



## HOW DO YOU SPELL RELIEF?

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ADA, FMLA, SSA ... Lawyers representing injured workers sit down to an alphabet soup of possible legal remedies. Here's how to spoon up the letters that will best protect your client.

Jane was shocked when she was fired. A registered nurse, she had worked on the surgical floor of Metro Hospital, a private employer, for 15 years. After she herniated a disc while helping to move a patient, Jane took a leave of absence, believing that the hospital would hold her job until she could return. Though her injury required surgery to repair the disc, Jane was on her way to recovery when, 15 weeks into her leave, the termination letter came.

It informed Jane that her leave period under the Family and Medical Leave Act (FMLA)<sup>1</sup> had elapsed. Unless she could report to work immediately, she would be fired. When she received the letter, Jane still had significant difficulty lifting and standing or walking for long periods of time. She was physically incapable of doing her job on the surgical floor.

Jane contacted her union representative, who filed a grievance contending that Jane should be offered a position in the hospital's contractually created light-duty program. The hospital denied the request, claiming that Jane would not meet the program's requirements that she be physically able to perform her original job at the end of 90 days. The union declined to take the grievance to arbitration.

Though Jane seems to have reached the end of the line at Metro, the hospital's doors might not be closed to her quite yet.

Possible remedies for Jane and others like her are available under a patchwork of federal and state laws that affect the rights of injured and disabled employees. In the course of a single illness or injury, any one or all of a series of laws could apply to the employer-employee relationship. These include the FMLA, the Social Security Act (SSA),<sup>2</sup> the Americans with Disabilities Act (ADA),<sup>3</sup> and federal labor, state disability discrimination, and state workers' compensation laws.

In determining which of these laws apply to a given circumstance, lawyers should analyze both the legislative intent and the laws' definitions of disability. For example, what constitutes disability under the ADA? How does the SSA's definition differ, and why? Where does workers' compensation fit in? Which of these laws are fashioned to provide income replacement and which seek to preserve the employment relationship?

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If an ill or injured employee has suffered \*20 an adverse job action in connection with the illness or injury—whether it be demotion, transfer, a pay cut, or termination—the ADA and FMLA are always worth a hard look. Was the employer motivated by discrimination? Was the employer retaliating against an employee who missed too many days of work?

If an employee is injured on the job, workers' compensation can replace lost income. However, standing alone, it won't compel an employer to treat the employee fairly or guarantee the employee time off in order to treat the injury. The ADA and FMLA are the appropriate tools to meet those goals.

If an employee is so severely ill or injured that she can't work in her prior job or any job, the ADA and FMLA will ultimately be of little use to her. But the Social Security Act can provide the employee with a financial lifeline that will keep her from sinking into poverty—especially when used in tandem with workers' compensation law in the case of a work injury.

There aren't any easy answers as to which of these laws apply in a given circumstance. Indeed, in the last four years, the U.S. Supreme Court has issued five opinions that examine the scope of ADA disability alone.<sup>4</sup>

Despite the potential difficulty—particularly for lawyers who practice in one of these disciplines and not another—it is important to find where a client fits within the spectrum of these federal and state laws, or at least to know the relevant questions to ask. Often, a consultation with a specialist will be the right move for a practitioner who has no experience in a given discipline.

## WORKERS' COMPENSATION STATUTES

Jane's workplace injury could trigger, at a minimum, a right to receive workers' compensation benefits to replace her lost earnings. Though workers' compensation statutes vary among the states, their ostensible purpose is to provide quick and certain benefits to employees who suffer work-related injuries. In exchange, employers are insulated from tort liability.<sup>5</sup>



Under workers' compensation statutes, disability is synonymous with loss of earning power. These statutes differ from the ADA, which focuses on what the disabled person can do, because they focus on what the employee cannot do. Workers' compensation seeks to make up for an employee's loss of earning capacity, not to promote an injured worker's continued employment or reinstatement.<sup>6</sup>

In Jane's case, workers' compensation will not save her job, but it will provide her with post-termination income as long as her injury prevents her from fully rejoining the workforce. Typically, these benefits would reflect a percentage of her pre-injury earning capacity. As Jane's condition improves, the hospital could seek to modify her benefits to reflect increases in her earning capacity. In some states, employer-sponsored short-term and long-term disability benefits and/or unemployment compensation might offset workers' compensation benefits.<sup>7</sup>

Similarly, contractual benefits, like short-term and long-term disability, might be offset by collateral sources of income like workers' compensation. Generally, the effect of law and contract is that an injured employee will replace only a percentage of his or her pre-injury income, not the entire amount.

