Repetitive Motion Injuries and the ADA: 
A Roadmap for Employers 
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I. Introduction

With the passage of the Americans With Disabilities Act (“ADA”), the U.S. Congress took a major step in protecting the disabled from unfair discrimination in employment and other settings. But like other statutes, the ADA was a product of legislative compromise and political maneuvering. Little wonder, then, that the implementation of the ADA has been characterized by substantial litigation over the fundamental question of how “disabled” a person must be to qualify for the ADA’s protections. After many years of confusion in the lower courts, the Supreme Court in recent years has begun to clarify who is and who is not “disabled” for purposes of the ADA.

The Court’s latest pronouncement on this issue came earlier this year in Toyota Motor Mfg. Kentucky, Inc. v. Williams, 534 U.S. 184, 122 S. Ct. 681 (2002). In a decision with broad significance for employers and workers alike, the Court set forth the proper analysis for determining whether a person is disabled when the required “substantial limitation in a major life activity” pertains to the person’s ability to perform manual tasks. In essence, the Court held that the proper focus is not the extent to which the person can perform the manual tasks required by a narrow set of jobs, but the extent to which the person can perform manual tasks that are “of central importance to most people’s daily lives.”

This paper analyzes the current state of the law defining the circumstances in which repetitive motion injuries constitute a disability under the ADA, and provides employers with a roadmap for dealing with the often complex compliance issues that arise in this context.

II. Repetitive Motion Injuries and the ADA

A. Repetitive Motion Injuries Pose Significant Problems in Today’s Workplace.

According to the U.S. Occupational Safety and Health Administration, work-related musculoskeletal disorders represent “the largest single job-related injury and illness problem in the United States,” accounting for one-third of all occupational injuries and illnesses reported to the Bureau of Labor Statistics. 65 Fed. Reg. 68262-63

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Many of these injuries have been linked to working conditions which require workers to engage in repetitive motions, such as cutting chicken filets off the bone, prolonged data entry on a keyboard, lifting heavy materials, and performing many assembly line functions. At the same time, the extent to which working conditions are responsible for a particular injury is often unclear, as the worker in question may have had a preexisting condition, or may have been exposed to other contributing factors away from work.

Many employers have implemented ergonomics programs, medical management, and other strategies to identify potential repetitive motion problems early and take steps to prevent workers from suffering more serious injuries. At the same time, the science of ergonomics is still developing, and in many jobs—such as trash collection, meatpacking and grocery handling—it may simply not be feasible to automate or engineer the repetitive motions completely out of the job. Thus, even those employers that have adopted successful ergonomics programs may still find that some of their workers experience repetitive motion injuries.

B. Many Workers With Repetitive Motion Injuries Have Sought the ADA’s Protections.

Many workers who have suffered repetitive motion injuries on the job have sought the protections of Title I of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. In a significant body of case law developed over the past decade, federal courts have struggled to define whether workers with repetitive motion injuries are "disabled" within the meaning of the ADA, and thus entitled to protection against discrimination based on their injury, as well as reasonable accommodations from their employers. Because the effects of these injuries vary greatly, and because the capacity of individual workers to tolerate repetitive motions varies greatly, the applicability of the ADA has been determined on a highly individualized, case-by-case basis, often with inconsistent results.

C. The Framework of the ADA

The ADA provides that no employer “shall discriminate against a qualified individual with a disability because of the disability” in regard to hiring, advancement, discharge, or the terms and conditions of employment. 42 U.S.C. § 12112(a). The Act defines “disability” to mean “a physical or mental impairment that substantially limits one or more of the major life activities of an individual,” or “being regarded as having such an impairment.” Id. at § 12102(2). An individual is “qualified” if he or she can perform the “essential functions” of the job in question. Id. at § 12111(8).

