

Employer ADA Insights From 2nd Circ. Bloomberg Ruling

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Nearly every day, management employment lawyers receive a phone call from a client facing one of the most vexing issues — how to handle a transfer request from a seemingly healthy employee stating they are disabled due to the stress of their job. This manifests itself in a variety of ways.

Sometimes the employee is asserting they are suffering from depression or anxiety, other times they report physical symptoms such as back pain, migraines or even cardiac issues. In these circumstances, the employee often indicates that such health issues are a result of job-related stress, job demands being too high, their boss being too critical, or unrealistic performance expectations.

But regardless of the details, the fact pattern is often the same: an employee without any known preexisting health issue demanding a transfer or a new supervisor as a reasonable accommodation of their reported disability.

The U.S. Court of Appeals for the Second Circuit tackled these issues with its recent decision in *Woolf v. Strada*,^[1] finding that an employee is not disabled under the Americans with Disabilities Act simply because he is not able to work for a particular supervisor. Rather, he must be limited in his ability to perform a wide class of jobs to be considered disabled under the law.

The ADA, enacted in 1990, was designed to address what one of its original authors, disability activist Robert L. Burgdorf, has described as "widespread, systemic, inhumane discrimination against people with disabilities."^[2] At the time of enactment, physically disabled people were routinely excluded from access to basic services such as public transportation, education and health care.

And disabled people were routinely denied the opportunity to work in jobs they were perfectly qualified to perform, either because of outright discrimination or because employers failed to make basic job modifications that would even the playing field between disabled and nondisabled individuals.



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In the decades since, as the demands of the workplace have increased, so have the frequency of employees (and plaintiffs) seeking to extend the definition of "disabled" to include individuals who struggle to effectively manage the job for which they have been hired. Many employees now feel empowered to deflect feedback, or even bypass performance expectations entirely, asserting that a disability requires less stressful job tasks, less work, limited or no performance feedback, reassignment, or a new boss entirely.

The challenges this presents for employers are exhibited in the Woolf case. Ronald Woolf was a sales representative, responsible for negotiating commercial data contracts with third-party data contributors.

His employer, Bloomberg LP, expected Woolf to build and expand his business and professional relationships both inside and outside the organization to get these deals done. According to the factual findings of the court, at the end of Woolf's first complete year at Bloomberg, his performance review noted that he struggled to collaborate with key business managers and that his performance failings had caused additional work for others.

Woolf requested an internal transfer to Asia, which he believed would help his chances for advancement within the company. The company denied this request because its policy required that an employee be in good standing to be eligible for a transfer.

According to the opinion, several months later, Woolf received a verbal warning, noting his inability to meet the productivity expectations of his role, as well as his continuing struggle with internal relationships and product knowledge. As described by the court, Woolf responded with a 19-page rebuttal, claiming the warning "was not necessary or even warranted."

Woolf next informed his supervisors that he was experiencing severe migraines and had been unable to complete a certain work task. According to the court, Woolf provided medical documentation stating that his condition presented a serious health risk "simply from the stress he is currently experiencing at work," pointing to work-related stress as "the primary trigger" for Woolf's migraines.

Woolf's neurologist stated that the only solution would be a change in his current work environment. Instead of a transfer to another position, Woolf requested that he continue in his role but under a different supervisor.

Bloomberg denied Woolf's request but immediately granted Woolf intermittent medical leave, whenever needed, with full pay. Over the next six months, Woolf's managers continued to manage his performance, and after another low performance review and a written warning, Bloomberg terminated Woolf's employment.

Woolf sued, arguing in part that Bloomberg had failed to accommodate his disability, which he characterized as "complex migraines with neurological deficits." He claimed the headaches began a

decade before he commenced employment at Bloomberg, but the record showed that any headaches were controlled and manageable in the past.

As noted by the court, Woolf conceded his headaches only became disabling because of the stress caused by his particular supervisors, and he claimed he could have done the same job with different management. In his lawsuit, Woolf argued that Bloomberg was legally obligated to reduce his stress by giving him a new role or new supervisors.

