Five Cases at Supreme Court Could Affect Disabilities Law

Job Opportunities, Employers' Responsibilities at Stake

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Karen Sutton and Kimberly Hinton are twin sisters whose dream of flying for a big airline has made them a symbol of the legal morass that the nation's disabilities laws have become.

When the sisters from Spokane applied to be pilots for United Air Lines, they were turned away after the company contended they were both too nearsighted to take a place in the cockpit. So they sued under the Americans with Disabilities Act, but courts said the law does not cover people who can correct their disability (in their case, with glasses) and get along as well as anyone else.

To the sisters and others with serious handicaps that can be improved by taking medicine or using some device, it is a Catch-22: They lose out on jobs because of their condition but do not qualify as disabled under the law. In the view of many employers, the law was not designed for relatively common problems but rather to shelter a small, discrete group of disabled people who have long suffered discrimination.

Now, the sisters' case joins four others before the Supreme Court this term that could profoundly affect the landmark disabilities law passed by Congress nearly a decade ago. Eventual rulings in these disputes will determine how easily people with disabilities can find their way into the nation's work force and how much financial responsibility employers should bear to accommodate them.

"The statute is not just about protecting people in wheelchairs or those who are totally blind," contends the sisters' lawyer, Van Aaron Hughes. "It is about protecting anyone with any significant impairment who is being prejudged" about his or her ability to do the job.

The legal dilemmas as well as larger social policy questions about what the term "disabled" means and who the ADA truly benefits are just emerging. More than 20 percent of all job discrimination complaints filed with the Equal Employment Opportunity Commission now include grounds based on disabilities.

Advocates say the law has changed public attitudes, opened new opportunities to people with myriad disabilities and brought dignity to their lives. But critics say the ADA has become another tool of frivolous litigation wielded more by problem employees with minor ailments than by individuals truly shut out because of discrimination.

Since the law went into effect, about 100,000 complaints have been filed with the EEOC. About half of those were found to have no "reasonable cause," or grounds. Of those complaints that did go forward through EEOC proceedings, a relatively modest $211 million was paid out by businesses to the handicapped.

Now, the Supreme Court is poised to pick up where Congress left off when it passed the law making it illegal for an employer to discriminate against a "qualified individual with a disability." The law also protects the disabled against bias in housing, medical care and places that serve the public.

A record five ADA disputes will be heard over the next two months, beginning next week when the justices take up the case of a stroke victim in Texas who says her boss refused to provide retraining, her colleagues mocked her speech impediment and she was fired after being told she would never be able to do anything again.

Soon after Carolyn Cleveland suffered a stroke, she applied for Social Security disability. With some rehabilitation, however, she was able to return to work part time at Policy Management Systems Corp., where she checked the backgrounds of prospective employees of the firm's clients. Cleveland notified the Social Security Administration she no longer needed benefits. Eventually, after what she says were continual taunts from co-workers and refusal by her company to help her accommodate her disability, her performance suffered and she was fired.

The question is whether an individual who has applied for Social Security disability benefits, but then returned to work, can claim in an ADA lawsuit that she was "qualified" for the job and discriminated against. A federal appeals court said the application for benefits creates a presumption that the person is not qualified.

The case, *Cleveland v. Policy Management Systems Corp.*, is being closely watched by a variety of advocates, including those representing the mentally retarded, elderly and people with AIDS, and by employers, including the Equal Employment Advisory Council, which argues that courts should presume once someone has applied for Social Security benefits she is not "qualified" for the job under the ADA's coverage.

A larger issue to be addressed by the justices in three April cases is how to define "disabled"—the foundation of any ADA claim. If bad eyesight can be corrected, can it be the basis for a job discrimination lawsuit? If medicine can reduce high blood pressure, can a mechanic claim a trucking company fired him because of his hypertension?

Sutton and Hinton say it should not matter whether the disability can be corrected by drugs, glasses or something else. But United's lawyer points to the ADA's language specifically covering people whose impairment "substantially limits one or more major life activities," and says the availability of glasses and contact lenses means the sisters' myopia is not substantially limiting. "Congress did not intend that a minor and relatively common impairment such as nearsightedness . . . be a covered disability," United lawyer Lisa Hogan wrote in a brief.

Ruling for the airlines in *Sutton v. United Air Lines*, the 10th U.S. Circuit Court of Appeals declared Sutton and Hinton "cannot have it both ways." The court said if they are "disabled" because their uncorrected vision substantially restricts their ability to see, they cannot be qualified for pilot jobs. And if they are qualified because their vision is correctable, the court said, they cannot be limited in "the major life activity" of seeing and are therefore beyond ADA protection. Other federal courts have ruled the opposite, that disabilities should be determined without any mitigating measures, and it will now fall to the Supreme Court to resolve the conflict.

Sutton and Hinton contend that not everyone who wears glasses should be considered disabled, but the severity of their bad vision (about 20/200 in the right eye, 20/400 in the left) qualifies them. The two other related cases involve a truck driver who is blind in one eye (*Albertsons v. Kirkingburg*) and a mechanic with high blood pressure (*Murphy v. United Parcel Service*).

In a fifth case, *Olmstead v. L.C.*, the justices will address states' responsibility for providing treatment and rehabilitation in the community, rather than in institutions, for the mentally disabled.

It has taken nearly a decade for core questions of disability rights to advance to the court. Last term, the justices ruled in their first case on the ADA. In it they held, 5 to 4, that people who are HIV-positive, even those with no overt symptoms of the deadly disease, fall within the ADA shelter.

"If these new cases come out in favor of the persons with disabilities," said Georgetown law professor Chai Feldblum, who pressed for the legislation more than a decade ago, "that will make a huge difference to giving people a sense of comfort that the ADA truly protects their rights to be part of the community."

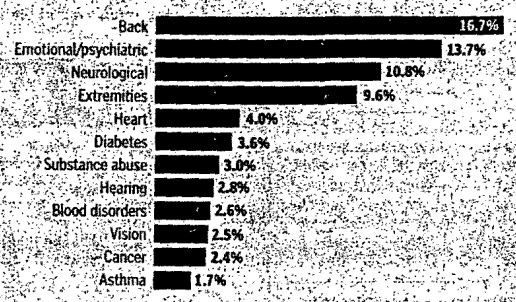
From the standpoint of employers, the court needs to make clear what physical conditions are covered so that businesses know what financial liability they face.

"Employers view the ADA as a very well-intentioned law with a very laudable purpose, but there are people who have tried to abuse it over the years," said Susan Mahallati Kysela of the National Chamber Litigation Center. "It's become important for the Supreme Court to clarify who is disabled."

Defining Disabilities

From 1992 to 1998, there were 108,939 complaints filed with the Equal Employment Opportunity Commission under the the Americans with Disabilities Act.

Impairments most often cited (as a percentage of all cases)



SOURCE: Equal Employment Opportunity Commission

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