

**Employment Law**—Extending Reasonable Accommodations to Qualified Employees “Regarded As” Disabled Under the Americans with Disabilities Act—*Williams v. Philadelphia Housing Authority Police Department*, 380 F.3d 751 (3d Cir. 2004)

The Americans with Disabilities Act of 1990 (ADA) protects qualified individuals with disabilities from employment discrimination by requiring employers to provide those individuals with reasonable accommodations in the workplace.<sup>1</sup> An employer’s failure to provide reasonable accommodations to a disabled employee constitutes discrimination unless the employer can demonstrate that doing so would impose an undue hardship on his or her business.<sup>2</sup> In *Williams v. Philadelphia Housing Authority Police Department*,<sup>3</sup> the Third Circuit Court of Appeals considered whether an employee who is “regarded as” disabled is a qualified individual entitled to reasonable accommodations the way those who are actually disabled qualify.<sup>4</sup> The court concluded that reasonable accommodations should extend to “regarded as” disabled employees pursuant to the plain language and meaning of the ADA, its

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1. 42 U.S.C. § 12112(b)(5)(A) (2000) (requiring employers to provide disabled employees with reasonable accommodations); *see also* 42 U.S.C. § 12111(8) (2000) (defining qualified individual with disability); 42 U.S.C. § 12111(9) (2000) (describing nature of reasonable accommodations as modification to details of regular employment); *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1172 (10th Cir. 1999) (determining reasonable accommodation under ADA to include employer’s good faith effort to communicate with employee); Robert L. Mullen, *The Americans with Disabilities Act: An Introduction for Lawyers and Judges*, 29 LAND & WATER L. REV. 175, 186-88 (1994) (discussing general rule prohibiting employer discrimination against individuals with disabilities). *See generally* 42 U.S.C. §§ 12111-12112 (2000) (extending ADA to employment context).

2. 42 U.S.C. § 12112(b)(5)(A) (2000) (acknowledging discrimination as failure to reasonably accommodate known limitations of employee absent hardship); *see also* 42 U.S.C. § 12111(9) (2000) (outlining employer options qualifying as reasonable accommodation); 42 U.S.C. § 12111(10)(B) (2000) (highlighting undue hardship factors). A “disability” is defined by the ADA as: “(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2) (2000); *see also* Michael D. Reisman, Note, *Traveling “To the Farthest Reaches of the ADA,” or Taking Aim at Employment Discrimination on the Basis of Perceived Disability*, 26 CARDOZO L. REV. 2121, 2123-25 (2005) (providing in-depth explanation of disability definitions).

3. 380 F.3d 751 (3d Cir. 2004). The court focused on those individuals who are disabled due to impairments resulting from being perceived as or “regarded as” disabled. *Id.* at 766-77.

4. *Id.* at 773-76 (discussing whether reasonable accommodations extend to individuals “regarded as” disabled). The court recognized this as an issue of first impression in the Third Circuit, but noted a circuit split elsewhere. *Id.* at 773; *see also* 29 C.F.R. § 1630.2(l) (2005) (defining “regarded as” disabled). An employee is “regarded as” disabled if suffering from some medical impairment and is mistakenly perceived as being substantially limited by it. *See Katz v. City Metal Co.*, 87 F.3d 26, 33-34 (1st Cir. 2004) (declaring “regarded as” disabled plaintiffs entitled to reasonable accommodation); Michael Starr & Megumi Sakae, *Mental Disabilities*, NAT’L L.J., Nov. 22, 2004, at col. 1. *But see Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1231-33 (9th Cir. 2003), *cert. denied*, 540 U.S. 1049 (2003) (holding no duty to reasonably accommodate “regarded as” disabled plaintiffs).

