



### **Americans with Disabilities Act Claims**

In a recent case, the Third Circuit Court of Appeals reaffirmed that an employer who terminates an employee in retaliation for making a good faith request for an accommodation or for filing a claim of disability discrimination violates the Americans with Disabilities Act (ADA) regardless of whether the employee is disabled.

In *Shellenberger v. Summit Bancorp, Inc.*, 318 F.3d 183 (3<sup>rd</sup> Cir. 2003), an employee repeatedly complained that she was experiencing adverse physical reactions to fragrances and aromatic skin lotions worn by other employees in her work environment. While the employer allowed for some accommodation including paid leave, there was never an agreed-upon or mutually satisfactory resolution of the employee's complaints. The employee subsequently filed an EEOC Complaint alleging that she was disabled under the ADA and that the employer failed to accommodate her disability. The employer met again with the employee to discuss accommodations but the parties could not reach agreement. A short time later, the employer fired her citing an inability to "work out our relationship" as the basis for the termination. In ruling on the termination, the Court of Appeals held that there was sufficient factual evidence, including the proximity in time of the firing to the filing of the EEOC Complaint, by which a jury could conclude that the employee's termination was retaliatory and therefore, the employer could have violated the ADA even though the employee was not even disabled.

The Third Circuit's decision illustrates that the ADA not only prohibits employers from discriminating against disabled workers but also prohibits employers from retaliating

against workers for requesting accommodations in good faith or filing claims under the ADA, regardless of whether they are ultimately found to be disabled.<sup>1</sup> Accordingly, districts that are faced with an employee who makes a good faith request for accommodations or who files a discrimination charge, regardless of the merits, must be mindful of the appearance of retaliation should the need for discipline arise at or around the same time. Particularly, in such situations, districts should ensure that there is a legitimate and proper basis for any adverse employment action and that all necessary documentation has been secured. This will assist a district in defending against any future claim of retaliation.

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<sup>1</sup> *The prohibition against retaliation is a common principle which is not limited to the ADA but also spans other protected classifications such as race, color, religion, sex or national origin as set forth in Title VII, 42 U.S.C. §2000e and age as set forth in the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §623(d).*