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LABOR AND EMPLOYMENT PRACTICE CASE BULLETIN

Garrett v. University of Alabama at Birmingham Board of Trustees

RECEIPT OF FEDERAL FUNDS WAIVES IMMUNITY FOR STATE AGENCIES UNDER ADA

On September 11, 2003, the federal Eleventh Circuit Court of Appeals created an exception that allows state employees in some instances to sue state agencies for disability discrimination. In *Garrett v. University of Alabama at Birmingham Board of Trustees*, No. 02-16078 (11th Cir. 2003), the Eleventh Circuit ruled that a state waives its immunity from suit under the Americans With Disabilities Act to the extent it receives federal funds.

This is the second time this case has been to the Eleventh Circuit. The first time, the Eleventh Circuit held that states enjoyed no immunity at all from suit under the ADA. That decision went to the Supreme Court, which reversed the Eleventh Circuit. In *Board of Trustees of the University of Alabama v. Garrett*, 121 S.Ct. 955 (2001), the Supreme Court ruled that the purported waiver in the ADA of state immunity from suit was invalid (i.e., state employees cannot sue state agencies under the ADA), and sent the case back down. This second time, the Eleventh Circuit once again allows the lawsuits to proceed, finding a limited exception to the “no waiver” holding of the Supreme Court, to the extent the state agency receives federal funds.

The State argued that a waiver of immunity must be knowing and voluntary, and that the waiver of immunity by electing to receive funds could not have been knowing and voluntary. Until the Supreme Court decided *Board of Trustees v. Garrett*, the argument went, the State had no reason to believe it had any immunity to waive. The Eleventh Circuit disagreed, reasoning that the continued receipt of funds *after* the decision by the Supreme Court effected a waiver.

Comment: In short, a state agency may once again be sued under the ADA, at least in the Eleventh Circuit, to the extent it receives federal funds. We will watch this case to see if it goes back up to the Supreme Court, and will report the outcome if it does.

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