legislative history, and pertinent case law.<sup>5</sup>

In May 1998, Edward Williams, a Philadelphia Housing Authority (PHA) police officer of twenty-four years, was suspended without pay after threatening and yelling at a superior officer.<sup>6</sup> Two days later, the PHA directed Williams to report to the PHA radio room for duty, but Williams failed to comply.<sup>7</sup> Subsequently, Williams submitted an application for a medical leave of absence which the PHA approved.<sup>8</sup> In August, Williams's personal psychologist submitted a report to the PHA stating that Williams was prepared to resume his professional duties.<sup>9</sup> Just four weeks later, Dr. Finley, the PHA's psychologist, reported that Williams was fit to work only in an administrative capacity and that Williams should not resume active duty.<sup>10</sup> Moreover, Dr. Finley indicated that Williams should not carry a weapon or resume active duty for a minimum of three months.<sup>11</sup>

Shortly after Williams was cleared of restricted duty in October, the PHA declined his request to resume work in the training unit.<sup>12</sup> One day later, Williams asked for an assignment in the radio room; the PHA failed to respond.<sup>13</sup> The PHA believed Williams was unable to work with, have access to, or be around others carrying firearms, although Williams's only limitation was that he could not carry a weapon.<sup>14</sup> As a result of this misperception, the PHA offered Williams a leave of absence instead of placing him in the radio room.<sup>15</sup> In early December, a PHA officer wrote to Williams requesting that he file for medical leave by December 18, 1998, because his annual benefits

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5. 380 F.3d at 774.

6. 380 F.3d at 756 (detailing Williams's behavior when disciplined and suspended). Williams was called into the sergeant's office because of his unruly interactions with other employees. *Id.*

7. *Id.* (discussing Williams's absence from work). The PHA ordered Williams to undergo a psychological examination with its psychologist when Williams failed to return to work and began calling in sick each day. *Id.*

8. *Id.* (describing Williams's application for medical leave). The application, submitted in either June or July 1998, included an evaluation from Williams's personal psychologist diagnosing him as suffering from "[m]ajor depression, recurrent, severe." *Id.* Williams was notified in late July that his sick time and annual leave would deplete in August, but Williams ignored the letter and did not request another leave of absence until he asked again in late September. *Id.*

9. 380 F.3d at 756-57 (assessing Williams's fitness for duty). In August and September, Williams attended three appointments with Dr. Finley. *Id.*

10. *Id.* at 757 (allowing Williams to return to work with certain limitations).

11. *Id.* Dr. Finley stipulated, after meeting with Williams three times, that Williams can work around other officers who will be wearing their weapons, but he should not himself carry a weapon. *Id.*

12. *Id.* at 757 (concluding Williams ineligible for position due to work limitations). The PHA denied Williams's request because the position he sought was not available to him given Dr. Finley's recommendation that he not carry a weapon. *Id.* Alternatively, the PHA offered Williams an unpaid leave of absence and future employment when he recovered. *Id.* at 757 n.1, 771.

13. 380 F.3d at 757 (assuming PHA unresponsive until litigation ensued).

14. *Id.* at 766 (describing Williams's inability to carry a firearm). "One of the points of 'regarded as' protection is that employers cannot misinterpret information about an employee's limitations . . ." *Taylor v. Pathmark Stores, Inc.*, 177 F.3d 180, 190 (3d Cir. 1999).

15. 380 F.3d at 755, 762 (noting PHA's misperception regarding Williams's limitations).

would otherwise soon be exhausted.<sup>16</sup> Williams never filed for additional medical leave and the PHA finally terminated him.<sup>17</sup>

Williams filed suit against PHA in the United States District Court for the Eastern District of Pennsylvania alleging discrimination under the ADA.<sup>18</sup> To qualify as “disabled” under the ADA, Williams must have been substantially limited by a physical or mental impairment that significantly restricted his ability to perform either a class of jobs or a broad range of jobs.<sup>19</sup> The district court granted summary judgment in favor of the PHA, reasoning that Williams was not “disabled” because he was not precluded from working in a broad range of jobs, and therefore he could not entertain a discrimination claim.<sup>20</sup> The Third Circuit Court of Appeals reversed the grant of summary judgment and remanded the ADA discrimination claim because the district court failed to consider whether Williams could work in a class of jobs.<sup>21</sup>

Prior to the enactment of the ADA, other federal laws protected the rights of people with disabilities, but were narrow in scope and application.<sup>22</sup> Congress, under pressure from disability rights groups to expand its nondiscrimination

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16. *Id.* at 758 (recounting process of notification regarding Williams’s employment status); *see also supra* note 8 (cautioning Williams regarding potential depletion of annual benefits).

