

Perceived Disability Now Recognized Under Connecticut Law

Working Together

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On Monday December 8, 2014, the Connecticut Supreme Court issued its long-awaited decision in the case of *Mireille Derosiers v. Diageo North America, Inc. et al.* holding that the Connecticut Fair Employment Practices Act (the state counterpart to federal employment discrimination statutes, including the Americans with Disabilities Act) prohibits employers from discriminating against individuals whom they *perceive* as being physically disabled, even though the individual may not actually be disabled at all. Ms. Derosiers was employed by Diageo as a packaging buyer, and in that role, was responsible for repackaging Diageo's products (beer, wine and spirits). In the months leading to her termination, she received several unfavorable performance evaluations from her supervisor and was placed on a ninety day performance improvement plan. Ms. Derosiers alleged that she informed her supervisor that she would need to take a medical leave of absence to undergo surgery for a tumor on her right shoulder, and the following day she was terminated for "performance reasons." She then brought suit alleging disability discrimination based on her physical disability and/or perceived physical disability. Both the trial court and appellate court rejected her perceived physical disability claim, holding that while such a claim is expressly permissible under the ADA, it is not provided for under Connecticut law. Indeed, the Connecticut statute is silent on this issue. It states "It shall be a discriminatory practice in violation of this section: (1) For an employer ... to discharge from employment any individual ...because of the individual's ... present or past history of mental disability, intellectual disability, learning disability or *physical disability*" And "physical disability" is defined as "a chronic physical handicap, infirmity or impairment." (In contrast, the ADA specifically prohibits discrimination against employees who are "regarded as" disabled.) The Supreme Court reasoned that an employee who is rumored to have an impairment and is treated unfairly as a result should be entitled to the same legal recourse as the employee who, in fact, does have an impairment, because the illegal animus is the same. While interesting, this case should have little impact on employers' practices or handbook policies because the ADA has always prohibited this type of discrimination. Only employers with fewer than 15 employees, who are not subject to the ADA but are covered by CFEPA, might have believed that discrimination based on a "perceived disability" was permissible. But since 1989, the Commission on Human Rights and Opportunities (CHRO) has interpreted Connecticut's statute as providing the same protections as the ADA in this regard. This case simply legitimizes the CHRO's position.

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