

PUBLICATION

Sixth Circuit Analyzes Associational Disability Discrimination

September 01, 2011

The ADA expressly prohibits associational discrimination. In *Stansberry v. Air Wisconsin Airlines Corp.*, the Sixth Circuit recently affirmed summary judgment to an employer on a former employee's associational disability discrimination claim. The employee's wife suffered from a painful autoimmune disorder that was expensive to treat.

The Sixth Circuit recognized three theories of associational discrimination:

1. The "expense" theory covers situations where an employee suffers an adverse employment action because of his or her association with a disabled individual covered under the employer's health plan, which is costly to the employer.
2. The "disability by association" theory encompasses two related situations. Either the employer fears that the employee may contract the disability of the person he or she is associated with (for example the employee's partner is infected with HIV and the employer fears the employee may become infected), or the employee is genetically predisposed to develop a disability that his or her relatives have.
3. The "distraction" theory is based on the employee's being somewhat inattentive at work because of the disability of someone with whom he or she is associated.

Stansberry proceeded under the "distraction" theory. However the Court noted that the Stansberry's wife had been disabled for a long period of time, while Stansberry's job performance had precipitously declined right before his termination. The Court also noted that while Stansberry's declining performance may have been attributable to his wife's disability, that fact was irrelevant. The employee could not use the distraction of his wife's disability as an excuse for poor performance at work, since his employer was under no obligation to reasonably accommodate the employee as a result of the wife's disability.

This situation comes up often in practice. Employees frequently blame their poor performance on factors in their personal life. This case confirms that mere distractions in an employee's personal life, even if they are related to disabilities of family members, do not excuse poor performance.