17. 380 F.3d at 758 (describing Williams’s termination).

18. *Id.* at 755-56 (remanding discrimination claims and affirming failure of retaliation claims under ADA). Williams alleges that the PHA discriminated against him when they failed to reasonably accommodate, or respond at all, to his requests to work in the PHA radio room or training unit. *Id.* at 771; *see also supra* note 1 (identifying reasonable accommodation to include an employer obligation to communicate with employee). Citing lack of evidence, the Third Circuit upheld the district court’s dismissal and motion for judgment in favor of the PHA for the retaliatory claims. 380 F.3d at 759-60; *see also supra* notes 12-13 and accompanying text (detailing Williams’s requests for accommodations); *supra* note 2 and accompanying text (defining discrimination, in part, as failure to make reasonable accommodations).

19. 380 F.3d at 755 (noting district court’s ultimate error); *see also* 29 C.F.R. § 1630.2(j)(3)(i) (2005) (defining “substantially limited” as restricted in class of jobs or broad range of jobs); *supra* note 2 (defining terms, factors, and circumstances which trigger ADA compliance).

20. 380 F.3d at 762-64 (discussing Williams’s limitations regarding performance of major life activity of working). The PHA claimed that Williams was not “disabled” as his limitations would not preclude him from working in a broad range of jobs in various classes. *Id.* at 755; *see also* 42 U.S.C. § 12116 (2000) (implementing definitions to clarify ADA); 29 C.F.R. § 1630.2(j)(1)-(2) (2005) (qualifying circumstances and factors that satisfy “substantially limited” requirement); *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 491-93 (1999) (citing Equal Employment Opportunity Commission regulations interpreting ADA disability definition).

21. 380 F.3d at 755-56 (criticizing court’s sole consideration of Williams’s inability to work in broad range of jobs). Determination of whether a disability exists under ADA is made by evaluating an employee’s level of impairment as it affects major life activities. *Taylor v. Pathmark Stores, Inc.*, 177 F.3d 180, 187 (3d Cir. 1999).

22. *See* Rehabilitation Act of 1973, 29 U.S.C. §§ 701-794 (2002) (protecting individuals with disabilities). Section 794 of the Rehabilitation Act prohibits all federally assisted programs from discriminating on basis of disability. *Id.* at § 794; *see also* *Sch. Bd. of Nassau County, Fla. v. Arline*, 480 U.S. 273, 278-79 (1987) (listing programs impacted by Rehabilitation Act). The Rehabilitation Act only prohibited discrimination by entities receiving public assistance. H.R. REP. NO. 101-485(IV), at 23 (1990), *reprinted in* 1990 U.S.C.C.A.N. 512, 513. Initially, the Rehabilitation Act only applied to individuals with handicaps. *See* 29 U.S.C. § 701 (2000). Now, the definition of handicapped includes persons having a physical or mental impairment that substantially limits a major life activity, persons possessing a record of such impairment, or persons “regarded as” having such an impairment. H.R. REP. NO. 101-485(IV), at 23 (1990), *reprinted in*, 1990 U.S.C.C.A.N. 512, 513.

mandate to all business entities, passed the ADA in 1990.<sup>23</sup> In enacting the ADA, Congress provided protection for disabled individuals beyond that which the Rehabilitation Act already guaranteed, though both statutes were textually similar.<sup>24</sup>

In the employment context, employers and public entities are prohibited from discriminating against a qualified individual with a disability.<sup>25</sup> The ADA's definition of disability covers not only those employees who are actually disabled, but also includes employees who are "regarded as" disabled.<sup>26</sup> Only if the employee meets the definition of a qualified person with a disability does the employer's duty of reasonable accommodation begin.<sup>27</sup> Practical implementation of the ADA has generated much controversy as it pertains to the "regarded as" definition of disability.<sup>28</sup> Diverging definitions prevent employers from consistently recognizing employee conditions that trigger the employers' obligations.<sup>29</sup>

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23. 42 U.S.C. § 12101 (2000); see also Timothy J. McFarlin, Comment, *If They Ask for a Stool . . . Recognizing Reasonable Accommodation for Employees "Regarded As" Disabled*, 49 ST. LOUIS U. L.J. 927, 932 (2005) (explaining political pressures to enact comprehensive law requiring equality for all individuals with disabilities).

