



Most Carpal Tunnel Syndrome May Get Crossed Off the List of ADA Disabilities

"I've got carpal tunnel syndrome" may not be enough for disability law coverage. The U.S. Supreme Court, in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, held that a woman with carpal tunnel syndrome could not be categorized as a disabled worker under the Americans with Disabilities Act (ADA) because she was still able to care for herself off the job. Under the ADA, an employee is disabled if he or she is "substantially limited" in one or more "major life activities." The Court held the central inquiry must be whether the employee is unable to perform the variety of tasks central to an employee's daily life, not whether the employee is unable to perform the tasks associated with her specific job. While the Court did not say that carpal tunnel syndrome could never amount to a protected disability, the employee in *Toyota Motor Manufacturing* was not protected because she could still perform a variety of "major life activities" such as brushing her teeth and bathing. Employers beware, however, that a disabled individual in California need only be "limited" in a major life activity, rather than "substantially limited," so that many cases of carpal tunnel syndrome would still be covered under state law.

Nobody Has to Die First

Nobody "has to die first" before an individual with a disability constitutes a "direct threat" to the safety of others and, therefore, not protected by the Americans with Disabilities Act (ADA). In *Waddell v. Valley Forge Dental Associates, Inc.*, the Eleventh Circuit Court of Appeals held that a dental practice did not violate federal disability law by discharging a hygienist, responsible for cleaning patients' teeth, after finding out that he was HIV-positive. The court concluded that, even though the risk of HIV transmission was small and had never happened before, the fact that the hygienist could "theoretically" transmit the HIV virus was sufficient to make him a "direct threat" to others and not protected by the ADA. To constitute a direct threat, the Court held that although the evidence of the risk of danger must be sound and not speculative or fanciful, it is not a "somebody-has-to-die-first" standard. This standard also applies to potential threats to the safety of others from disabilities other than HIV. Nor should this decision be interpreted too broadly as to permit discrimination against HIV positive employees or to refuse to reasonably accommodate such persons.

Punishing Employers for Failing to Give FMLA Notice Comes Under U.S. Supreme Court Review

Can an employee receive more than 12 weeks of medical or family leave under the FMLA? According to the Department of Labor regulations, if an employer fails to give an employee express notice that his or her medical or family leave will be counted toward the employee's 12-week FMLA allotment, the employee retains the right to

the full 12 weeks of leave until notice is given. However, the Eighth Circuit Court of Appeals, in *Ragsdale v. Wolverine Worldwide, Inc.*, rejected these regulations because it would give employees more leave than they are expressly entitled to under the FMLA. The U.S. Supreme Court recently agreed to review the Eighth Circuit decision to rule on this controversial issue.

No Exception to FMLA Eligibility Requirements

Another Labor Department regulation regarding the FMLA was rejected by the court in *Carballo v. Puerto Rico Telephone, Inc.* There, a federal district court rejected a Labor Department regulation that waives an employee's FMLA eligibility requirements in cases where the employer fails to tell the employee if she or he is eligible for FMLA leave before the leave is to start. To qualify for FMLA leave, an employee must have worked for the employer for at least one year and at least 1,250 hours during the 12-month period before the commencement of the requested leave. In *Carballo*, the employee had more than one year of employment, but had not worked the required 1,250 hours. Even though the employer failed to give the employee the proper notice, the Court refused to waive the FMLA eligibility requirements on the basis that such a waiver is contrary to congressional intent.