The ADA also requires employers to make “reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a
disability,” unless the employer can demonstrate “that the accommodation would impose an undue hardship on the operation of the business . . . .” Id. at § 12112(b)(5)(A).
III. The Supreme Court’s Toyota v. Williams Decision


A. The Lower Courts’ Decisions

In the *Toyota* case, Toyota employee Ella Williams developed carpal tunnel syndrome after engaging in assembly line work using pneumatic tools. Toyota reassigned her to other jobs involving fewer manual tasks, consistent with the work restrictions her doctor had imposed. Nevertheless, Williams developed further problems in her arms and shoulders. Eventually, her doctor prohibited her from working. She was subsequently terminated by Toyota for attendance problems. Williams brought suit under the ADA on the ground that Toyota had not reasonably accommodated her conditions. 122 S. Ct. at 686-87. She asserted that she was disabled under the ADA because she was substantially limited in performing housework, gardening, working, and other manual tasks.

The district court granted Toyota summary judgment, concluding that Williams was not disabled within the meaning of the ADA. The court found that Williams’ asserted limitations were “irretrievably contradicted” by her insistence that she was qualified to perform assembly line tasks at the Toyota plant. *Id.* at 688.

The Court of Appeals for the Sixth Circuit reversed. 224 F.3d 840 (2000). To determine whether Williams was disabled under the ADA, the court looked at whether Williams’ physical impairment “involved a ‘class’ of manual activities affecting the ability to perform tasks at work.” *Id.* at 843. Because Williams could not perform certain manual assembly line tasks involving the gripping of tools and repetitive work, the court concluded that Williams’ impairments substantially limited her in the major life activity of manual tasks, and granted summary judgment for Williams on the question of whether she was disabled under the ADA.

B. The Supreme Court’s Analysis

The Supreme Court reversed the Sixth Circuit’s decision, concluding that the lower court had not applied the proper standard because it focused on whether Williams could perform “a limited class of manual tasks” rather than “tasks that are of central importance to most people’s daily lives.” *Id.* at 686.

The Court first noted that the ADA’s definition of disability was taken almost verbatim from the definition of a handicapped individual under the Rehabilitation Act of 1973, 29 U.S.C. § 706(8)(B). Thus, the Court looked to the Rehabilitation Act regulations for guidance on the application of this definition. These regulations provide...
examples of major life activities, including walking, seeing, hearing, and performing manual tasks. 45 C.F.R. § 84.3(j)(2)(ii) (2001).

The Court found that the ADA terms defining a disability “need to be interpreted strictly to create a demanding standard.” 122 S. Ct. at 691. Applying this principle, the Court held that to be protected under the ADA, “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives. The impairment’s impact must also be permanent or long-term.” Id.

The Court then set forth the appropriate analysis when a worker asserts that he or she is substantially limited in the major life activity of manual tasks: “the central inquiry must be whether the [worker] is unable to perform the variety of tasks central to most people’s daily lives, not whether the claimant is unable to perform the tasks associated with her specific job.” Id. at 693.

The Court reversed the Sixth Circuit’s decision, because the lower court had focused on Williams’ specific job rather than on tasks more important to daily living. Id. (“occupation-specific tasks may have only limited relevance to the manual task inquiry”). The Court specifically concluded that the lower court had improperly granted summary judgment for Williams on this issue, because among other things Williams could brush her teeth, bathe, fix breakfast, do the laundry, garden, and perform other daily household chores, although with some limitations.

C. Subsequent Federal Decisions Applying Toyota

Since the Supreme Court issued its ruling in Toyota earlier this year, three federal courts of appeals have applied the Court’s analysis to determine whether employees with repetitive motion injuries were entitled to protection under disability laws. In each case, the court of appeals concluded that the employee had not established a disability under the ADA.

1. Stein v. Ashcroft

In Stein v. Ashcroft, 284 F.3d 721 (7th Cir. 2002), an INS employee’s doctor diagnosed myofacial pain syndrome in the employee’s left arm, and imposed lifting restrictions. The INS eliminated the employee’s duties that required lifting. The employee then brought suit, alleging that she had not received a reasonable accommodation of her condition. Id. at 724. The district court held that she was not disabled.

