

## Mixed Motive Allegation Not Enough To Sustain “Regarded As” ADAAA Case

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When the Americans with Disabilities Act Amendments Act (ADAAA) became effective in 2009, it was clear proving a “disability” was going to be much easier for plaintiffs than it had been in the past. Still, interpretive guidance on other aspects on the amended act – through regulation and court decisions – has been much slower to develop. Although not controlling outside its jurisdiction, the Southern District of Indiana, in *Nayak v. St. Vincent Hospital*, recently shed light on the “regarded as” method of proving disability discrimination. The case can be [found here](#). Under the ADAAA, an employer may not discriminate against an individual regarded as having a disability that is not minor and transitory in nature. The only relevant change in the language of the ADA and the ADAAA regarding the general prohibition against discrimination is that the ADAAA prohibits discrimination “on the basis of” a disability as opposed to “because of” a disability, as the ADA prohibited. The Southern District of Indiana found that this “small change in the text of the ADAAA is not significant enough to transform the ADAAA into a mixed-motive statute.” Thus, under the “regarded as” prong, plaintiffs must still plead and prove that their perceived disability was the “but for” cause of the adverse employment action. Unlike Title VII discrimination cases, proof of a mixed motive will not suffice. With disability claims on the rise – and showing no signs of slowing – court guidance on the technical aspects and evidentiary burdens under the ADAAA is extremely important because it affects how employers should handle employees with potential disabilities. While most decisions have been auguring in favor of employees, perhaps this case signals that the mixed motive strategy will have to remain on the shelf under the ADAAA.

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