24. See 42 U.S.C. §§ 12101(b)(4), 12111(2) (2000) (extending disability discrimination prohibitions to private sector); see also *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating ADA's definition of disability almost identical to "handicapped individual" in Rehabilitation Act); *Ellenwood v. Exxon Shipping Co.*, 984 F.2d 1270, 1277 (1st Cir. 1993) (noting ADA extends protection of Rehabilitation Act to reach more private employers); *Noland v. Wheatley*, 835 F. Supp. 476, 481-83 (N.D. Ind. 1993) (ruling plaintiff states claim under ADA, but not Rehabilitation Act); H.R. REP. NO. 485(IV), at 23-25 (1990), reprinted in 1990 U.S.C.C.A.N. 512, 512-14 (acknowledging purpose of ADA to expand coverage of Rehabilitation Act); *supra* note 2 (explaining three categories of disability satisfying requirement for ADA protection).

25. See 42 U.S.C. § 12112(a) (2000) (outlining reach of employment context to job application, hiring, advancement, and termination); *id.* at § 12111(8) (defining qualified individual as disabled person having ability to perform job with or without accommodations); *Giordano v. City of New York*, 274 F.3d 740, 747 (2d Cir. 2001) (prohibiting discrimination in discharging employees).

26. See 42 U.S.C. § 12102(2)(c) (2000) (including "regarded as" impairments under ADA disability definition); see also 29 C.F.R. § 1630.2(h) (2005) (declaring impairment as physiological disorder, disfigurement, anatomical loss, or any mental disorder); *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 156 (E.D.N.Y. 2002) (articulating three definitions of disability under ADA). See generally Arlene Mayerson, *Restoring Regard for the "Regarded as" Prong: Giving Effect to Congressional Intent*, 42 VILL. L. REV. 587 (1997) (suggesting failure to understand broad disability definitions as basis for rulings against "regarded as" employees); *supra* note 2 (recapping disability definition under ADA).

27. See 42 U.S.C. § 12111(8) (2000); see also *Weber v. Strippit, Inc.*, 186 F.3d 907, 915 (8th Cir. 1999) (citing *prima facie* disability case must satisfy both disability and qualified individual elements); John Vande Walle, Note and Comment, *In the Eye of the Beholder: Issues of Distributive and Corrective Justice in the ADA's Employment Protection for Persons Regarded as Disabled*, 73 CHI.-KENT L. REV. 897, 924 (1998) (distinguishing ADA from other statutes due to employer's duties to make reasonable accommodation). The ADA describes a qualified individual as an individual "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8) (2000).

28. See 42 U.S.C. § 12102(2)(A) (2000) (describing "actually disabled" as physical or mental impairments substantially limiting major life activity); *id.* (identifying necessity for employers to perceive an impairment as substantially limiting to qualify as disability).

29. See *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1231-33 (9th Cir. 2003) (noting bizarre result if liability attached to employers failing to accommodate "regarded as" employees); *Weber v. Strippit, Inc.*, 186

The Supreme Court previously held in *School Board v. Arline*<sup>30</sup> that an individual who is “regarded as” disabled under the Rehabilitation Act is required to be reasonably accommodated.<sup>31</sup> The Court explained that Congress intended that “regarded as” plaintiffs receive accommodations when it expanded the definition of handicapped to include “regarded as” individuals.<sup>32</sup> Congress recognized that a person’s ability to work can be limited by the negative reactions of others to the perceived impairment.<sup>33</sup> In contrast to the textual approach taken in *Arline*, the court in *Weber v. Strippit, Inc.*<sup>34</sup> declined to apply the statute as written, claiming that “[i]t seems odd to give an impaired but not disabled person a windfall because of her employer’s erroneous perception of disability, when other impaired but not disabled people are not entitled to an accommodation.”<sup>35</sup> Because *Weber* denies that Congress intended to create a disparity in treatment based solely on whether the employer misperceives the impairment, the court declined to apply the statute at face value since such an application would lead to “bizarre results.”<sup>36</sup> In light of these two approaches, courts have split on whether “regarded as” employees under the ADA are entitled to the same accommodations as those employees who are actually disabled.<sup>37</sup>

