CLIENT ALERTS & INSIGHTS

Supreme Court Refuses to Hear Driver's ADA Challenge to Sleep Apnea Screening Program

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Earlier this week, the Supreme Court denied a driver's Americans with Disabilities Act ("ADA") challenge to a carrier's sleep apnea screening program in Parker v. Crete Carrier Corp., U.S. Supreme Court Case No. 16-2002. In the case, Parker, a driver, alleged that Crete, his employer, discriminated against him by requiring him-and every other Crete driver with a body mass index ("BMI") of 35 or greater-to undergo medical testing to determine whether they had obstructive sleep apnea.

Crete had a sound, safety-minded reason for instituting the challenged program. As two FMCSA advisory committees have noted, drivers with a BMI in the ranges targeted by Crete's program are at a high risk for obstructive sleep apnea, a condition known to cause daytime sleepiness and make drivers more likely to have accidents. Based on the advisory committees' guidance, Crete instituted a policy requiring its at-risk drivers with elevated BMI to undergo in-lab sleep studies to diagnose, and, if necessary, treat, their sleep apnea with the aim of preventing avoidable accidents.

Parker refused the testing, submitting a physician assistant's note claiming that he had no sleep issues and arguing that he should not be screened as his safety record was exemplary. Crete nevertheless took Parker out of service in accordance with its screening program, and Parker promptly brought suit alleging discrimination on the basis of disability.

The District of Nebraska and Eighth Circuit Court of Appeals both rejected the driver's suit in turn, finding that Crete's sleep apnea screening program was job-related and consistent with business necessity, and thus permissible under the ADA. Although the Supreme Court's decision not to hear the driver's appeal does not have the same implications as an express affirmation of the Eighth Circuit's decision, the decision does assure that the Eighth Circuit's holding will not be overturned in the immediate future. Accordingly, Parker v. Crete remains binding precedent in the Eighth Circuit, and serves an example of an employer's permissible use of employee medical testing program within the parameters of the ADA to employers nationwide.

Nevertheless, employers should be cautioned: Crete's showing that its program was job-related and consistent with business necessity was critical to the case's outcome, and a misstep in the planning or execution of the screening program could have easily led to a different outcome here. Accordingly, employers considering or using a program like Crete's (whether for sleep apnea or otherwise) should consider legal counsel to review their procedures. To speak with a Benesch attorney about reviewing your company's procedures, please contact an attorney in Benesch's Transportation and Logistics Practice Group.

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