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Employers May Come Up, Um, Short Under ADA

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A decision last week from the U.S. District Court for Arizona highlights a point made previously in this space – for better or worse, the number of people protected by discrimination laws almost never goes down, rather we just keep adding protected classes and who is covered under them. In this decision, the Court opened the Pandora's Box of possibly protecting short employees under the ADA.

The case involves an allegedly bullying supervisor - accusing the plaintiff of mistakes that turned out to the supervisor's own, touching or hugging the plaintiff in a way that was received as patronizing, and not allowing employees to use the restroom and other things in the workplace. The employer was involved in field work to combat a small insect, and the plaintiff's and other employees' concerns about workplace health and safety issues with that work were disregarded. The supervisor eventually demoted the plaintiff, stating that she could not drive vehicles because she was only 4'10". The plaintiff filed numerous claims including an ADA claim, and the employer moved to dismiss before discovery.

While the allegations certainly paint the picture of less than ideal management and HR practices (note again this is before discovery has taken place, so the employer has not had an opportunity to respond on the factual allegations), the Court's holding that short stature may be an "impairment" raising possible ADA claims should be concerning for employers. The court acknowledged that height or lack thereof would not normally be considered an impairment, and indeed there is language from the U.S. Supreme Court suggesting that. However, the court said, 4'10" may be enough outside the normal range that it may "substantially limit one or more major life activities. The brief discussion of this issue can be found on page 6 of the court's opinion.

This decision does not have sweeping importance outside of the court's jurisdiction as far as binding precedent, but rest assured that there will be plaintiffs invoking it in new contexts. As always, good management and strongly documenting good business reasons for a termination decision are the best preventive practices.

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