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## SOCIAL SECURITY DISABILITY INSURANCE

For an injury more serious than Jane's, Social Security Disability Insurance (SSDI) benefits might be a source of income replacement. SSDI is a social insurance program for people whose disabilities prevent them from working in any job. Though Jane's injury arguably prevents her from working as a nurse on the surgical floor at Metro, it will not prevent her from working as a receptionist in a surgeon's office. If Jane's injury permanently prevented her from standing or sitting for long periods of time, or eliminated her ability to perform any manual task, she might qualify for SSDI benefits.<sup>8</sup>

To collect SSDI, a claimant must not only be unable to do her previous work, but—considering her age, education, and work experience—must be unable to engage in any other kind of substantial, gainful work that exists in the national economy.<sup>9</sup>

Also, a person claiming SSDI must have contributed to the Social Security system for a period of time set by the act. Claimants over 31 years old must demonstrate they have contributed to Social Security for 20 of the 40 quarters before disability. A person is credited with quarters of coverage based on wages paid into the Social Security system during a given year. For those who become disabled under the age of 31, this formula is modified to reflect \*22 fewer years in the workforce.<sup>10</sup>

For low-income individuals who are disabled enough to qualify for SSDI, payments may be augmented by Supplemental Security Income (SSI), a social assistance program available to those with monthly income less than that required for the basic necessities of life. This amount is now fixed at \$1,752 per year for an individual and \$2,628 for households.<sup>11</sup> A permanently disabled SSI claimant need not go through SSDI analysis for wage contribution into the Social Security system.

The Supreme Court has ruled that applying for SSDI does not preclude an ADA claim.<sup>12</sup> Since the ADA assumes that a disabled employee can continue to work, circuit courts had split on whether a claim for SSDI benefits—which requires an assertion of total disability—preempts an ADA claim. As the Supreme Court explained, however, the ADA recognizes the possibility of accommodation in the work-place; SSDI's definition of disability does not. Thus, an employee can receive an accommodation from her employer and continue to work, despite being disabled under SSDI.

The Court noted that a plaintiff cannot ignore the apparent contradiction between an SSDI claim and an ADA claim. Instead, she must be prepared to explain how the two can be reconciled. That explanation will vary from case to case.<sup>13</sup>

In the case of a work-related injury, SSDI benefits can supplement state workers' compensation, but they can be offset by the amount of state benefits received. If the combined SSDI and workers' compensation benefits exceed 80 percent of a claimant's predisability income, the state or federal benefits will be reduced to bring the total under the cap.<sup>14</sup>

Predisability income is typically measured against a claimant's "average monthly wage," determined by a formula prescribed by the Social Security Act.<sup>15</sup>

## FAMILY AND MEDICAL LEAVE ACT

While workers' compensation and SSDI are mainly concerned with replacing lost income, the FMLA affords plaintiffs like Jane an opportunity for reinstatement. Because Metro is a private employer with more than 50 employees, it is covered under the act.<sup>16</sup> If Jane worked 1,250 hours in the 12 months before she was injured, she would be entitled to take FMLA leave for a qualifying injury.<sup>17</sup>



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The FMLA was enacted to promote job stability when workers have or adopt children or when they confront illness, injury, or family emergencies.<sup>18</sup> The law provides eligible employees with 12 weeks of leave during any 12-month period.<sup>19</sup> After an employee has taken FMLA leave, she is entitled to return to the same job or to an “equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.”<sup>20</sup>

In cases of employee illness or injury, the act measures the severity of the injury against the employee’s ability to perform the functions of her job.<sup>21</sup> Jane’s injury falls within the FMLA’s triggering definition of a “serious health condition,” defined in the statute’s implementing regulations to include illnesses, injuries, impairments, and physical or mental conditions involving periods of incapacity and requiring inpatient hospital care or continuing treatment by health care providers.<sup>22</sup>

When Metro notified Jane that her FMLA leave had elapsed and she would be terminated, she was unaware that her leave under the act had run concurrently with the hospital’s contractual employee medical leave. The hospital’s failure to notify Jane might open the door for her return to Metro, if only by a small crack.