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F.3d 907, 916 (8th Cir. 1999) (declaring liability for employers who fail to accommodate “regarded as” employees creates bizarre results). *But see* *Kelly v. Metallics West, Inc.*, 410 F.3d 670, 675 (10th Cir. 2005) (declining to follow *Kaplan* and *Weber*); *Katz v. City Metal Co.*, 87 F.3d 26, 33 (1st Cir. 1996) (entitling “regarded as” employees to reasonable accommodations). If the statute was interpreted facially, it would deny most the right to reasonable accommodations while granting it to others solely based on employer’s misperceptions, thereby creating bizarre results. *Weber v. Strippit, Inc.*, 186 F.3d 907, 917 (8th Cir. 1999).

30. 480 U.S. 273 (1987).

31. *Sch. Bd. v. Arline*, 480 U.S. 273, 288-89 (1987) (imposing affirmative obligation to provide reasonable accommodations to handicapped employees).

32. *See Sch. Bd. v. Arline*, 480 U.S. 273, 282-83 (1987) (acknowledging Congressional intent to expand ADA coverage with “regarded as” language).

33. *Sch. Bd. v. Arline*, 480 U.S. 273, 278 n.3 (concluding handicapped definition too narrow to deal with broad range of discrimination). “The amended definition reflected Congress’ concern with protecting the handicapped against discrimination stemming not only from simple prejudice, but also from ‘archaic attitudes and laws’ and from ‘the fact that the American people are simply unfamiliar with and insensitive to the difficulties confront[ing] individuals with handicaps.’” *Id.* at 279 (citing S. REP. NO. 93-1297, at 50 (1974)); *see also id.* at 292 (noting negative reactions of others may substantially limit the person’s ability to work).

34. 186 F.3d 907 (8th Cir. 1999).

35. *Weber v. Strippit, Inc.*, 186 F.3d 907, 917 (8th Cir. 1999) (citing *Taylor v. Pathmark Stores, Inc.*, 177 F.3d 180, 195 (3d Cir. 1999)). For example, if an individual had an impairment that interfered with his job but did not substantially limit any major life activity, the employer could terminate him absent a perceived disability. *Id.* at 916. If, however, the employer perceived the individual as being more limited than he actually was, the individual would receive reasonable accommodations solely based on the employer’s misconception when fundamentally, the injury or limitation is the same. *Id.* (providing example of bizarre result from statute’s application).

36. *Weber v. Strippit, Inc.*, 186 F.3d 907, 916-17 (8th Cir. 1999) (holding “regarded as” employees not eligible for reasonable accommodations). The court acknowledged that the statute does not differentiate between actual and “regarded as” disabled individuals, but is convinced that Congress never intended to create a statute that would create inconsistent and arbitrary results. *Id.* at 917.

37. *See Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1231-33 (9th Cir. 2003) (opining strict reading of ADA would result in windfall and inequality). The *Kaplan* court relied, in part, on the windfall theory

In *Williams v. Philadelphia Housing Authority Police Department*, the Third Circuit considered, for the first time, whether the ADA required employers to reasonably accommodate individuals who were “regarded as” disabled.<sup>38</sup> The court determined that the national mandate imposes an obligation on employers to accommodate “regarded as” employees because the statutory text of the ADA and its legislative history warrants it.<sup>39</sup> The court noted that Congress did not draw a distinction between those employees who were actually disabled and those who were perceived as disabled when it constructed in plain language the “qualified individual with a disability” category.<sup>40</sup> Consequently, the court refused to create a disparity between these two groups that was not included in the statutory language.<sup>41</sup> Further, the court relied on the ADA’s legislative history, specifically on the fact that Congress accepted the rationale of *Arline*.<sup>42</sup> By following *Arline*, Congress intended that the “regarded as” provision stop discrimination against individuals perceived to be disabled by “acknowledg[ing] that society’s accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment.”<sup>43</sup>

