TREATABLE DISABILITY ISSUE  
By Susan Norton

RESOLVED BY SUPREME COURT

Dealing with the Americans with Disabilities Act (ADA) is a thorn in the side of many a well-intentioned manager or employer. Its tricky passages and myriad interpretations continuously plague managers who are trying to figure out the best way to deal with employees who request coverage under the ADA.

There is not a single manager or employer with more than 15 employees under his care that does not have to deal with the ADA on a continual basis. One common scenario is that of an employee with an impairment which is correctable, and trying to deal with the employee’s need for an accommodation to allow him or her to perform the job.

For example, consider having a prospective employee sitting in your office, being interviewed. But what if they have an impairment like severe myopia? If they can wear prescription glasses, do they still fall within the rubric of the ADA? In other words, what if they could fix their disability? Are they still disabled under the terms of the ADA?

Managers don’t like dealing in hypotheticals. And, until recently, when faced with a situation like the one above, that is exactly what they had to do. The resolution of the issue has been anything but simple. And until now, the dialogue surrounding it has been punctuated with what is “supposes” and “maybes.” What if the employee wears glasses? Suppose he or she does not take his or her medication? Is the employee still, or has he or she ever been, disabled?

Court decisions have not been useful in providing aid to beleaguered employers approached by their employees demanding coverage under the ADA. The courts have been split on this issue, with approximately half finding employees needed to be evaluated in their “uncorrected” state, with the other half finding that employees need to be considered in their “corrected” state. The EEOC guidelines are generally useful in interpreting the varying provisions of the ADA, but on this issue, the guidelines disregard the impact of any mitigating measures.

To the collective relief of employers everywhere, the Supreme Court recently considered this issue in the two cases (Sutton v. United States and Murphy v. United Parcel Service). Specifically, the Court considered whether mitigating or corrective measures should be assessed in determining whether individuals are “disabled” for the purpose of the ADA, and thereby covered under the Act. The justices resolved the debate in favor of evaluating the employee in his or her corrected or mitigated state.

The plaintiffs in Sutton were two sisters who applied for positions as pilots. They were rejected because they failed to pass the visual acuity requirement. Their uncorrected nearsightedness was 20/200, exceeding the airline’s 20/100 requirement. When wearing contact lenses or eyeglasses, though, the plaintiffs’ vision was normal. In Murphy, the plaintiff was a truck mechanic with hypertension, which was able to be controlled with medication.

The Supreme Court held that the determination as to whether an individual was disabled under the ADA should include consideration of mitigating measures. The Court explained that a disability exists only where an impairment does limit a major life activity, not where it “might,” “could” or “would” be substantially limiting if mitigating measures were not available.

However, this does not mean that all individuals who take mitigating or corrective measures are not disabled. The Supreme Court emphasized that if a condition is substantially limiting even when corrected, the individual may still be “disabled” under the ADA. It is also worth noting that the Court also provided no guidance with respect to what the legal status was of fully correctable conditions where the employee in question either fails or refuses to use the available corrective measures.

So what does this mean for the average employer facing this issue? These rulings require employers to consider corrective or mitigating measures and their effects in determining whether an individual is disabled under the law. At this time, it seems that individuals who take medication which mitigates an otherwise disabling condition are NOT disabled under the Act if, while under the effects of the medication, they are not substantially impaired in enjoying major life activities. For example, diabetics who take their insulin would not be considered disabled if the diabetes was controlled by medication. The idea is that if the employee in question is able to function by use of medication or other corrective measures just as other non-impaired individuals in society, then he or she is not disabled for the purpose of the ADA. Employers should be aided by the Court’s decisions, which now provide relatively defined rules that start to move the discussion away from the realm of what-ifs and hypotheticals into the realm of practical reality.

Susan Potter Norton is a principle shareholder in the Miami office of Allen, Norton & Blue, P.A., a nationally recognized law firm which represents management in labor and employment law. She can be contacted by email (snorton@anblaw.com).