In its first hard look at the FMLA, the Supreme Court in March clarified an employer’s notice obligations under the act. In *Ragsdale v. Wolverine Worldwide, Inc.*, the Court invalidated a Department of Labor (DOL) regulation requiring employers to first give an employee explicit notice that the leave is counted as FMLA leave before tallying it against the employee’s 12-week FMLA entitlement.<sup>23</sup>

In the *Ragsdale* case, the plaintiff took a 7-month leave, under an employer-provided medical leave policy, for cancer treatment. At the end of that period, she was too sick to return to work. She asked her employer for an additional 12 weeks of leave under the FMLA. The employer denied her request, claiming that her \*23 FMLA leave ran concurrently with the employer-provided medical leave. The employer, however, had not identified the plaintiff’s absence as FMLA leave before or during the time she was absent while sick, nor had it given her notice that her absence would be counted against her FMLA leave.<sup>24</sup>

Although the act itself does not require an employer to designate leave as FMLA leave, the Department of Labor’s regulations expressly state that an employer must designate both paid and unpaid leave as FMLA leave and give notice of this to employees.<sup>25</sup> The employer cannot designate FMLA leave retroactively. Only leave that occurs after the date the employee was notified of the designation can be classified as FMLA leave.<sup>26</sup>

As the Eighth Circuit noted in its underlying opinion, federal courts have split on whether the DOL regulations impermissibly “convert the statute’s minimum of federally mandated unpaid leave into an entitlement to an additional 12 weeks of leave unless the employer specifically and prospectively notifies the employee that she is using her FMLA leave.”<sup>27</sup>

In *Ragsdale*, the Supreme Court—in a 5-4 decision—resolved the issue in favor of those courts that hold the regulations to be improper. The majority reasoned that the DOL regulations establish “an irrebuttable presumption that the employee’s exercise of FMLA rights was impaired [by the employer’s notice failure]—and that the employee deserves 12 more weeks. There is no empirical or logical basis for this presumption ....”<sup>28</sup>

While it did not expressly invalidate the employer-notice requirements stipulated in the DOL regulations, the Court held that, for an employee to be entitled to an equitable or financial remedy for an employer’s failure to notify, the employee must show that the failure impaired her rights under the act. The *Ragsdale* plaintiff, whose 30 weeks of employer-provided leave far outstripped the FMLA’s 12-week requirement, could not make that showing of impairment.

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However, as the Court pointed out, there are certain, albeit rare, fact patterns when an employee can show impairment \*25 based on notice failure. Take, for example, a scenario in which a cancer patient's treatment regimen runs more than 12 weeks, with treatment occurring only on alternate weeks. If the patient were informed that the leave would count against her FMLA entitlement, she might elect to take leave only on the alternate weeks, saving 6 weeks of FMLA leave. If the employer failed to provide FMLA notice and she exhausted her 12 weeks of leave, she might have an equitable argument to 6 more weeks of leave, contending that she would have planned differently if the employer had given adequate notice.

For Jane, whose 15 weeks of employer-provided leave exceeded the 12-week FMLA entitlement and who was physically unable to work during those 15 weeks, the Ragsdale rationale will foreclose equitable reinstatement. If she had been physically able to work for some stretch of that time, she could make an argument under Ragsdale that she would have returned to Metro if she had been given adequate FMLA notice at the outset of her leave.

Apart from the potential notice violation, the FMLA would not require Metro to reinstate Jane if she could not perform her job when her leave ran out.<sup>29</sup>



### THE AMERICANS WITH DISABILITIES ACT

The ADA is a broad remedial statute designed to prohibit discrimination against people with disabilities who want to and are qualified to work. At the heart of the act is a requirement that employers provide disabled employees with reasonable accommodations so they can do their jobs.<sup>30</sup>

Few statutes have generated as much Supreme Court review as the ADA—much of it narrowing the scope of the statute's reach. In its recent ruling in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Court held that an automobile assemblyline worker whose carpal tunnel syndrome and related impairments prevented her from working on the line did not qualify as “disabled” under the ADA.<sup>31</sup>