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suggested in dictum by the Third Circuit, which articulated an opportunity for impaired individuals, but not disabled, to obtain a windfall simply from a misperceiving employer. 380 F.3d at 773 (citing *Taylor v. Pathmark*, 177 F.3d 180, 196 (3d Cir. 1999)); see also *Weber v. Strippit, Inc.*, 186 F.3d 907, 916 (8th Cir. 1999) (declining to apply ADA statute as written). The court noted that denying some the right to reasonable accommodations, but granting it to others, creates an inherent disparity, based only on whether the employer misperceived the employee’s impairments. *Id.* But see *Kelly v. Metallics West, Inc.*, 410 F.3d 670, 675 (10th Cir. 2005) (noting failure of ADA to distinguish between actual or “regarded as” individuals requiring reasonable accommodations).

38. 380 F.3d at 773-76 (reiterating case and issue and analyzing current law); see also *supra* notes 4, 36 and accompanying text (acknowledging circuit split regarding issue).

39. See 380 F.3d at 774 (reasoning ADA’s language and legislative history require accommodations for “regarded as” employees). The court acknowledged that situations may arise where requiring reasonable accommodations would produce bizarre results, but believed the majority of cases would produce appropriate results given a literal reading of the text. *Id.*; see also H.R. REP. NO. 101-485(III), at 29-30 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 452-53 (rationalizing implementation of “regarded as” prong in Rehabilitation Act); *infra* notes 52-53 and accompanying text (highlighting inaccuracies of bizarre results theory).

40. 380 F.3d at 773-74 (noting unambiguous nature of statutory text); see also 42 U.S.C. § 12112(a) (2000) (declaring discrimination against qualified individuals with disability illegal). The *Williams* court acknowledged that the definition of disability included being “regarded as” having an impairment and applied the statute as it was written. 380 F.3d at 774; see also 42 U.S.C. § 12102(2) (2000) (defining disability using three categories); Reisman, *supra* note 2, at 2124 (explaining “regarded as” test designed to protect persons with controlled medical conditions from discrimination).

41. 380 F.3d at 775 (pointing out statutory text generally refers to individuals with a disability).

42. See 380 F.3d at 774 (following Congress’s acceptance of *Arline* rationale).

43. See H.R. REP. NO. 101-485(III), at 30 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 453 (encouraging adoption of *Arline*’s rationale for “regarded as” prong). Congress endorsed *Arline* when it crafted the “regarded as” provision. 380 F.3d at 775 (highlighting congressional intent); see also *Sch. Bd. v. Arline*, 480 U.S. 273, 284 (1987) (recognizing potential of individual disability without impairment which substantially limits life activity). The court used Congress’s explicit recall of *Arline* in the legislative history of the ADA as a template of legislative intent. 380 F.3d at 774. In *Arline*, a teacher who had a contagious, but not substantially limiting, form of tuberculosis was protected under the “regarded as” prong of the Rehabilitation Act because the impairment could limit her ability to work as a result of negative reactions to the impairment.

The court likened the Supreme Court's decision in *Arline*, which declared that "regarded as" employees were entitled to reasonable accommodations under the Rehabilitation Act, to the issue of "regarded as" employees under the ADA in the case at hand.<sup>44</sup> The *Williams* court noted that the "regarded as" provision that exists in the Rehabilitation Act serves the same anti-discriminatory purpose as the "regarded as" provision in the ADA.<sup>45</sup> Since the ADA must be construed "to grant at least as much protection as is provided by the Rehabilitation Act," the court explained, employees perceived to be disabled under the ADA are entitled to enjoy the same benefits as their earlier counterparts in *Arline*.<sup>46</sup>

The Third Circuit Court of Appeals properly analyzed the ADA's statutory text in holding that "regarded as" employees are entitled to reasonable accommodations to counter discrimination based on an employer's misperception.<sup>47</sup> The court accurately interpreted the federal statute and convincingly used the text's lack of differentiation between actually and "regarded as" disabled individuals to help support its position that Congress never intended to treat actually or "regarded as" disabled employees differently.<sup>48</sup> The Third Circuit correctly analogized the Supreme Court's interpretation of the "regarded as" provision of the Rehabilitation Act in *Arline* to the intended interpretation and scope of the same provision in the ADA.<sup>49</sup>

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Sch. Bd. v. *Arline*, 480 U.S. 273, 283 (1987).