The Seventh Circuit affirmed, finding that the lifting restrictions did not establish that the employee was unable to work in a broad class of jobs: “[a] plaintiff’s inability to perform ‘one narrow job for the employer’ is insufficient to establish a disability.” Id. at 726. Similarly, the court rejected the plaintiff’s claim that she was
unable to perform non-work tasks such as cutting food, brushing her hair, and sleeping, because the claim was supported only by her affidavit, and she did not state that these problems were “permanent or long-term (or even currently existing).” Id. at 726-27 (relying on the *Toyota* decision).


In *Cannon v. Levi Strauss & Co.*, 2002 U.S. App. LEXIS 2093 (6th Cir. 2002), a sewing-machine operator developed carpal tunnel syndrome, and was put on a permanent work restriction precluding repetitive motions. She was then laid off from her job, and filed suit under the ADA. She claimed that Levi Strauss regarded her as substantially impaired in the major life activity of working. The district court granted summary judgment for Levi Strauss.

The Sixth Circuit affirmed. Id. at *2. The employee had not offered evidence to support her assertion that Levi Strauss considered her to be incapable of performing factory work, rather than the narrower category of work involving repetitive motions. Id. at *11-13. Moreover, the court concluded that “[r]epetitive motion factory work is simply not a broad class of jobs.” Id. at *14. Thus, “even if Levi’s did think that she could not do repetitive motion work, that inability is not a disability, and so Levi’s did not regard her as disabled.” Id. The court cited the Supreme Court’s *Toyota* decision in support of its conclusions.

3.  *Thornton v. McClatchy Newspapers*

In *Thornton v. McClatchy Newspapers*, No. 99-15857 (June 11, 2002), the Ninth Circuit Court of Appeals applied the *Toyota* analysis to reaffirm a previous ruling that a newspaper reporter was not disabled under the ADA by virtue of her repetitive stress injuries. Although the reporter was restricted from continuous keyboard work or writing, the court found that she was not substantially limited in performing manual tasks as the Supreme Court had defined that standard:

While most lawyers or law office personnel would undoubtedly consider continuous keyboarding and handwriting to be activities of central importance to their lives, we cannot say that is so for “most people’s daily lives,” as [*Toyota*] requires. . . . Thornton’s condition does not stop her from either activity; she simply cannot pursue them continuously.

Sl. op. at 8376. In a dissenting opinion, Judge Berzon argued that the reporter’s limitations would have a “widespread, pervasive” effect on her ability to learn and work, and that these activities are central to most people’s daily lives.
IV. A Roadmap for Employers: Questions and Answers About ADA Compliance

While the Supreme Court’s *Toyota* decision clarifies the proper analysis to be used in determining whether an individual with a repetitive motion injury is disabled under the ADA, many employers report that they are still struggling with a host of compliance issues that arise in the context of ADA compliance. The following Question-and-Answer discussion is intended to help clarify employer rights and obligations in this murky area of disabilities law.

A. After *Toyota*, can a repetitive motion injury constitute a disability under the ADA?

The *Toyota* decision imposes a significant burden on plaintiffs who seek to establish an ADA-protected disability based on a repetitive motion injury. As the Sixth Circuit’s subsequent decision in *Levi Strauss* suggests, a worker’s inability to perform work involving repetitive motion will not ordinarily suffice to establish a substantial limitation on the major life activity of working.

Instead, most such workers will be required to demonstrate a substantial limitation in the performance of manual tasks that are central to most people’s daily lives, such as household chores, bathing, and brushing one’s teeth. In other words, it may be necessary for a worker to show that he or she is disabled not just at work, but outside the workplace as well. The *Toyota* decision and its progeny will narrow the group of workers with repetitive motion injuries who can assert ADA claims, but those with more debilitating injuries will very likely be protected.

B. If an employee is “qualified” to perform a job, how can he or she be considered as disabled?

To establish protection under the ADA, an employee must demonstrate both that he or she is qualified to perform the job in question—that he or she can perform the essential functions of the job—and that he or she is disabled under the ADA. While there is an obvious tension between these two requirements, many employees have shown that they have a bona fide disability that does not interfere with their performance of the essential functions of a job.