As the Court noted, the ADA defines “disability” as a physical impairment that “substantially limits one or more ... major life activities.”<sup>32</sup> The act requires that a covered employer provide “reasonable accommodation” to an impaired employee if the employee is a “qualified individual with a disability.”<sup>33</sup> A qualified individual is defined as someone with a disability “who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.”<sup>34</sup> The *Williams* Court looked specifically to whether the plaintiff's carpal tunnel syndrome substantially limited her ability to “perform manual tasks,” a major life activity.<sup>35</sup>

The Supreme Court noted that the Sixth Circuit had held that the plaintiff was “disabled” within the meaning of the ADA because her impairment prevented her from doing “a class of manual activities affecting the ability to perform manual \*26 tasks at work.”<sup>36</sup> But the Supreme Court reversed, explaining that the circuit court's view of manual tasks should not have been limited to those performed in the workplace. Rather, the Court said, an ADA plaintiff “must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term.”<sup>37</sup>

Though *Williams*'s injury might have prevented her from working on an automobile assembly line, it did not prevent her from performing tasks of central importance to her life such as “household chores, bathing, and brushing [her] teeth.”<sup>38</sup>

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Fortunately for Jane, the Williams decision is expressly limited to clarifying the bounds of the major life activity of performing manual tasks. This is only one of a series of “major life activities” recognized by the ADA. Others include walking, lifting, seeing, hearing, and working.<sup>39</sup>

Unfortunately for Jane and for other potential ADA plaintiffs, the Supreme Court, along the way to reaching its limited holding, explained that the language of the ADA “need[s] to be interpreted strictly to create a demanding standard for qualifying as disabled.”<sup>40</sup> That phrase will probably find a home in defense summary judgment motions for years to come.

For plaintiff attorneys who proceed on an ADA claim, the Court’s clear message is to choose wisely the arguments that your client pursues and build a detailed, individualized, and preferably voluminous record as to why the client fits within that disability category.

In order to avoid the federal courts’ typically narrow interpretation of the ADA and the Supreme Court’s language in Williams, many plaintiff lawyers look to state disability discrimination statutes for relief. Though these statutes often reflect the ADA, some states’ laws include broader definitions of disability. In Connecticut, for example, disability is defined as “chronic impairment.”<sup>41</sup> There, a plaintiff need not show that she is substantially limited in a major life activity.

Similarly, in cases involving union workers, collective bargaining agreements often include provisions that prohibit disability discrimination. In deciding what constitutes a disability under a contract, an arbitrator is not required to follow federal ADA interpretations and can read the term broadly. In Jane’s case, her contract did not have a disability discrimination provision. If it had, she would have done well to grieve under it because her injury is probably not serious enough or permanent enough to qualify as a “disability” under typically conservative federal court review.

If we assume for a moment that she can argue under the ADA that her disc injury substantially limits her ability to walk, lift, or work, Metro is required to provide her with a reasonable accommodation unless the hospital can show that doing so would create an undue hardship.<sup>42</sup>

The ADA’s implementing regulations define reasonable accommodations as “modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.”<sup>43</sup>

Though the ADA does not include an exhaustive list of potential job accommodations, the implementing regulations state that reasonable accommodation may include job restructuring, part-time or modified work schedules, reassignment to a vacant position, and the acquisition or modification of equipment and devices.<sup>44</sup>

Continuing its review of the act, the Supreme Court—at press time—was slated to rule on a case that considers whether reassignment is permissible when it violates an employer’s established seniority system.<sup>45</sup> The case has broad implications for union workplaces, where collective bargaining agreements have traditionally been held to trump the ADA on the reassignment issue.

Acknowledging its departure from the mainstream in the underlying appellate decision, the Ninth Circuit held that violation of a noncontractual seniority system does not bar reassignment under the ADA.<sup>46</sup> In dicta, the court said that collective bargaining agreements cannot be used to invalidate the act’s accommodation requirement.

For Jane, job reassignment to a less strenuous position away from the surgical floor, if it fits within the hospital’s contractual seniority system, may provide a viable ADA accommodation.