44. See 380 F.3d at 775 (suggesting "regarded as" section of Rehabilitation Act plays identical role in ADA); see also Sch. Bd. v. *Arline*, 480 U.S. 273, 288 (1987) (forcing employers of qualified individuals to make reasonable accommodations).

45. 380 F.3d at 775 (noting virtually identical role of "regarded as" provisions in Rehabilitation Act and ADA); see also H.R. REP. NO. 101-485(III), at 30 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 453 (implementing "regarded as" test to preclude discrimination against impaired individuals). The report identifies common workplace barriers that result in discrimination, and the list, the report states, evidences Congress intent to include these concerns within the "regarded as" provision under the Rehabilitation Act and now the ADA. H.R. REP. NO. 101-485(III), at 30 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 453.

46. See 380 F.3d at 775 (concluding "regarded as" disabled employees entitled to same accommodations as actually disabled employees); see also *Bragdon v. Abbott*, 524 U.S. 624, 631-32 (1998) (acknowledging statutory grant of ADA protection applies at least to extent of Rehabilitation Act); *supra* text accompanying note 23 (increasing scope of protection from Rehabilitation Act to ADA). An examination of the ADA's terms demonstrates the deliberate similarity and inconclusiveness of the Rehabilitation Act's requirements. See 42 U.S.C. § 12201(a) (2000).

47. See, e.g., *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1231-32 (9th Cir. 2003); *Weber v. Strippit, Inc.*, 186 F.3d 907, 916 (8th Cir. 1999); *Katz v. City Metal Co.*, 87 F.3d 26, 33 (1st Cir. 1996) (declaring textual analysis as first step in determining meaning of statute). Many courts acknowledged that the statutory text did not, on its face, distinguish between different kinds of disability, but contrary to the plain language of the statute, held "regarded as" employees ineligible to receive reasonable accommodations. See *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1232 (9th Cir. 2003) (suggesting formalistic reading of ADA leads to bizarre results and unjustly enriched individuals); *Weber v. Strippit, Inc.*, 186 F.3d 907, 917 (8th Cir. 1999) (declining to apply statute as written).

48. See *supra* text accompanying notes 40-41 (highlighting lack of distinction between disabled employees in ADA text); *supra* note 43 (explaining Congressional intent via *Arline* holding).

49. See 42 U.S.C. § 12201(a) (2000) (confirming scope of ADA at least that of Rehabilitation act); see also H.R. REP. NO. 101-485(III), at 30 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 453 (stating Congress's

Unfortunately, the Third Circuit missed an opportunity to frame the issue squarely as a straightforward case of workplace discrimination, and instead chose to travel down the less important path of dissecting how the discrimination occurred.<sup>50</sup> The Third Circuit should have attacked the *Weber* court's suggestion and denounced the proposition that "regarded as" individuals are accommodated only based on whether they are perceived as disabled by their employer.<sup>51</sup> The court should have emphasized that the provision seeks to protect impaired individuals who have been discriminated against due to an employer's misperception of their impairment.<sup>52</sup> Had the Third Circuit stressed that discrimination is the triggering act for ADA protection, instead of entertaining the manner in which the discrimination occurred, it would have adequately repealed the "bizarre results" theory set forth in *Weber* and weakened the reasoning of the courts that rely on *Weber*.<sup>53</sup>

The court's focus on the plain language of the statute effectively preserves the concept of textualism.<sup>54</sup> Had the court rendered qualified, "regarded as" employees ineligible to receive reasonable accommodations, the notion of textualism would begin to erode with the court's open contradiction of the statute's plain language.<sup>55</sup> "The first step in interpreting a statute 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'"<sup>56</sup> If courts begin to deviate

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interpretation of "regarded as" under Rehabilitation Act extends to "regarded as" ADA provision).

