

The long and short of height discrimination under the ADA

Barbara Joy McElmurry, 4'10" tall, worked for the Arizona Department of Agriculture as a lab technician fighting the [Asian citrus psyllid](#). Her job consisted of screening traps set by her co-workers in the field. Over time, tension developed between McElmurry and her supervisor, Mary Garman. After McElmurry threatened to file harassment charges against Garman, the supervisor accused her of sabotaging lab results and demoted her to field work. McElmurry demurred, protesting that at 4'10" she was too short to drive the vehicles necessary to do field work. Garman, however, forced the demotion. Ultimately, McElmurry was injured in the field, and Garman terminated her.

Among other claims, McElmurry sued her ex-employer for disability discrimination, claiming that the ADA protects her shortness of stature.

In [McElmurry v. Arizona Dept. of Agriculture \(D. Ariz. 6/11/13\)](#), the district court refused to dismiss the disability discrimination claim, concluding that McElmurry had stated enough in her complaint for her disability discrimination claim to proceed to discovery:

McElmurry, however, has alleged that her height is outside the normal range. She stands around 4'10". The Department has claimed that height can never be a disability.... The Court is unable to make such a conclusion on the very limited record before it on this Motion to Dismiss. It is plausible that "short stature" could, in some contexts, "substantially limit one or more of the major life activities of an individual."

Typically, height is not a disability protected by the ADA. As this case illustrates, however, the ADA (as amended in 2009) is now sufficiently broad such that an employee can plausibly argue that a host of normal physical characteristics can become protected disabilities if they fall "outside the normal range." This case concerns height. But, it is not a stretch for one to imagine similar claims of discrimination based on other typical characteristics that fall outside the norm—weight, for example.

This case is a perfect illustration of how dangerous the ADA has become for employers, and how carefully businesses must tread when dealing with any physical or mental condition.