



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, D.C.

LABOR AND EMPLOYMENT BULLETIN

September 23, 2005

ELEVENTH CIRCUIT SAYS EMPLOYERS MUST ACCOMMODATE "PERCEIVED" DISABILITIES

In a decision that is sure to further confuse an already confused area of the law, the Eleventh Circuit Court of Appeals—which covers Georgia, Alabama, and Florida—recently decided that employees that are only “regarded as” disabled are entitled to reasonable accommodations under the Americans with Disabilities Act (“ADA”).

The case of *D’Angelo v. ConAgra Foods Inc., d/b/a Singleton Seafood* was brought by a former employee with vertigo. The employer discharged her when it concluded that her symptoms of vertigo, aggravated by watching the conveyor belts in the plant where she worked, rendered her unqualified for her job. On appeal to the Eleventh Circuit, D’Angelo argued that even if she were only “regarded as” disabled, ConAgra had a duty to accommodate her. The Eleventh Circuit agreed, reasoning that the plain language of the ADA provided no basis for distinguishing between individuals who are actually disabled under the legal definition, and those who are only “regarded as” disabled.

The D’Angelo decision has at least two major consequences for employers. First, when deciding whether a duty to accommodate exists, employers must now consider not only whether the employee has an actual disability, but whether the employee was treated as having a disability by managers. Second, employers must be careful not to assume the role of a physician and make assumptions based on employees’ perceived physical or mental impairments.



The Eleventh Circuit's decision also stirs a growing debate among the various courts of appeals. The Eleventh Circuit joins two others in holding that employees that are "regarded as" disabled are entitled to reasonable accommodations. The Fifth Circuit, which covers Mississippi, along with four other courts, has concluded that no accommodation is necessary. Look for this issue to be addressed by the United States Supreme Court in the next few years.

LEARN MORE

at Balch & Bingham's Labor & Employment Seminars.

Seminars will be offered in Birmingham, AL on September 29-30, and in Jackson, MS on October 13-14, 2005.

[Click here to register now!](#)



L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

Leslie M. Allen
205.226.3484
lallen@balch.com

David R. Boyd
205.226.3485
dboyd@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

N. DeWayne Pope
205.226.3421
dpope@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

HUNTSVILLE, AL

David B. Block
256.512.0105
dblock@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
pcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

Cary Ichter
404.760.3502
cichter@balch.com

T. Joshua R. Archer
404.760.3556
jarcher@balch.com

MONTGOMERY, AL

David R. Boyd
334.269.3132
dboyd@balch.com

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpaterso@balch.com

John G. Smith
334.269.3150
jgsmith@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

The Labor & Employment Bulletin is published as an informational resource for clients and friends of Balch & Bingham, LLP. It is not a solicitation to perform legal services. No representation is made that the quality of legal services performed by Balch & Bingham LLP is greater than the quality of legal services performed by other lawyers.