50. See 380 F.3d at 773-74 (addressing manner in which discrimination occurred); see also *supra* text accompanying notes 47-49 (noting court's focus on "regarded as" provision of statute).

51. See 380 F.3d at 774 (admitting possibility of situations rendering bizarre results); *supra* text accompanying notes 35-36 (detailing *Weber*'s bizarre results theory); see also *infra* note 53 and accompanying text (suggesting repeal of bizarre results theory would produce more persuasive argument).

52. See *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 165-66 (E.D.N.Y. 2002) (highlighting statute's purpose to shield impaired individuals from discrimination due to employer's misperception). The *Williams* court acknowledged that "regarded as" protection operates, in part, so employers do not misinterpret the limitations of their employees and render them incapable of performing a wide array of jobs. 380 F.3d at 769.

53. 380 F.3d at 773 (admitting persuasiveness of well-reasoned district court case which repeals bizarre results theory); see also *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 164-65 (E.D.N.Y. 2002) (proclaiming bizarre results theory would nullify "regarded as" protection). But see *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1232 (9th Cir. 2003) (adopting rationale of *Weber* suggesting formalistic reading gives way to inconsistent results); *supra* note 37 (detailing origin of the windfall theory).

54. See *Mayerson*, *supra* note 26, at 609 (suggesting elimination of confusion concerning "regarded as" provision by adopting "simple, straightforward approach Congress intended"). See generally *id.* (preserving textualism when court analyzes statute, realizes and applies its clear intent). Several courts, however, completed a statutory analysis, recognized that it did not distinguish between disabled employees, but still refused to apply it as written because it favored a different outcome. *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1232 (9th Cir. 2003) (failing to apply strict textual interpretation); *Weber v. Strippit, Inc.*, 186 F.3d 907, 916 (8th Cir. 1999) (lacking adherence to principles of strict construction).

55. See *supra* note 53 (noting consequences of upholding *Weber*); *supra* note 43 (citing *Arline* as support). If courts refuse to adhere to the plain meaning of the text, the intended purpose of the statute and process by which we analyze it will ultimately erode. *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 164-65 (E.D.N.Y. 2002) (warning of effects when ignoring plain meaning of text).

56. *Jacques v. DiMarzio, Inc.*, 200 F. Supp. 2d 151, 166 (E.D.N.Y. 2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

from the unambiguous meaning of the text merely because they dislike the results, textualism will become obsolete and inconsistencies among courts will become the norm.<sup>57</sup> In the event that this issue is presented to the United States Supreme Court, the Court will affirm the decision in *Williams* based upon its earlier interpretation of the “regarded as” clause in *Arline* and the simplistic textual analysis provided in the instant case.<sup>58</sup> In *Williams v. Philadelphia Housing Authority Police Department*, the court considered whether employers have an obligation to provide reasonable accommodations to qualified employees “regarded as” disabled under the ADA. The court concluded that employers are required to provide accommodations for “regarded as” employees pursuant to the plain language of the ADA and its legislative intent. In failing to adequately discredit the argument that a strict application of the statute would not lead to bizarre results, the court missed a significant opportunity to discredit *Weber’s* reasoning as it relates to reasonable accommodations. Despite this shortcoming, the Third Circuit effectively conveyed Congress’s intent when it enacted the ADA to preclude discrimination against individuals who are actually and “regarded as” disabled.

*Lynn M. Carroll*

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57. See *supra* note 55 (recognizing consequences of interpreting statutes outside plain meaning of text).

58. See H.R. REP. NO. 101-485(III), at 30 (1990), reprinted in 1990 U.S.C.A.N. 445, 453 (evidencing intent to extend interpretation of “regarded as” under Rehabilitation Act to ADA). The Supreme Court’s ruling regarding the liberal scope of the “regarded as” clause, coupled with Congress’s intent that the scope under the Rehabilitation Act extend to the ADA, leaves no other logical choice for the Supreme Court but to confirm the holding in the instant case. See *supra* note 33 and accompanying text (detailing *Arline’s* liberal approach to “regarded as” employees).