C. Can an employer adopt an ergonomics policy defining what conditions will be considered as disabilities?

No. The ADA requires an interactive, individualized focus on each affected employee. *See, e.g., Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685 (7th Cir. 1999) (meatpacker’s ergonomics program, which provided temporary light duty work to employees with repetitive stress injuries, might violate the ADA due to lack of interactive process with each employee to identify reasonable accommodations on a case-by-case
basis, and failure to fully consider disabled employees for non-production jobs). The determination as to whether an employee is disabled under the ADA and thus entitled to the Act’s protections depends not simply on the employee’s diagnosed condition. For example, workers diagnosed with a repetitive motion injury will experience symptoms that vary greatly in severity from person to person. Thus, the proper analysis is highly individualized, focusing on the nature, duration and severity of the diagnosed condition, its effect on the employee’s major life activities, and the extent to which a reasonable accommodation may permit the employee to continue performing his or her job or a comparable job.

D. Should mitigating measures be considered in determining whether an employee is disabled?

Yes. In three 1999 decisions, the Supreme Court held that medications and other measures that mitigate a condition must be considered in determining whether an employee is disabled. See, e.g., Sutton v. United Air Lines, Inc., 527 U.S. 471.

E. Can an employer be liable for discrimination under the ADA if it is unaware of the employee’s disability?

No. The ADA prohibits intentional discrimination. The courts have uniformly held—and common sense dictates—that an employer cannot be held liable for intentional discrimination when it was unaware of the employee’s condition. See, e.g., Hammon v. DHL Airways, Inc., 165 F.3d 441, 450 (6th Cir. 1999) (“the employer is not required to speculate as to the extent of the employee’s disability or the employee’s need or desire for an accommodation”).

F. Can an employer refuse to hire or promote an individual into a job that might aggravate a pre-existing health condition?

Yes, within limits. In Chevron U.S.A. Inc. v. Echazabal, No. 00-1406 (June 10, 2002), the Supreme Court held that an employer may deem an individual unqualified to perform a job if the job would pose a direct threat to the individual’s own health or safety. That case involved an individual with hepatitis C, and a determination by the employer’s doctors that due to the individual’s condition the job he applied for would seriously endanger his health and possibly kill him.

In the context of a repetitive motion injury, it appears that under Echazabal employers can exclude individuals who have or are susceptible to repetitive motion injuries from jobs requiring repetitive motion. The “imminence of the risk” and “the severity of the harm portended” must be considered, among other factors.

For example, employers can use pre-employment screening tests to identify applicants that are at an elevated risk of developing a repetitive motion injury, and exclude such individuals from jobs requiring repetitive motion. EEOC v.
G. Does the Toyota decision apply to the definition of a disability under state and local disability laws?

The Toyota decision governs claims brought under the ADA and the Rehabilitation Act, as well as those state and local disability statutes modeled on the ADA. Many state and local jurisdictions, however, have different disability laws, so employers should consult with counsel before assuming that the Toyota decision insulates them from ADA claims based on repetitive motion injuries.

H. Under what circumstances should an employer reassign a disabled employee?

Although this area of the law is in flux, courts and the U.S. Equal Employment Opportunity Commission agree on some general rules. First, assuming an employee is disabled within the meaning of the ADA, reassignment may be appropriate when the employee is unable to perform the essential functions of his or her job despite other reasonable accommodations. While some courts have said that reassignment is an accommodation “of last resort,” most agree that it is one of a variety of accommodations potentially available to disabled employees.

Second, employer and employee are free to mutually agree to reassignment before it is clear that the employee cannot remain in her current position.

Third, an employer’s reassignment obligation extends only to vacant positions that are comparable in terms of pay and status. If the only available vacant position pays less, the disabled employee and the employer may agree to such a reassignment as an accommodation, but the employer is not obligated to compensate the employee at his prior higher rate of pay. And, courts have held that an employer need not create a new position or promote an employee if a comparable position is not vacant. Nor must an employer “bump” another employee already occupying a position just because a disabled employee requests it as an accommodation.

I. Is a “vacant” position one that is presently open or one that you know will be open in the future, and must an employer search everywhere and anywhere for such a position?

