination, he did not have a "physical impairment" that "substantially limited a major life activity." However, the court noted that the ADA states that "an impairment that is episodic *or in remission* is a disability if it would substantially limit a major life activity when active" (emphasis added), and neither side disputed that Hoffman's cancer, if not in remission, would constitute a disability under the ADA. Advanced Healthcare then argued Congress could not have "intended all cancer survivors in

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remission, with no medical evidence of active disease, to be considered as disabled as a matter of law for the rest of their lives." The court was not persuaded, stating that although there was an utter lack of law on the subject to date, Congress intended to greatly expand ADA protections with the ADAAA and that the language of the ADAAA, quoted earlier, was clear. Thus, Hoffman did not need to show he was substantially limited in a major life activity at the actual time of his termination.

What does the *Hoffman* case mean for employers? This case represents the first wave of decisions interpreting the ADAAA. In the coming months and years, employers can expect many more decisions that will demonstrate how the newly revised ADA has expanded worker protections. Put simply, employers must throw out their old preconceptions of what conditions implicate the ADA and of how to handle possible ADA issues. Many conditions presented by employees that may not have called for the interactive process before will require the interactive process going forward. Employers should also exercise caution in relying on even recent case law interpreting the ADA, because those courts may not have been interpreting the ADA under the new amendments. Thus, just because an employer prevailed on a past disability discrimination claim does not necessarily mean that should similar facts arise in a subsequent claim the employer will prevail this time around.

However, despite the changes to the ADA, employers should still practice many of their old good habits. Job descriptions should be updated to accurately reflect the actual essential functions of the job. Human resources professionals should evaluate the essential functions of an employees' position when he or she approaches the company with a non-intermittent condition. While it is likely that some employees who did not need to be accommodated before may now have to be accommodated, by continuing best practices under the interactive process, employers will be able to continue to avoid pitfalls in the new law.

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