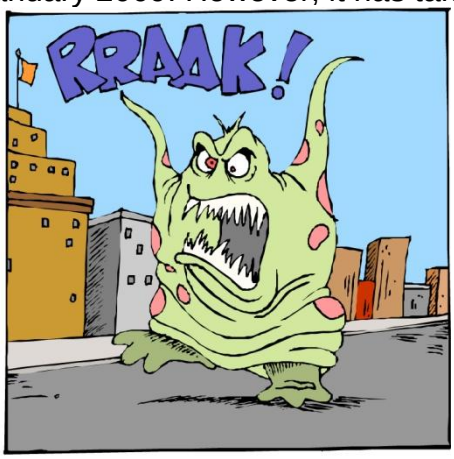
ADAAA litigation "goes live."

By Robin E. Shea on October 29, 2010

The ADAAA sleeping giant is finally awake . . . and he's not a morning person. The Americans with Disabilities Act Amendments Act, which dramatically expanded the definition of "disability" in the Americans with Disabilities Act, was signed into law by President George W. Bush in September 2008 and took effect in January 2009. However, it has taken until now for some of the cases applying



the new law to bubble up through the court system. Recently, the Equal Employment Opportunity Commission announced that it was filing suits against three employers, and a federal court in Indiana denied summary judgment to an employer who sought to defend itself based on the ground of "no disability," formerly a strong defense under the ADA.

The EEOC suits include one against a drug store chain that allegedly refused to provide a stool to an employee who had arthritis in her knees, one against a surveying company that terminated two individuals in a reduction in force -- one of whom had hypertension, and the other of whom had diabetes, and one against a printing company that allegedly refused to allow an employee a part-time schedule so that he could receive chemotherapy.

In *Hoffman v. Carefirst*, one of the first known summary judgment decisions involving the ADAAA, the court found that the plaintiff - who had Stage III renal cancer which was in remission - was disabled and denied the company's motion for summary judgment on that ground. This means that the plaintiff's disability discrimination case will go to trial if it does not settle.

We expect the expanded definition of "disability" under the ADAAA to breathe new life into disability discrimination claims. Before the ADAAA, courts were routinely dismissing disability discrimination lawsuits on the ground that the plaintiffs were not "disabled" within the meaning of the law. If the plaintiff could "mitigate" the disability through medication or other means, then the plaintiff was not disabled. If the plaintiff was not substantially more impaired than the general population, then the plaintiff was not disabled. If the plaintiff had a condition that was in remission, then the plaintiff was not disabled.

That's all changed now. Under the ADAAA, if a condition would be disabling without mitigating measures or when not in remission, then it is a disability. This means that treatable but chronic conditions like hypertension, diabetes, and seizure disorders will now render a person disabled. The old ADA required that an individual be substantially limited in a "major life activity." The ADAAA adds new "major life activities" to the list and also provides that an impairment in a "major bodily function" will create a disability.

Does this mean that employers will now have to go to trial in all of their disability discrimination cases? Let us hope not. But what it does mean is that employers will have to be very careful that they do not discriminate against individuals based on their medical conditions, and that they appropriately consider reasonable accommodations. In a future post, I'll talk about best practices for employers in light of the ADAAA.