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The ADA might also be used to buy Jane more leave time.<sup>47</sup> Unlike the FMLA, leave taken under the ADA is not capped at 12 weeks. Instead, as with any accommodation under the act, the need for leave will be measured against the burden placed on

an employer to give it. The burden is measured by the nature and cost of the accommodation, the employer's overall financial resources, the nature of the job and the workplace, and the impact of the accommodation on the workplace.<sup>48</sup> For example, under this analysis, a manager in a mom-and-pop grocery store could be granted less leave than a secretary in a large corporation. If an employer claims that no accommodation is possible, the burden is on the company to prove it.<sup>49</sup>

The hospital had rejected Jane's request for a position in its contractually created light-duty program because it was not certain she could meet the requirement that she be physically able to perform her original job after 90 days. On its face, this rejection violates the ADA. The hospital's obligation to accommodate Jane, presuming that she is "a qualified person with a disability," continues throughout her employment. At the end of the 90-day period, the hospital would have to reassess whether \*27 Jane could be accommodated, either in her original job or through reassignment.

If Jane received workers' compensation benefits, the hospital might refer her to a rehabilitation counselor to find a new job rather than put her in the light-duty program. This would allow the hospital to reduce or eliminate its workers' compensation wage-loss liability. But outplacement isn't an ADA accommodation. If Jane can be accommodated in her job at Metro, the hospital has an obligation to do it.<sup>50</sup>

Under the ADA, Jane has some obligations, too. She and her employer must work together to "identify the precise limitations resulting from the disability and potential reasonable accommodations that can overcome those limitations."<sup>51</sup> The process is triggered either by an employee's request for accommodation or by an employer's recognition of the need for it. In its ADA Compliance Manual, the Equal Employment Opportunity Commission indicates that an accommodation request can be made in plain English and need not mention the ADA or the phrase "reasonable accommodation."<sup>52</sup>

In this process, employers must analyze job functions to determine the essential and nonessential tasks and, cooperating with employees, identify both barriers to job performance and potential accommodations to eliminate them.<sup>53</sup> If a reasonable accommodation would otherwise have been possible, an employer's failure to participate in good faith in the process violates the ADA.

It's important that Jane respond to her job termination letter with an accommodation request. Though a court may later find she was not disabled under the ADA, she will have preserved her right to press the issue.

Further, because federal court interpretation of the act is in a constant state of flux, employers are sometimes reluctant to test the litigation waters on a close question. Instead, they will err on the side of accommodation when an employee with a significant injury makes a request, though the injury may not fall within a federal court interpretation of ADA disability.

In cases like Jane's, state and federal laws, taken together, can work to keep an employee in her job and provide her with income while she is out of work. For lawyers, using these laws to protect workers may require time-consuming research and case evaluation, but the effort is essential if clients are to receive their full spectrum of rights.

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## STATUTE PURPOSE

### Workers' compensation

To provide quick and certain benefits to employees who suffer work-related injuries. In exchange for providing these benefits, employers are insulated from tort liability.

### Social Security Disability Insurance

To replace income for people with disabilities who generally are unable to work permanently or for extended periods.

### Family and Medical Leave Act

To promote job stability when workers have or adopt children or when they confront illness, injury, or family emergencies. Affords eligible employees 12 weeks of leave during any 12-month period.

### Americans with Disabilities Act

To prohibit discrimination against people with disabilities who want to and are qualified to work. Requires that employers provide reasonable accommodations that permit these employees to continue to work despite their disabilities.

### Notes:

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1 29 U.S.C. §§2601-2654 (1994).

2 42 U.S.C. §§401-434 (1994).

3 42 U.S.C. §§12101-12213 (1994).

4 Toyota Motor Mfg., Kentucky, Inc. v. Williams, 122 S. Ct. 681 (2002); Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999); Murphy v. United Parcel Serv., 527 U.S. 516 (1999); Albertsons, Inc. v. Kirkingburg, 527 U.S. 555 (1999); Bragdon v. Abbott, 524 U.S. 624 (1998).

5 1 ARTHUR LARSON, LAW OF WORKMEN'S COMPENSATION §§1.00-3.40 (1994).

6 Id.; see also EEOC Enforcement Guidance: Workers Compensation and the ADA, 8 FEP Manual (BNA) 405:7391 (1996).

7 3 ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION §508.205 (1994).

8 Cleveland v. Policy Mgmt. Corp., 526 U.S. 795, 801 (1999); Mathews v. de Castro, 429 U.S. 181, 185-86 (1976).

9 42 U.S.C. §423(d)(2)(A); 42 U.S.C. §1382c.

10 20 C.F.R. §§404.130-33, 20 C.F.R. §§140-46 (1995).

