



## APPEALS COURT REVERSES ADA CLASS CERTIFICATION

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In a case of first impression, the U.S. Court of Appeals for the Third Circuit recently held that the question of whether employees were "qualified" individuals with disabilities under the Americans With Disabilities Act ("ADA") could not be resolved through a class action. *Hohider v. United Parcel Service, Inc.*

Mark Hohider and Robert DiPaolo, both UPS employees, sued UPS under the ADA on behalf of themselves and a proposed class of similarly-situated employees. They alleged that the company had a policy of requiring employees to be 100% healed before allowing them to return to work following an injury or illness, and that this policy was a *per se* violation of the ADA. In a 204-page opinion, the U.S. District Court for the Western District of Pennsylvania granted the plaintiffs' motion for class certification.

In its opinion, the district court adopted the two-stage framework created by the U.S. Supreme Court's decision in *International Brotherhood of Teamsters v. United States* (1977) for resolving "pattern or practice" discrimination cases under Title VII. Under the first stage of this framework, the plaintiffs would have the burden of establishing liability by showing that the company had a regular procedure or policy that violated the statute. If plaintiffs succeed at this step, the burden would shift

to the employer to dispute the existence of the unlawful policy or practice. If the employer fails to do so, the court would be permitted to issue injunctive relief, prohibiting the unlawful practice. The lawsuit would then proceed to the second stage, in which plaintiffs would have the burden of proving that each individual member of the plaintiff class may have been affected by the unlawful policy or practice, and the company would have the burden of showing that each individual was treated lawfully.

Rejecting this approach, the Court of Appeals held that to be protected under the ADA, an employee must not only be disabled, but must be a "qualified" individual with a disability, meaning that the employee is able to perform all of the essential functions of the job, with or without a reasonable accommodation. To establish that UPS had a "pattern or practice" of violating the ADA, the court held, would require the district court to conduct an individualized inquiry as to whether each member of the prospective class was in fact "qualified." This differs from the standard of proof under Title VII, which prohibits discrimination based upon "immutable characteristics" specified in the statute, such as race and sex, and does not require the court to determine whether an individual is "qualified" to determine if the statute applies.



## CLIENT ALERT

This case is a significant victory for employers, particularly in light of recent amendments to the ADA that dramatically expand the Act's coverage. If adopted in other circuits, this ruling could make it substantially more difficult for plaintiffs' attorneys to obtain class certification in ADA cases. Nevertheless, in light of the ADA's expanded coverage and increased enforcement efforts by the EEOC, employers should carefully review their return to work and disability accommodation policies to ensure that they

comply with the ADA and minimize their exposure to claims such as those faced by UPS.

The [full text of the 3rd Circuit's 86-page opinion](#) is available in .pdf format from the court's Web site.

For questions regarding this case or the Americans With Disabilities Act, please contact [Bill Pokorny](#) or any [Franczek Radelet attorney](#).