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Allergy to Perfume Not a Disability, Says Ohio Federal Court

Employers got some relief from a situation that is becoming more and more common: an employee that claims a scent allergy and wants a work accommodation. In *Core v. Champaign County Board of County Commissioners*, Case No. 3:11-cv-166 (S.D. Ohio Oct. 17, 2012), plaintiff claimed she was allergic to a particular scent that substantially limited her breathing and requested, as an accommodation, that her employer institute a policy requesting that all employees refrain from wearing scented products of any kind. The U.S. Court for the Southern District of Ohio threw the case out, concluding that (1) plaintiff was not disabled, as that term was used under the pre-2009 amendments to the Americans with Disabilities Act; and (2) even if the broader post-2009 definition of "disability" were used, plaintiff's requested accommodation was not reasonable.

Plaintiff worked for the Champaign County Department of Jobs and Family Services as a social service worker. Her job required her to conduct onsite inspections of childcare facilities, interact with the public and clients both onsite and offsite, and perform in-house client interviews, among other things. She claimed a disability because one particular scent she encountered occasionally in the workplace—Japanese Cherry Blossom—triggered asthma attacks, which substantially limited the major life activity of breathing. (She claimed reactions to other scents, too, but those reactions only included headaches and nausea, which the court found had no impact on plaintiff's breathing or on any other major life activity.)

Allergy to Specific Perfume Not a Disability

The court, applying the pre-amendment definition of "disability," concluded that plaintiff's reaction to Japanese Cherry Blossom did not substantially limit her breathing because, among other things, she encountered it so rarely, and plaintiff admitted she was still able to perform the essential functions of her job even when exposed. The court acknowledged that, after January 1, 2009, the relevant inquiry is whether the asthma substantially limits plaintiff's breathing when she is having an attack, rather than examining whether her breathing is substantially limited generally. But the court did not reach the issue of whether the amended standard would entitle plaintiff to relief because it concluded her requested accommodation was unreasonable.

Fragrance-Free Workplace Request an Unreasonable Accommodation

The court noted that, in the Sixth Circuit (encompassing Ohio, Michigan, Kentucky, and Tennessee), an accommodation requiring a fragrance-free workplace is objectively unreasonable. The court

emphasized that it would be unreasonable to require employees to "alter all of their personal habits to ensure that all products of daily living, *i.e.*, deodorant, lotions, hair products, etc., used in their private homes before coming into the workplace, are fragrant-free." Moreover, plaintiff's request that all fragrances be banned was not reasonable because she only alleged having breathing difficulty in response to one fragrance. Notably, her employer had offered her a wide array of accommodations—including allowing plaintiff to use an inhaler and take breaks, and circulating an email to all employees requesting that they refrain from wearing Japanese Cherry Blossom—all of which plaintiff inexplicably rejected.

What Does This Mean for You?

Employers should be cautious in relying on this decision. Because of the timing of the plaintiff's claims, the court applied the pre-amendment definition of "disability." An employee after January 1, 2009, who can demonstrate a substantial breathing impairment when encountering a particular scent can probably establish that he or she is disabled under the ADA Amendments Act. But that does not mean that employers are going to have to declare their businesses fragrance-free. The Sixth Circuit, at least, has declared such accommodations facially unreasonable; there does not yet appear to be any law in the Ninth Circuit on this issue.

So what should you do? When an employee complains about scents in the workplace, it is incumbent on the employer to gather as much information as possible. What scents trigger an episode? (This will help determine whether the employee has broad allergies/sensitivities that may require a broader response or has narrower allergies/sensitivities like the plaintiff in *Core*.) What happens when the employee encounters those scents? (If the reaction is headache and nausea, this may not qualify as a disability or may require very minor accommodations; if the reaction is anaphylactic shock, you can bet on probably having to find some accommodation(!).) If necessary, request that the employee provide medical verification of the allergy/sensitivity and its severity. Importantly, like the employer did in *Core*, *talk to the employee* about what might ameliorate the problem. The plaintiff in *Core* made the mistake of rejecting every accommodation offered—accommodations the court later concluded were all reasonable. Will a fan suffice? Can the employee be moved to a different work station? Will the job requirements permit the employee to work remotely part of the time? Are additional breaks to get fresh air adequate? The bottom line: Ask questions and get as much detail as possible.

As always, each case will depend on the particular circumstances. Note that the employer here was prepared to *request* (though not *require*) employees to not wear the particular scent to which plaintiff alleged an allergy. The court specifically declared that offer reasonable—though it did not say that kind of accommodation would have been required. Different facts—for example, an employee with broader scent allergies than the one particular scent at issue here—could well lead to a court concluding broader scent prohibitions are reasonable and necessary. All we can do is hold our breath and wait.