11 42 U.S.C. §§1381-1383f.

12 Cleveland, 526 U.S. 795, 801.

13 Id. at 806-07; see also EEOC: Instructions for Field Offices: Analyzing ADA Charges After Supreme Court Decisions Addressing "Disability" and "Qualified" (July 1999), available at [www.eeoc.gov/docs/field-ada.html](http://www.eeoc.gov/docs/field-ada.html) [hereinafter EEOC Instructions].

14 42 U.S.C. §424a.

15 42 U.S.C. §415b, §423a(a)(18).

16 29 U.S.C. §2611(4)(A)(i).

17 Id. §2611(2)(A)(ii).

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- 18 29 U.S.C. §2601; see also EEOC: Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964, 8 FEP Manual (BNA) 405:7371 (1996).
- 19 29 U.S.C. §2612.
- 20 *Id.* §2614(a)(1).
- 21 *Id.* §2612(a)(1)(D).
- 22 29 C.F.R. §825.114 (1998).
- 23 *Ragsdale v. Wolverine Worldwide, Inc.*, 122 S. Ct. 1155 (2002).
- 24 *Ragsdale v. Wolverine Worldwide, Inc.*, 218 F.3d 933, 935 (8th Cir. 2000).
- 25 29 C.F.R. §825.208(a).
- 26 *Id.* §825.208(c).
- 27 *Ragsdale*, 218 F.3d 933, 937 (citing *McGregor v. Autozone, Inc.*, 180 F.3d 1305, 1308 (11th Cir. 1999). Compare *Schloer v. Lucent Techs., Inc.*, No. CIV 99-3392, 2000 WL 128698 (D. Md. Jan. 21, 2000) with *Plant v. Morton Int'l, Inc.*, 212 F.3d 929, 934-36 (6th Cir. 2000); *Ritchie v. Grand Casinos of Miss., Inc.*, 49 F. Supp. 2d 878, 881 (S.D. Miss. 1999).
- 28 122 S. Ct. 1155, 1162.
- 29 29 C.F.R. §825.214(b).
- 30 42 U.S.C. §12112(b)(5)(A).
- 31 122 S. Ct. 681, 691.
- 32 42 U.S.C. §12102(2)(A).
- 33 42 U.S.C. §12112(b)(5)(A).
- 34 *Id.* §§12112(b)(5)(A), 12111(8); see also EEOC Instructions, *supra* note 13; EEOC Enforcement Guidance: Definition of the Term "Disability," 8 FEP Manual (BNA) 405:7278 (1995).
- 35 *Williams*, 122 S. Ct. 681, 691.
- 36 *Id.* at 688.
- 37 *Id.* at 691 (citing 29 C.F.R. §1630.2(j)(2)(ii)-(iii)).
- 38 *Id.* at 693.
- 39 5 C.F.R. §84.3(j)(2)(ii) (1994).
- 40 *Williams*, 122 S. Ct. 681, 691.
- 41 CONN. GEN. STAT. §46a-51(15).
- 42 42 U.S.C. §12112(b)(5)(A); 29 C.F.R. §1630.9.
- 43 29 C.F.R. §1630.2(o)(ii).
- 44 *Id.* §1630.2(o)(2).
- 45 *U.S. Airways, Inc. v. Barnett*, 228 F.3d 1105 (9th Cir. 2000), cert. granted, 121 S. Ct. 1600 (2001).
- 46 *Id.* at 1119-21.
- 47 29 C.F.R. §1630.2(o); EEOC Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act §3.10(4), 8 FEP Manual (BNA) 405:7055 (1992).
- 48 42 U.S.C. §12111(10); 29 C.F.R. §1630.2(p); see also EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Compliance Manual (CCH) §902 (Mar. 1, 1999); Steven B. Epstein, *In Search of a Bright Line: Determining When an Employer's Financial Hardship Becomes "Undue" under the Americans with Disabilities Act*, 48 VAND. L. REV. 391 (1995).
- 49 42 U.S.C. §12112(b)(5)(A).
- 50 EEOC Enforcement Guidance: Workers Compensation and the ADA, *supra* note 6.
- 51 29 C.F.R. §1630.2(o)(3).
- 52 EEOC Compliance Manual (CCH), *supra* note 48, §902, at 5438-40.
- 53 29 C.F.R. §1630.9.

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