HIV case shines spotlight on ADAAA's broader disability definition

A recent Illinois district court case sheds light on whether HIV is a disability under the ADA Amendments Act of 2008 (ADAAA). In Horgan v. Simmons, (No. 09 C 6796, ND IL, 2010), the court held that an HIV-positive man who was terminated after disclosing his medical condition to his supervisor could pursue an employment discrimination claim under the ADA.

Under the ADA, employers cannot discriminate against a qualified individual with a disability. The ADAAA, which became effective Jan. 1, 2009, revised certain provisions of the ADA to broaden the scope of the law’s protections and make it easier for people to prove that they have a covered disability.

This case reflects the trend toward broader protection under the ADA.

A boss’s suspicions

In 2001, Kenneth Horgan began working as a sales manager for Morgan Services Inc., a linen and uniform rental company. He was promoted to general manager in 2008.

Ten years earlier, Horgan had been diagnosed with HIV, the virus that causes AIDS. He never told anyone at work.

Horgan claimed that his supervisor asked to meet him for a “social visit,” during which the supervisor said he was worried about Horgan and said that “if there was something medical going on, needed to know.”

Horgan stated he had no health problems that affected his ability to work. But after the boss continued to insist he thought something was wrong, Horgan disclosed that he was HIV-positive.

Time ‘to recover’

The supervisor questioned how Horgan could perform his job and lead his employees if they knew about his condition. Horgan claimed that his supervisor then told him he needed “to recover,” should “leave the plant immediately” and that he would discuss Horgan’s situation with the owner of Morgan Services.

The next day, Horgan received a copy of an e-mail sent to the general managers and staff stating that Horgan was no longer employed.

Horgan sued Morgan Services and his supervisor, claiming he had been terminated because of his HIV-positive status in violation of the ADA. He alleged the supervisor’s questions constituted an impermissible medical inquiry in violation of the ADA.

The defendants sought dismissal, arguing that Horgan couldn’t show he had a protected disability under the ADA. They argued that the supervisor’s questions were job-related and, therefore, not prohibited under the ADA.
Is HIV a disability?

The court said Horgan had a case. The judge cited the elements that a plaintiff must show to prevail on an ADA claim:

1. He is disabled.
2. He is qualified to perform the essential functions of the job with or without accommodation.
3. He suffered an adverse employment action because of his disability.

The defendants argued that Horgan failed to establish the first element because he wasn’t substantially limited in a major life activity, one of the definitions of a “disability” under the ADA.

The judge pointed out that “the ADAAA clarified that the operation of ‘major bodily functions,’ including ‘functions of the immune system,’ constitute major life activities under the ADA’s definition of disability.” He noted that “an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” The judge held that Horgan’s HIV-positive status substantially limited the function of his immune system, which is a major activity.

The judge also favorably cited to the EEOC’s proposed regulations implementing the ADAAA, which includes HIV as an impairment that meets the definition of a disability.

Thus the court allowed Horgan’s claim to proceed.

A matter of questioning

The court further held that the supervisor’s questioning constituted an impermissible medical inquiry.

Under the ADA, it is unlawful for an employer to ask an employee whether the employee has a disability or inquire as to the nature or severity of the disability, unless the inquiry is related to the job and consistent with business necessity.

The defendants argued they could ask Horgan questions about HIV since the goal was determining whether he was fit to work. However, Horgan claimed he felt compelled to disclose his medical condition even after he insisted nothing was affecting his ability to work.

The court said Horgan’s complaint successfully rebutted the defendants’ claim that the supervisor’s questions were necessary to determine whether Horgan could manage his job responsibilities. Accordingly, Horgan’s claim that his supervisor’s questioning constituted an impermissible medical inquiry was also allowed to proceed.

What employers must do now

The ADAAA has broadened the definition of disability under the ADA, something employers must understand. Employers should be aware of the ADAAA’s broader scope of protection for employees to establish they have a disability.

Advice: Consult your attorney to help you draft strong policies and implement practices that comply with the ADAAA.