The trial court disagreed, granting summary judgment for the defendants. In so holding, the court relied upon a line of jurisprudence holding that an individual is not disabled under the meaning of the ADA if their symptoms are situation-specific such that the individual is only precluded from doing a specific job or a narrow class of jobs.

These cases were somewhat dated, preceding passage of the 2008 Americans with Disabilities Act Amendments Act, or ADAAA. Woolf and his attorneys pointed out on appeal that Congress' express purpose in passing the ADAAA was to broaden the class of individuals included under the ADA's definition of disability. For this reason, Woolf argued that the district court's reliance on pre-ADAAA cases was improper, as all pre-ADAAA cases "on the issue of disability are now suspect."^[3]

The Second Circuit disagreed, holding that although the ADAAA intended to broaden the definition of "disability," nothing in the law or its legislative history

suggests that Congress intended to modify, let alone abandon altogether, the well-established understanding that an employee's "inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." This longstanding, common-sense principle of law recognizes that employees who are precluded only from doing their specific job, or from working under a specific supervisor, do not have a "disability." Rather, an employee alleging a substantial limitation in the major life activity of working must show that the limitation affects the ability to "perform a class ... or broad range of jobs."^[4]^[5]

Lessons for Employers

Employers can draw several important lessons from the Woolf case.

First, and perhaps foremost, many have considered American workplaces too stressful or demanding for years. Employers are justifiably concerned with improving the well-being and overall health of their employees.

Consistent with this focus, American workplaces could be well served to introduce employee programs designed to improve the ability to digest feedback, and to respond in a productive and self-reflective way. Many employers already invest resources in team-building programs, and even executive coaching.

Fewer invest in programs designed to help employees learn the skills that would enable them to respond productively to direct performance feedback. Many managers could also benefit from coaching on how to deliver performance feedback in a constructive way.

Of course, in some cases, an employee is not willing to accept feedback. In others, an employee may lack the ability or desire to handle a particularly stressful or demanding job.

As noted, increasingly often an employee will report developing a disability such as depression or anxiety, often coupled with physical manifestations of the two. In those instances, employers should consider the following steps:

1. Confirm with the employee that the symptoms they are experiencing arise from their particular work environment. Employees may reveal that an underlying diagnosis, previously managed, has been exacerbated by the current work environment, although employers should not inquire into preexisting conditions. Document these discussions.
2. Investigate in good faith. Reports often surface about situations in which an employee claims for the first time that a supervisor is causing a medical condition after learning they are about to receive (or soon after receiving) a performance warning, discipline or notice of termination. This timing should be considered as one factor in assessing the credibility of a complainant. Nevertheless, investigations always should be undertaken in good faith, and employers should not simply rule out the possibility that performance feedback is misdirected or unfair.
3. All of that said, in many cases, it is clear that an employee is simply unwilling or unable to accept performance feedback. In such instances, it is important to remind the employee, preferably in writing, that accepting performance feedback is fundamental to all jobs and while the company will work with them to provide needed accommodations, evading performance feedback, avoiding stress or changing supervisors is not one of them.
4. Continue to manage performance, while regularly checking in with the employee to find out whether there are reasonable changes that can be made to help them manage their response to their work environment. For example, an employee who is having trouble interacting with her manager may require break time before and after one-on-one sessions to manage any anticipation of and response to the feedback.
5. Document, document, document. Follow up verbal counseling with an email to the employee, summarizing deficiencies and confirming expectations. Provide the employee with an opportunity to respond or ask clarifying questions by email.

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[1] Ronald Woolf v. Melissa Strada et al., No. 19-860, February 6, 2020.

[2] See “Why I wrote the Americans with Disabilities Act” Robert L. Burgdorf, The Washington Post, July 24, 2015.

[3] 2019 WL 3384283 (at *28, No. 19-860-cv (Feb. 6, 2020 2d Cir.).

[4] Id. at *11.

[5] Id. at *11-12.