



## DEALING WITH DISABILITY CASES

A new case from the U.S. 5th Circuit Court of Appeals makes clear once again the importance in disability cases of an individual assessment of the employee's ability to perform the job and of having a job description, which includes the essential functions and the physical requirements of the job. In *Rodriguez vs. ConAgra Grocery Products Company*, Rodriguez was a temporary laborer and then was recommended for a permanent position. *ConAgra* made a provisional offer of employment for a permanent position contingent on *Rodriguez* passing a physical examination. *ConAgra* sent *Rodriguez* for a physical but provided the doctor with no job description or physical requirement information regarding the job. The doctor, in fact, knew nothing of the qualifications necessary for the position. The doctor discovered *Rodriguez* had diabetes. When questioned about the condition and whether he was being treated for the condition, *Rodriguez* could not recall the name of the medication he was taking and also could not recall the name of his physician. The doctor submitted a report to *ConAgra* saying *Rodriguez* "was not medically qualified" for the position because of "uncontrolled diabetes." *Rodriguez* disputed the assessment and informed the doctor he had a complete physical two months before; he was taking pills for his diabetes; and he had no problems with his diabetes. The doctor later testified that he observed "no ill-effects attributable to *Rodriguez's* diabetes." On the basis of the doctor's opinion, *ConAgra* denied employment to *Rodriguez*.

The trial court granted *ConAgra's* Motion for Summary Judgment and dismissed *Rodriguez's* case finding there was no Americans with Disabilities Act ("ADA") discrimination because the employment decision was based on the belief that his diabetes was uncontrolled and not on the disability. The 5th Circuit did not agree and reversed the dismissal of the suit. The 5th Circuit found that *Rodriguez* presented sufficient evidence to show that he was "regarded as" disabled and that *ConAgra* withdrew its offer of employment because of his "perceived disability."

Under the ADA, a plaintiff is "regarded as" disabled if he/she: "(1) has an impairment which is not substantially limiting but which the employer perceives as... substantially limiting...; (2) has an impairment which is substantially limiting only because of the attitudes of others towards such an impairment; or (3) has no impairment at all but is regarded by the employer as having a substantially limiting impairment." Here *Rodriguez's* diabetes did not substantially limit him in a major life activity, but *ConAgra* "perceived" his diabetes to be substantially limiting. In essence, the court says that in "regarded as" disability cases "there is nothing for the plaintiff to control or mediate."

The court stressed that *ConAgra* failed to follow the ADA's mandate that an employer measure "in an individualized manner" the impact of an employee's disability on his ability to work. In other words, no blanket rule may be applied. Each individual case must be assessed on the individual facts. Here *ConAgra* had no way of knowing whether *Rodriguez's* "presumed failure to control his diabetes would actually prevent him from performing the requirements of the position." *Rodriguez* actually had performed the job as a temporary employee, and there was no information from which the doctor could assess or conclude that *Rodriguez's* condition would make him unsuitable for the position on a permanent basis. The job offer was withdrawn based on a blanket rule that *ConAgra* would not hire any diabetic who its physicians characterized as uncontrolled. There had been no particular assessment of this individual and his ability or inability to perform the essential functions of the job. The fact that the doctor did not have a job description which described the essential functions of the job made clear to the court that there was no "individualized assessment" as mandated by the ADA.

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# LOUISIANA'S FIRST CIRCUIT STRENGTHENS THE EMPLOYMENT-AT-WILL DOCTRINE

As many of you know, Louisiana is an employment-at-will state. This rule is found in Article 2747 of the Louisiana Civil Code which says, “[a] man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.” Although there are statutory exceptions to the general rule of employment-at-will, courts generally consider the rule important because it furthers broad societal policies, such as the maintenance of a free and efficient flow of human resources.

Recently, the employment-at-will rule was strengthened by Louisiana’s First Circuit Court of Appeal in *May v. Harris Management Corp.*, \_\_\_ So.2d \_\_\_ (La. App. 1 Cir. 12/22/05). In *May*, the court held that recovery is not allowed under the doctrine of detrimental reliance when an employer withdraws an offer of at-will employment prior to the designated time for the employee to begin work. The case has important implications for all employers. Essentially, the *May* court says an employer can hire someone and then fire them before they even start work if there is an at-will employment relationship.

The facts in *May* illustrate the rule. In *May*, the plaintiff was orally offered a position as a nursing home administrator. The plaintiff negotiated her salary and then accepted the job. There was no written employment contract, and the oral offer of employment was for an indefinite term. The plaintiff asked for a one-month delay before starting her new job so that she could give her old employer a two-week notice of her resignation and enjoy two weeks

of accrued vacation time. During the one-month delay period, the plaintiff’s new employer began to feel uneasy about the plaintiff. The new employer withdrew the plaintiff’s offer of employment five days before she was supposed to begin work.

The plaintiff sued the new employer under the doctrine of detrimental reliance. Detrimental reliance is an equitable theory of recovery, and its purpose is to afford a party relief whenever no contract is found. To prevail on a claim for detrimental reliance, a plaintiff must prove three elements: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one’s detriment because of the reliance. After reviewing the facts and applicable law, the court determined the plaintiff could not recover from the new employer under the doctrine of detrimental reliance. According to the court, it was “patently unreasonable” to rely on an offer of at-will employment – even during the period between when she was hired and when she was to begin work.

Thus, the *May* court reaffirmed and strengthened the employment-at-will doctrine in Louisiana. The court acknowledged the “apparent harshness” of its ruling, but said, “to hold otherwise would undermine the at-will employment doctrine in this state.” This decision is clearly favorable for the employer.



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