A vacant position is one that is presently open or one that will soon be available. According to the EEOC, one month is “soon” but six months is not. As to how widely an employer must search for a vacancy, the EEOC and some courts disagree. Nowhere within the organization is too far to look for a vacancy, according to the EEOC.
unless undue hardship would result. And while employers can argue that reassignment should be limited to a specific business unit, location, or department, courts will look to the employer’s regular practice regarding transfer of employees from one facility to another. Before you conclude that a nationwide or worldwide search is necessary, however, consider a practical tip: identify the disabled employee’s self-imposed geographic limitations and confirm them in writing. Afterwards, limit the company’s search in accord with the employee’s wishes.

J. **Does a disabled employee have to meet the same qualification standards for the vacant position as non-disabled employees? If so, must an employer provide the disabled employee with training to become qualified?**

The disabled employee must meet the same qualification standards for the vacant position as a non-disabled employee. However, if an employer does not impose those qualifications on all non-disabled employees, it risks a discrimination lawsuit by imposing them on disabled employees. For example, requiring all employees, disabled or not, to possess a particular technical certification in order to apply for transfer to a computer-repair position would be entirely legitimate. Imposing the requirement on all disabled applicants while occasionally exempting non-disabled applicants could be problematic. Consistency counts. As for training, an employer is not required to train a disabled employee to meet the qualifications of the vacant position unless it does so for non-disabled employees. Equal training opportunities are the key.

K. **Assume that a disabled employee seeks reassignment to a vacant position but can perform the essential job functions of the position only with another accommodation. Must an employer provide the additional accommodation as well?**

Most courts would say yes, as long as the accommodation does not impose an undue hardship on the employer. Keep in mind that for mid- to large-sized companies with ample resources, establishing undue hardship by relying on cost alone will be an uphill battle. Remember also that courts tend to evaluate each accommodation request on its own merits. Many courts will not be receptive to an employer’s argument that because it already extended multiple accommodations, it does not have to extend another. Also keep in mind that if a disabled employee asks for an accommodation in order to apply for a vacant position, the employer should engage in the interactive process and consider the request like any other.

L. **A non-disabled employee applies for a vacant position, as does a disabled employee seeking reassignment as an accommodation. The disabled employee has less experience, less education, and less impressive performance reviews, but still meets the minimal qualifications for the position. Must the employer give the job to the**
disabled employee, rather than the better-qualified non-disabled employee?

Employment lawyers and a variety of courts have been hotly debating this issue. There is much disagreement. The EEOC says yes, reasoning that the ADA requires more of an employer than to merely allow a disabled employee to apply and compete for a vacant position. Without preferential treatment, says the agency, reassignment as an accommodation is inadequate. Some federal courts of appeal have agreed, such as the Tenth Circuit in *Smith v. Midland Brake*, 180 F.3d 1154, 1164-67 (1999). But other courts have adamantly disagreed. The Seventh Circuit Court of Appeals, in *EEOC v. Humiston-Keeling*, rejected the EEOC’s position. 227 F.3d 1024, 1026-29 (2000). The court characterized the requirement to hire inferior but minimally qualified applicants merely because they are disabled as “affirmative action with a vengeance.”

Employers are truly caught between a rock and a hard place. They can extend preferential treatment to disabled employees at the expense of non-disabled employees, regardless of their comparative qualifications. The best-qualified individuals will not necessarily end up in vacant positions, and non-disabled employees may claim that their purported rights have been infringed. Or, employers can assist disabled employees in identifying vacant positions for which they are qualified, accommodate them as necessary in the application process, but insist in the final analysis that the best-qualified individual, regardless of disability, be selected for the position. Employers choosing the latter option will retain their historic right to assign the best-qualified person to the job, but risk failure to accommodate claims by disabled employees.

V. Conclusion

Even the most well-intentioned employers have struggled to define their rights and obligations under the ADA. Because this is an area of disability law that is changing literally from month to month, be sure to keep up-to-date. This is an issue that will undoubtedly be the focus of further decisions by the federal courts.

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